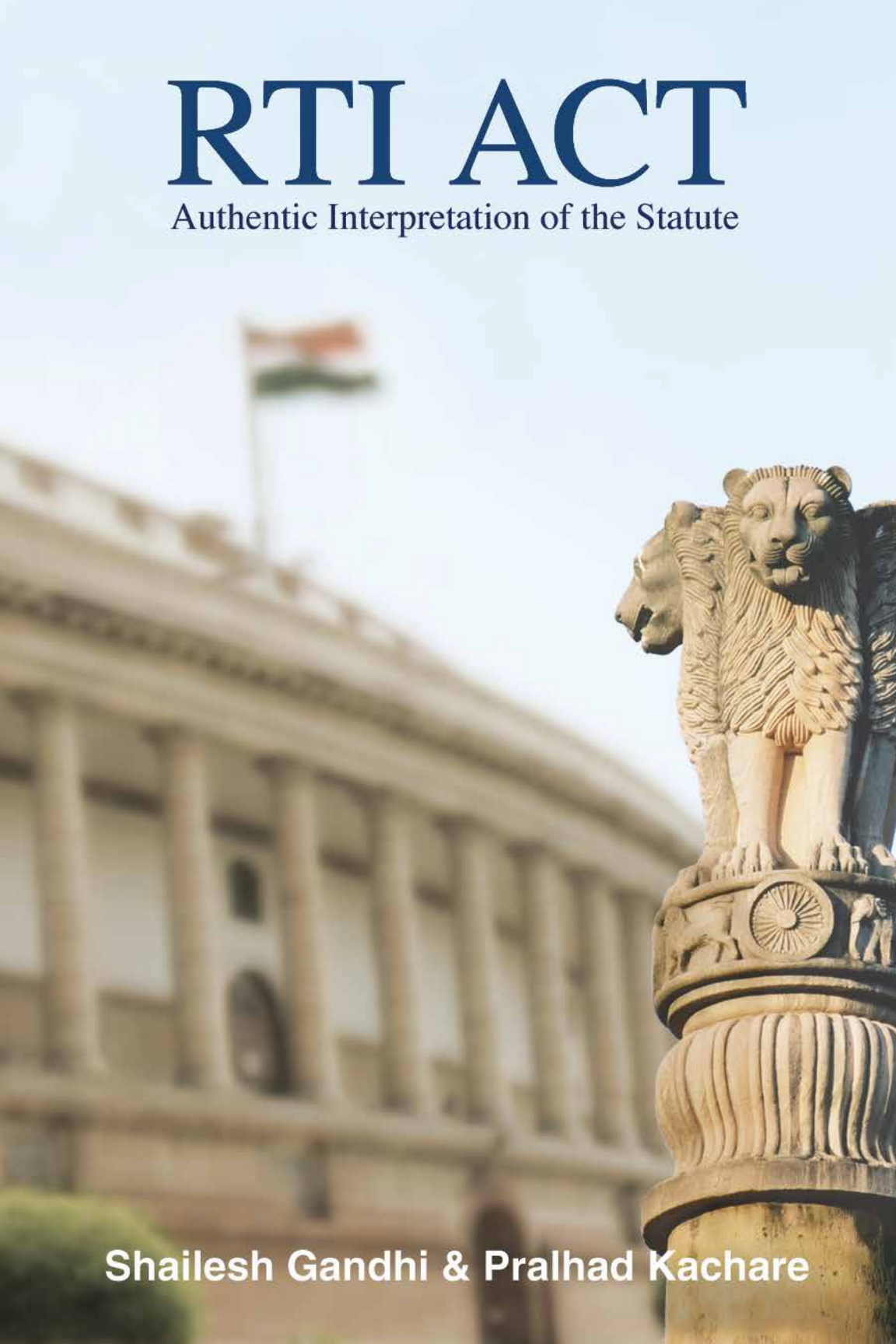
RTI ACT

Authentic Interpretation of the Statute



Shailesh Gandhi & Pralhad Kachare

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Vakils, Feffer and Simons Pvt. Ltd.
Industry Manor, Appasaheb Marathe Marg, Prabhadevi,
Mumbai 400 025. India

First printing 2016

Price ₹

Published by Vakils, Feffer & Simons Pvt. Ltd.
Industry Manor, Appasaheb Marathe Marg
Prabhadevi, Mumbai 400 025, India

Printed at Vakil & Sons Pvt. Ltd.
Industry Manor, Appasaheb Marathe Marg
Prabhadevi, Mumbai 400 025, India

ISBN-978-81-8462-139-6

www.vakilspublications.com
info@vakilspublications.com

Note:
The RTI Act has been quoted and our interpretation given below each section. Where Mr. Satyananda Mishra or Mr. Toby Mendel had a differing view from that of the authors, their comments have been given in footnotes.

To

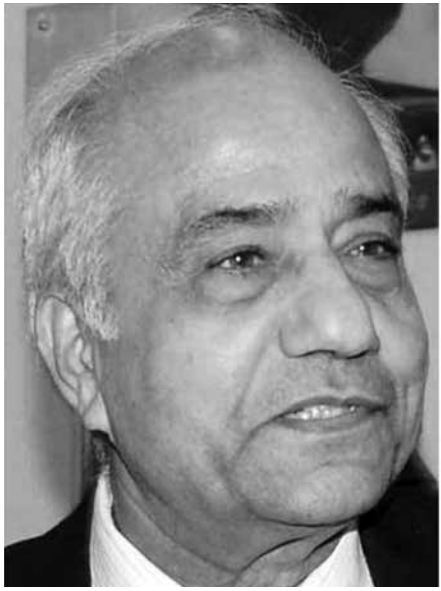
Aruna Roy

who played a critical role

in the enactment of the RTI Act,

for guiding, mentoring and introducing me

to the National movement for RTI



Justice B. N. Srikrishna

Justice B. N. Srikrishna is one of the foremost jurists of India. He retired as a Supreme Court judge and has served in a wide variety of roles. His knack of understanding complex and eclectic issues has led to his heading various commissions for different purposes. Amongst the many commissions he headed, is a commission to investigate the communal riots in Mumbai, and also the sixth pay commission. There are many other commissions for diverse needs where he has delivered reports. He is very well-known and respected for his fairness, scholarship and delivering the most complex assignments in time.

B. N. Srikrishna
FORMER JUDGE, SUPREME COURT OF INDIA

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OPP. CATHEDRAL SENIOR SCHOOL,
FORT, MUMBAI - 400 001
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FOREWORD

I had the pleasure of reading the book written by Shri Shailesh Gandhi, former Central Information Commissioner, on the nuances of the Right to Information Act, 2005. This book addresses the long felt need for an assessment of the impact of the R.T.I. Act on the right of the citizens to know, the *sine qua non* in a democracy wedded to the Rule of Law.

Shri Gandhi has been passionate about the Right to Information of the citizens throughout his career, as a social activist, and later as an authority concerned with the implementation of the Act. He displayed unmitigated enthusiasm in interpreting the Act and enabled citizens to derive maximum benefits extended by the Act. This book is the product of his passion for the subject coupled with his practical experience in the field.

While it may not be possible to agree with some of the views expressed by Shri Gandhi with regard to the manner of interpretation of legislations and the ambit of Article 141 of the Constitution, one cannot but admire and commend his efforts to translate into literature the quintessence of his credo and his experience in implementation of the Right to Information Act. I am sure the book will serve us a practical manual to persons interested in the subject - students, activists and the authorities in charge of implementation of the Act.

My best wishes to Shri Shailesh Gandhi for the success of this book.

Mumbai,
7th September 2016

(B.N. SRIKRISHNA)

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Acknowledgements

I am very grateful to former Supreme Court judge, Justice B. N. Srikrishna for writing the Foreword to this book. One of the finest judges of India, he is well-known for his quick grasp of subjects and commitment to transparency. I would also like to acknowledge a personal debt, since he has always been very supportive and given his views and advice to me freely.

I want to record my gratitude to my co-author Mr. Pralhad Kachare who when asked to give his comments on my interpretations of the language of the RTI Act, agreed with my contentions and gave many additional and significant inputs.

I also want to express my gratitude to Mr. Toby Mendel and Mr. Satyananda Mishra for examining my work and giving their comments. Both were kind enough to take time out of their busy schedules to sift through drafts and argue their views through a series of emails exchanged between us. Most of their comments and suggestions have been incorporated in my comments, and where they had something additional or different, their comments have been added as footnotes. The active interaction between four people who have considerable experience and knowledge about RTI makes this an authentic interpretation of the statute. On most broad areas, there is considerable agreement.

Ms. Maria Elena Perez Jaen, former information commissioner of Mexico, has also given me an understanding of the aspects of the Mexican RTI Act. Mr. C. J. Karira has also reviewed this book and given valuable suggestions.

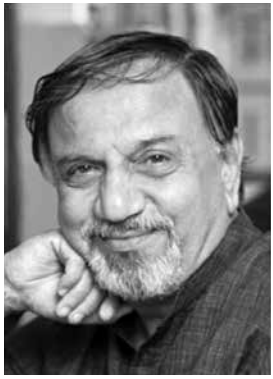
I would like to thank the editor, Ms. Zinat Aboli, for patiently steering this project. Being an academician and a researcher, she did have strong objections to the way I have put forth the discussion as it did not meet the rigour or traditions of academic writing. I am thankful to her for accepting and helping me in this project despite her serious reservations about the format.

I would also like to record my gratitude to my friend, the late Mr. Narayan Varma who kept pushing and encouraging me to write.

Last but not the least, I am very grateful to my friend Mr. Sharad Saraf for offering to publish this book in a hard copy. Ms. Ritu Saraf has taken great pains to design the cover and help in the actual details of publishing. Without her help, this project would not have taken off. I also acknowledge my gratitude to my young friends Ronak Sutaria and Chandni Parekh for helping in various aspects.

Shailesh Gandhi

About the Authors



Shailesh Gandhi

Shailesh Gandhi is a first-generation entrepreneur and a distinguished Alumnus awardee of IIT Bombay. He sold his company to become a RTI activist. Shailesh was part of the National RTI movement which was involved in drafting the National Act. He was convener of the National Campaign for People's Right To Information (NCPRI). He used RTI and also trained many citizens and government officials in over 1,000 workshops to use it. The only RTI activist to have been chosen as a Central Information Commissioner, he disposed a record of over 20,000 cases in 3 years and 9 months, and ensured that most cases were decided in less than 90 days. He gave many landmark decisions on RTI, apart from organizing the first digital paper-less office in the Commission. He is now at his home in Mumbai to further and deepen RTI. He is passionately pursuing the cause of evolving ways for a time-bound justice delivery system, and improving governance systems. Amongst many awards, he has been awarded the Nani Palkhiwala Civil Liberties award, and the M R Pai award.

Co-Author

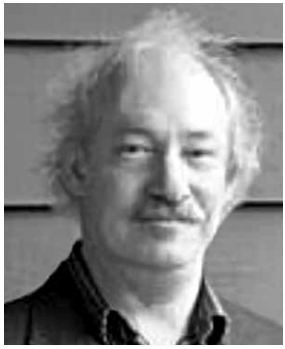
Pralhad Kachare

Presently working as Additional Collector (Selection Grade) in State Civil Service, and holding charge of Deputy Commissioner (Revenue), Aurangabad Revenue Division, Maharashtra. Worked as Associate Professor and Director of Center for Right to Information and worked on various training projects and programs in YASHADA, Pune till July 2014. Conducted more than 250 training programs and delivered more than 750 lectures on Right to Information and Good Governance issues. Participated and presented papers in National and International Workshops and Seminars. He worked as Director of Centre for Right to Information. He conceptualized an open learning distance course in YASHADA for RTI. More than 1000 citizens have completed this course. He has authored English and Marathi books on Right to Information Act 2005. He carried out a comparative study of RTI rules prevailing in various states, Union Territories and Courts in India and compiled a Case digest in 2012-13. He regularly writes articles on various issues relating to RTI, Governance and Land Revenue matters in newspapers and journals. During his journey in administration, his work has been recognised many times and he was awarded *'Uttam Karyakarta Adhikari Puraskar'* by the state-level Federation of Associations of Gazetted Officers in Maharashtra.

Active review and comments by:

Satyananda Mishra

Mr. Satyananda Mishra is a successful bureaucrat who also writes regularly. He retired as Secretary of Department of Personnel and Training (DOPT) in the Government of India. He then took on the post of Central Information Commissioner and later on became the Chief Information Commissioner. He gave many landmark orders including one declaring political parties as public authorities falling within the ambit of the RTI Act. He is now chairman of the Multi-Commodity Exchange of India Ltd. (MCX).



Toby Mendel

Mr. Toby Mendel is a renowned international expert in the field of transparency laws. He is President and Executive Director of Centre for Law and Democracy based in Canada. He has been involved with the drafting of many transparency laws and is a member of many UN and World Bank projects. In 2011, his organisation had ranked the Indian Law as the third best in terms of its draft and provisions.[1]

1 Centre for Law and Democracy: http://www.rti-rating.org

Preface

The Right to Information Act has definitely been a powerful empowering legislation for citizens. It has caught the imagination of people in the country and rough estimates suggest that there may be about six to eight million applications filed in 2015. Many users, Public Information Officers (PIOs), First Appellate Authorities and Information Commissioners have varying perspectives on the law. My insight into the transparency law shows that most people in power develop a dislike for transparency. Most of them believe transparency to be necessary - not for themselves - but for others. Consequently, multiple interpretations are being accepted which are not in consonance with the law passed by Parliament. An interesting aspect is that the Indian law is rated as being third best in the world as far as its provisions go, but the rating for implementation and actual transparency ranks India at number 66.[2] This divergence is largely due to not paying careful attention to the provisions and the words of the law.

It is my firm belief that the law as laid down by Parliament or State legislature is the law which has to be followed. Orders or judgments which cannot be justified by the language of the statute cannot form the basis of law, which would be followed as precedents. Article 141 of the Indian Constitution does say, "The law declared by the Supreme Court shall be binding on all courts within the territory of India." India follows the common law system where precedents are given immense importance. But there are enough Supreme Court judgments that specify that a *ratio decidendi* must be followed only when reasoning is given based on the wording of the law, and the preceding judgments. The *ratio decidendi* is "the principle which the case establishes." If a judicial or quasi-judicial decision is not made by proper and careful interpretation of the law, it is *'per incuriam'*[3] and does not become a binding precedent. Hence it need not be followed. The courts and other adjudicators must interpret the law based on its words. The Supreme Court can rule that a

2 The World Justice Project lists India at number 66 in terms of actual implementation of the RTI Act. http://worldjusticeproject.org/sites/default/files/ogi_2015.pdf http://www.rti-rating.org

3 'Per incuriam' means 'through lack of care'

law or provision is *ultra vires*. But if it gives a ruling without considering the words of the law passed by Parliament, this would be a ruling which would be *ultra vires*. The primacy of 'we the people' represented by the Parliament in making laws has to be respected.

It is worth remembering two judgments of the Supreme Court. A five judge bench has ruled in P. Ramachandra Rao v. State of Karnataka case no. appeal (crl.) 535.: "Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature". In Rajiv Singh Dalal (Dr.) Vs. Chaudhari Devilal University, Sirsa and another (2008), the Supreme Court, after referring to its earlier decisions, has observed as follows. "The decision of a Court is a precedent, if it lays down some principle of law supported by reasons. Mere casual observations or directions without laying down any principle of law and without giving reasons does not amount to a precedent."

It is possible to give diverse interpretations to any law based on a variety of different Supreme Court judgments. This book is an attempt to draw meaning from the words in the law, keeping the preamble in mind. Therefore judgments of Information Commissions or Courts are not quoted in this explanation of the RTI Act. The Right to Information Act overrides all earlier acts or rules as far as giving information is concerned. The only exception will be if release of some information is prohibited in the Constitution.

Some misinterpretations of the words in the law have developed and been carried forward. It is hoped that this book will help all stakeholders look closely at the law and follow it. This will empower the citizen to participate in our democracy more meaningfully. Hopefully, this book will start a *'samvad'* (dialogue) on the true meaning of the RTI Act. There are many eminent persons in the country who berate RTI and say there should be some limit to it. It is accepted widely that freedom of speech is often used to abuse or defame people. It is also used by small papers to resort to blackmail. The concept of paid news has been too well recorded. Despite all these there is never a demand to constrict freedom of speech. But there is a growing tendency from those with power to misinterpret the RTI Act almost to a point where it does not really represent what the law says. There is widespread acceptance of the idea that statements, books and works of literature and art are covered by Article 19 (1) (a) of the constitution, and any attempt to curb it meets with very stiff resistance. However, there is no murmur when users of RTI are being labelled deprecatingly though it is covered by the same article of the constitution. Everyone with power appears to say: "I would risk my life for your right to express your views, but damn you if you use RTI in a manner I do not approve."

My passion for this Act pushed me to think about writing this book to understand what the language of the law says. While writing, I laid down certain limits in

terms of providing no references to any decisions or judgments; no proposals for changes in law and also no reference to international practices or laws in this exercise.

My strong conviction in transparency and accountability sparked self-doubt about whether I was misinterpreting the words of the law. I therefore invited Mr. Pralhad Kachare, (Former head, RTI cell of YASHADA) to critically examine my work and to give comments wherever he had strong disagreements. Mr. Kachare was in agreement with my interpretation and offered valuable inputs. Hence we have co-authored this work.

I strongly felt that diverse opinions from prominent individuals in RTI would add value to this effort. I therefore approached Mr. Toby Mendel (Executive Director, Centre for Law and Democracy) and Mr. Satyananda Mishra (Former Chief Information Commissioner)[4] to share their valuable inputs. Both offered their comments along with sharp criticism about certain interpretations. I have accepted most of their suggestions and in some cases also quoted their comments as footnotes, which may at times differ with my understanding of the language of the law. It is satisfying to note there is a broad consensus on the meaning of most of the provisions.

I have been actively advocating a national colloquium to discuss and debate the RTI Act. A discourse on interpretation of RTI Act is crucial for India. Unfortunately, inadequate attention is given to interpretations of the words of the law passed by Parliament. There are instances where the RTI Act has been grossly constricted by decisions in which a complete section of the statute is not even quoted completely.[5] These decisions constricting the citizens' fundamental right are followed with great enthusiasm, whereas those which champion transparency are not. This effort is in the hope that various stakeholders will discuss and debate the RTI Act as per its words and spirit. This can lead to the *'Swaraj'* we all hope for. This book is perhaps the most authentic interpretation of the RTI Act enacted by Parliament.

I request readers to share their comments on this book. If any reader feels that the interpretation of the words is contrary to their actual meaning, please do let me know at rtiprekshak@gmail.com.

Shailesh Gandhi

2 October 2016

4 The Preface is entirely drafted by me and has no mention of the comments of Mr. Kachare, Mr. Toby Mendel or Mr. Satyananda Mishra.

5 Shailesh Gandhi's paper on Supreme Court judgments on the RTI Act: https://www.scribd.com/document/319277709/Supreme-Court-Paper

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THE CONSTITUTION OF INDIA

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The Right to Information Act, 2005

No. 22 of 2005

Preamble: 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.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS 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;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:

Comment: *The Preamble is the touchstone of the Act as it provides interpretative guidance. Just as the basic features of the Constitution form the basis for interpretation of laws so also the understanding of the Preamble assists in arriving at the objectives of the Act.*

A number of landmark Supreme Court judgments[6] have recognised the Right to Information as part of the fundamental rights of citizens under Article 19(1)(a). A prerequisite to comprehending the preamble of the RTI Act is the understanding of Article 19.

Article 19 of the Indian constitution states:

"Protection of certain rights regarding freedom of speech etc

(1) All citizens shall have the right

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions or cooperative societies;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India; and

(f) Omitted

(g) to practise any profession, or to carry on any occupation, trade or business

(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence."

This judiciously worded article of the Constitution of India embraces the true democratic ideal of freedom of expression. In a democracy the citizen's voice must be free and unhindered. Globally it has been accepted that freedom of expression includes the right to be informed. Without the right to information, freedom of expression cannot be fully realised. An uninformed

6 State of UP v. Raj Narain, AIR 1975 SC 865; S. P. Gupta v. President of India, AIR 1982 SC 149.

citizenry cannot express or participate meaningfully in democratic governance. Right to information is therefore an intrinsic part of the fundamental right to freedom of expression specifically mentioned under Article 19(1)(a). It is not a new right conferred on the citizens.

The legislative intent of the Right to Information Act, 2005 is clear when it admits the need for an informed citizenry, "to contain corruption and to hold Governments and their instrumentalities accountable to the governed." Thus the objective of this Act is to enable citizens to curb corruption, and hold all the instrumentalities of the Government accountable.

A democratic Government at every level is a 'government of the people, by the people, and for the people'. This leads us to the practical reality of information being the means to power, which needs to be shared with citizens. Transparency in the process of governance acts as a check on arbitrariness and corruption. For long, citizens in India were unable to monitor their government due to lack of accountability. It was for the first time, through the Right to Information that the citizens could access information from the government as a matter of right. This changed the paradigm of power by empowering the individual citizen. This process of participative vigilance will pave a path towards inclusive good governance leading to the fulfilment of the accountability principles of the Preamble. These aspects have been considered wisely by the lawmakers while framing the law. The essence of democracy is that each individual citizen is a sovereign in her own right. The Right to Information Act therefore needs to be understood as a tool of dialogue by each sovereign individual with the State. The Indian Constitution was designed with the implied promise of *Swaraj*-participatory governance. If 'we the people' do not have information about the working of the government then meaningful participation cannot happen.

In the last paragraphs it recognises that there may be some conflict with other public interests and that there is need to harmonise these different needs as per our Constitution. The Preamble recognises that there may be certain practical difficulties such as a requirement of more resources, extra expenditure and ensuring efficient working of the government. Having taken these

into account Parliament has harmonised these when framing the law, so as to achieve the democratic ideal enshrined in our Constitution. Hence the need to actualise this right and codify it to empower citizens. The reasonable limitations on this fundamental right of citizens have to follow Article 19(2) of the Constitution. In the Act of harmonizing, restrictions on the right have been provided in section 8 of the Right to Information Act. These are in sync with Article 19(2) which provides an inherent and inbuilt safeguard in the form of 'reasonable restrictions'.

The British inculcated a culture of secrecy to establish and perpetuate their 'Raj'. Those in power have largely continued this in governance. The exemptions based on these restrictions need to be construed narrowly as per the law and tested strictly in accordance with Article 19(2).

Chapter I

Preliminary

Section 1

(1) This Act may be called the Right to Information Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir

Comment: *Jammu and Kashmir has a separate State RTI law effective from 2009. All the laws passed by Parliament do not cover Jammu and Kashmir owing to Article 370* of the constitution.

(3) The provisions of sub-section (1) of section 4, sub-section (1) and (2) of section 5, section 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.

Comment: *The Act was passed by Parliament on 12 May 2005, received the Presidential assent on 15 June and became fully operational from 12 October 2005.*

Section 2

In this act, unless the context otherwise requires,

(a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly –

(i) by the Central Government or a Union Territory administration, the Central Government;

(ii) by the State Government, the State Government;

Comment: *The appropriate Government will be the State or Central Government, depending on the funding. The appropriate Government has:*

- *Power to constitute Information Commission and appointments of Information Commissioners under section 12 and 15.*
- *Jurisdiction of appropriate Government is the key factor to decide whether the Public Authority will lie in the jurisdiction of the State or Central Information Commission. This has to be read with section 2(h), 12 and 15.*
- *Peruse the annual report of each year forwarded by the Information Commission under section 25(1) and ensure monitoring of implementation of Right to Information Act within its jurisdiction.*
- *Appropriate Government must prepare programmes, public guidelines, design and develop dissemination strategy under section 26 for awareness and promoting the right to information temper among citizens and public authorities.*
- *Rule making under section 2(g), 27 and 29.*

(b) "Central Information Commission" means the Central Information Commission constituted under sub-section (1) of section 12;

(c) "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;

(d) "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12;

(e) "Competent authority" means

(i) the Speaker in the case of the House of the People or the Legislative Assembly of a state or a Union territory having such Assembly and the Chairman in the case of the Council of States or a Legislative Council of a State";

(ii) The Chief Justice of India in the case of the Supreme Court;

(iii) The Chief Justice of the High Court in the case of a High Court;

(iv) The President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;

(v) the administrator appointed under article 239 of the Constitution;

Comment: *This needs to be viewed through section 2(g) and section 28 which suggests that each competent authority is vested with rule making powers. Rules framed by a competent authority are applicable only to Public Authorities working under the control of the concerned competent authority. This rule making power of all competent authorities is not subjected to provisions of section 29. This apparently, is to respect the autonomy enjoyed by competent authorities other than those mentioned at 2(e)(iv).*

Rules can be made by the Speakers of the respective houses, the Chief Justices of the respective Courts, Governors of respective states and the President. The only specific task of the 'competent authority' discussed in Section 28 is the right to make rules mainly for fees and formats for appeals. For Union territories the administrator appointed by the President can make the rules. These rules cannot denote anything which is not in consonance with the law. In case of any inconsistence the law will prevail.

(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;

Comment: *Hence, information would mean anything which exists, in any form with a public authority. The specific instances – records, documents, memos, emails, opinions, advices, reports, samples, models - are merely meant to illustrate the broad scope. Clearly, file-noting is opinion and hence covered in the ambit of the Act. Legal or other opinions obtained by Public authorities, or various reports received by them are all covered.*

Here, it suggests an important principle regarding private bodies. Information relating to any private body, which may not be

covered by the definition of 'Public Authority' (given in Section 2 h), can be obtained through a public authority if the law allows the public authority to access it. There is an additional view at this juncture.[7] *Thus, if any public authority has the right to ask for any information under the law from a private organisation, the citizen can seek the information from the public authority. A few illustrative examples of how this proviso can be exercised by the citizens:*

- *Information about a private bank can be obtained from the regulator - RBI - if the law requires the information to be filed.*
- *Information about a private unaided school – from the Education Department.*
- *Information about a Public Limited Company – from the Registrar of Companies or SEBI if the law empowers them to ask for it.*
- *Information about a Cooperative Society – from the Registrar of Cooperative Societies.*
- *Information about Trusts – from the Charities Commissioner.*
- *Information about various banks, including private banks – from Reserve Bank of India.*

There is some ambiguity on the term 'accessed'. It may mean any information which the authority can ask for under various provisions, or the information which the authority is usually supposed to acquire under the law. There is an additional view at this juncture.[8]

As an example: The Labour office requires certain information to be submitted at certain intervals – this is 'Information' as defined

7 Mishra, Satyanand (personal communication, May 05, 2016) explains that Public authorities access information of private bodies by exercising powers under various laws. In each such law, the power to access information is usually vested in the public authority for a defined purpose. The obligation of a private body to share any information with any public authority is limited to the extent that the said public authority would use the said information only for the purpose defined in the respective law. Therefore, sharing such information with other citizens under the RTI Act appears to be a kind of breach of the condition on which the public authority concerned accessed the said information in the first place. He, however, agrees with this reading that the routine reports and returns various public authorities access from `private bodies by way of statutory compliance can be disclosed as information subject to the exemptions laid down in Sec 8.

8 Mendel, Toby (personal communication, May 13, 2016) contends that it cannot extend to any information which an investigatory authority (e.g. the police) might in pursuance of an investigation ask for. And yet it must extend beyond information already held (or supposed to be held) by the public authority. It covers information which an authority may at any time (i.e. not just in special cases covered by an investigation) ask for from a private body. E.g. a broadcast regulator might have the power to ask a broadcaster for its ownership structure, not because it is investigating but just to check.

by the Act, and hence can be accessed. However, the labour office during an inspection or investigation, can access virtually all the records of an organisation which otherwise would not be done.

Some RTI activists argue that this proviso allows access to any information of a private organisation through any Public authority by invoking the special investigative powers of the Public authority. Such a wide interpretation would actually mean that all private organisations could be forced to disclose all the information with them. This would be too wide an interpretation. Only the information 'normally' and routinely accessed by the Public authorities comes under the ambit of RTI.

However, all information with the Public authority is certainly information covered by the Right to Information Act. The Public authority holds the information on behalf of citizens. Thus, once any information is with a Public authority, it is 'information' available to any citizen under the Right to Information Act (subject to the exemptions of Section 8 of the Act). Repeatedly, the Act implicitly recognises that the Government holds all information on behalf of the citizen.

Often, some Right to Information Act users expect an explanation or answer even if there is nothing on records available. This cannot be tenable. RTI is not Right to Interrogation. The information has to exist in the material form. Often officials refuse to give information when a Right to Information request is framed as a question. This position has no basis in the law.

As an example, if an applicant asks: "What is the name of the Head of the Department?" or "What is the expenditure incurred on medical expenses in 2014 by the Organisation?" This is information available on record. However, if an applicant asks: "Why has the Municipal Corporation not repaired and maintained all roads?" or "What is the meaning of a certain rule?" or "Why was the judgment not given in my favour" etc., it must be noted whether such information exists on record. If it exists on the records it should be provided and if not, then the answer provided should be "There is no record of this".

(g) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

Comment: *The rules apply to fees, formats for applications, appeals etc. These can only be made by the appropriate Government and competent authorities mentioned in Section 2 (e). Other Public Authorities or departments have no authority to make any rules. It is normally accepted that regulations also cannot go beyond what is authorised For example, rules cannot specify exempting any information, beyond what is exempted under section 8 of the RTI Act. There is an additional view at this juncture.*[9]

(h) "public authority" means any authority or body or institution of self Government established or constituted —

a) by or under the Constitution;

b) by any other law made by Parliament;

c) by any other law made by State Legislature;

d) by notification issued or order made by the appropriate Government, and includes any--

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government"

In effect this suggests any authority or body which we consider as Government in common parlance- all Ministries and their departments, Municipal Bodies, Panchayats, and so on. This also includes Courts, UPSC, and Public Sector Undertakings like Nationalised Banks, LIC, and UTI amongst others. It is worth noting that establishments of the Parliament, Legislatures, Judiciary, President and the Governors have also been brought under the surveillance of the citizen.

Sub-section d) refers to organisations which are created by a specific notification eg. Deemed Universities which are created by a specific notification.

Sub clause d) (i) and (ii) mean any non-Government organisations and also private entities which are substantially owned, controlled or financed directly or indirectly by the Government are under the RTI ambit. Thus aided schools and colleges are Public

9 Mendel, Toby (personal communication, May 13, 2016) suggests that it is normally accepted that regulations cannot go beyond what is authorised, either explicitly or implicitly, by the primary legislation. One cannot, via regulation, get into matters that are not within the remit of the law.

Authorities. When there are significant Government nominees on the boards of companies, or trusts or NGOs this is control by the Government. There is an additional view at this juncture.[10]

At times when the Government nominees do not have a majority, it is claimed that the Government does not have control. The plea that if Government nominees are not in complete control the organisation is not a public authority is flawed. It must be noted that the adjective 'complete' or 'pervasive' control is not mentioned.

Where the Government either owns substantial stake, or has control over, or has given substantial finance, these are public authorities, directly covered under the Right to Information Act. The substantial finance can take into account tax-incentives, subsidies and other concessions like land as well.

There is some ambiguity about the words 'owned' and 'substantial finance'. The finance could be either as investment or towards the expenses, or both. The way in which the words have been placed, indicates that

(d) (i) relates to investments and

(d) (ii) relates to the running expenses, projects and delivery activities.

Section 2(45) of The Companies Act defines Government company thus:

"For the purposes of this Act Government company, means any company in which not less than fifty one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary of a Government company as thus defined."

By any norm, whenever over 51 per cent of the investment in a body lies with any entity, it is said to be owned by that entity and the Company law also confirms this. The RTI Act mentions 'owned' 'controlled' and 'substantially financed' separately, hence these words have to be assigned some meaning not covered by

10 Mendel, Toby (personal communication, May 13, 2016) contends that besides serving the goals of their organisations the board members are also subject to government direction and that is enough to bring it under the Right to Information law.

ownership. It is apparent that the intention of the Parliament is to extend the scope of the right to other organisations, which are not owned by government, but are financed by government funds or controlled by appropriate Government.

It may be noted that no word in any Act can be considered to be superfluous, unless the contradiction is such as to render a significant part meaningless, or it violates the Preamble. Therefore it becomes necessary to consider a situation where an entity may be controlled by Government without ownership or substantial finance like where they control the board of a trust.

When a Charity Commissioner or Registrar of Societies appoints an administrator to run the affairs of a Trust or Society, or have nominees who are Government servants as mentioned earlier; besides performing their duties as nominees, are also subject to government direction to exercise control. There is an additional view at this juncture.[11]

It is therefore evident that as per Section 2(h)(i) 'body substantially financed' would be a body where neither the ownership nor the control may lie with the Government. The wording 'substantially financed' would hence have to be given meaning at less than 51 per cent holding. There is an additional view at this juncture.[12] *Company Law gives significant rights to those who own 26 per cent of the shares in a Company. No special resolutions may be passed unless 75 per cent of the shareholders agree. Thus, 26% holding represents control. On the other hand, Section 2(6) of the Company law defines "associate company", in relation to another company as:* ***(6) "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.***

Explanation – For the purposes of this clause, "significant influence" means control of at least twenty per cent of total share capital, or of business decisions under an agreement.

11 Mendel, Toby (personal communication, May 13, 2016) believes that Government board members are supposed to operate in the interests of the body. But they remain government people and have to follow government policy too, hence the control.

12 Mendel, Toby (personal communication, May 13, 2016) suggests that there is confusion here between ownership and funding and that they are totally different from the control situation.

The apparent key approach of the Right to Information Act is that the citizens' money is involved and hence, since the State acts on behalf of the citizens, wherever the State gives substantial money, the citizen has a right to know. The phrase 'substantial finance' has not been defined in the Act. However, for the purpose of deciding what constitutes 'substantial finance' it may be useful to draw a guideline, instead of arbitrarily deciding each case. In common business parlance 'substantial finance' could mean control of over twenty six per cent of total share capital, which would give control over certain significant business decisions. There is an additional view at this juncture.[13] It therefore appears reasonable to have a threshold representing 26 per cent of the equity. Perhaps 20 per cent of the running expenses could be considered as 'substantial finance'. To obviate the problem which very small organisations may face in meeting the requirements of the Right to Information Act, it may also be reasonable to accept that if a NGO receives an amount - say less than 2 million - it would not be considered as substantial finance. There is an additional view at this juncture.[14] This is not defined in the law, and we have sought to give our interpretation to ensure a consistence of approach when determining whether an organisation is a public authority. The finance may be provided directly or indirectly by the government. This means either the funds are provided directly by the government, or any organisation which is owned by government, for example public sector undertakings or banks. This would be indirect finance.

It must be noted that the law does not cover entities which exercise public functions unless they are controlled or substantially financed by Government. A private entity which is not financed or controlled by government is not a 'public authority' as defined by this act. Public utilities like electricity distribution companies, or those providing and maintaining roads are not 'public authorities' as defined by the law, unless it can be shown that they are controlled or substantially financed by government. Many Right to Information Act users feel that regulatory control should be considered as control. This view is generally not accepted, since

13 Mendel, Toby (personal communication, May 13, 2016) agrees with the conclusion here i.e. 20-25% but not for this reason. He suggests that this is not a business situation. It is about meeting a threshold of public funding which then attracts obligations.

14 Mendel, Toby (personal communication, July 31, 2016) is of the view that an amount of about 2 million rupees is certainly substantial, even by Canadian standards.

almost all bodies are subject to certain regulations, and this would be too wide an interpretation of the law.

(i) "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;

Comment: *Effectively, any record in any form available with a Public authority.*

(j) "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) inspection of work, documents, records;

(ii) taking notes, extracts, or certified copies of documents or 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;

Comment: *Right to Information entitles the applicant to inspection of work or documents and records. It also entitles an applicant to take notes, or ask for extracts, or certified copies of any records. Since the word extracts is mentioned it would mean that the applicant is entitled to get an extract of the records sought by him. This would however be subject to the provision in Section 7(9). If the information is in digital form the information could be requisitioned and provided in appropriate electronic format.*

At times, there may be a need to find a small amount of data in a broad range of records. In such a scenario, it may be expensive and wasteful to give photocopies of all and therefore more efficient to allow the person to search it through a request for inspection of files. The applicant could mention in the Right to Information

application for inspection that she will also take copies of certain documents at the time of inspection. The officer offering records for inspection should ensure that the applicant is informed of the file numbers. The files should be indexed and numbered as per the requirement of Section 4(1)(a). As a practical measure the PIO could also offer three dates to an applicant for inspection.

(k) "State Information Commission" means the State Information Commission constituted under sub-section (1) of section 15;

(l) "State Chief Information Commissioner" and "State Information Commissioner" mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (3) of section 15;

(m) "State Public Information Officer" means the State Public Information Officer designated under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5;

(n) "third party" means a person other than the citizen making a request for information and includes a public authority.

Comment: *The third party has to be someone apart from the applicant and the Public authority from whom the information is sought. However, another public authority would also be considered as a third party.*

Chapter II

Right to Information and Obligations of Public Authorities

Section 3

Subject to the provisions of this Act, all citizens shall have the right to information.

Comment: *This is the shortest section in the Act but has great significance. It spells out that all citizens have access to right to information, subject to the provisions of this statute.*

Thus, the only restriction on getting information from any public authority is that provided by this law. The restrictions on providing information are only provided in Section 8 and 9.

Section 4

(1) Every public authority shall

(a) maintain all its records duly catalogued and indexed in a manner and 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;

Comment: *Section 4(1)(a)of the RTI Act mandates good governance by providing for information and record management, indexing all files and cataloguing*

to make them accessible easily. This has always been a requirement as per the Manual of Office procedures, and is now a statutory requirement. It also mandates the use of Information Technology requiring every public authority to computerize all its records and to upload it so that it can be accessed wherever required. It is a mandate for true e- governance. Failure in maintenance of records is resulting in inefficient working of the government. Inaccessibility of records also encourages corruption as this leads to difficulty in providing service and information to citizens, apart from arbitrary decisions being taken. This section also mandates networking the computers all over the country, to improve the efficiency in government and transparency.

(b) publish within one hundred and twenty days from the enactment of this Act,-

Comment: *Section 4(1)(b) of the RTI envisages a strategy to carry out the legislative intent of building an informed citizenry by requiring every public authority to upload information in the public domain on a proactive basis. This would lead to transparent functioning of the Public Authorities and also reduce filing of individual applications. The spirit of this provision is to initiate a dialogue between public authorities and citizens. This will ensure further participation leading to informed citizenry which is vital for a participative democracy.*

(i) The particulars of its organisation, functions and duties;

(ii) The powers and duties of its officers and employees;

Comment: *Section 4(1)(b)(i) and (ii) suggest that the functioning and responsibilities of a public authority must be understood along with the powers and functions of its employees. Citizens must be made aware about functions and duties of those involved to ensure clarity. Often, these are not clearly defined and understood even within the departments and there is ambiguity.*

(iii) The procedure followed in the decision making process, including channels of supervision and accountability;

(iv) The norms set by it for the discharge of its functions;

Comment: *The mandate of this clause is that every public authority should proactively disclose the standards by which its performance should be judged. Norms should specify the time within which officers should work and deliver services to citizens.*[15]

Wherever norms have been specified for the discharge of its functions by any statute or government orders, they should be proactively disclosed, particularly linking them with the decision making processes as detailed earlier.[16] *All Public Authorities should proactively disclose the following:*

a) Define the services and goods that the particular public authority/office provides directly, or indirectly through any other agency/contractor.

b) Detailing and describing the processes by which the public can access and/or receive the goods and services that they are entitled to, from the public authority/office along with the forms, if any prescribed, for use by both the applicant and the service providing agency. Links to such forms (online), wherever available, should be given.

c) Describing the conditions, criteria and priorities under which a person becomes eligible for the goods and services, and consequently, the categories of people who are entitled to receive the goods and services.

d) Defining the quantitative and tangible parameters, (weight, size, frequency etc,) and timelines, that are applicable to the goods and services that are accessible to the public.

15 Citizen Charters or commitments prepared under Public Service Guarantee Acts are good examples of norms of performance for major functions and for monitoring achievements against those standards.

16 For reference one could refer to the Manual of Office Procedures issued by Department of Personnel and Training (DOPT) in September 2010 where in paragraph 16 it mandates:

"Prompt response to letters received—

(1) Each communication received from a Member of Parliament, member of the public, Recognized association or a public body should be acknowledged within 15 days, followed by a reply within the next 15 days of acknowledgement sent.

(2) Where (i) delay is anticipated in sending a final reply, or (ii) information has to be obtained from another Ministry or another office, an interim reply will be sent within a month (from the date of receipt) indicating the possible date by which a final reply can be given."

e) Defining the qualitative and quantitative outcomes that each public authority/office plans to achieve through the goods and services that it was obligated to provide.

f) Laying down individual responsibility for providing the goods and services (who is responsible for delivery/implementation and who is responsible for supervision).

Similarly, Act 21 of 2006 in Maharashtra mandates that decision on every file should be taken within 45 days. If these norms were displayed by the departments of Central Government and the State Governments, citizens and officers would know and understand that there is a mandated timeframe which must be adhered to.

(v) The rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

Comment: *Irregularities and malpractices remain unquestioned due to the lack of legal literacy amongst citizens. This clause mandates disclosure at various levels i.e. all Acts, rules, regulations, instructions, manuals and records by which the working of Public Authority is carried out. Disclosure of this kind would certainly empower citizens to assess and monitor the working of Public Authorities. It will promote literacy of rules, regulations, procedures and processes among the citizens who are the stakeholders. It could also lead to better compliance with laws and rules by citizens.*

(vi) A statement of the categories of documents that are held by it or under its control;

Comment: *Clause (vi) requires every public authority to disclose statement of the categories of documents that are held by it or under its control with the list of records and files used by its employees for discharging its functions. If such lists are available, citizens can*

choose exactly what information is required from which record or file and hence, precise Right to Information requests can be facilitated. Even within the public authority work would be more efficient.

(vii) The particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

Comment: *This clause highlights that in a democracy the citizens have rights and duties. Consultation provides them opportunities to participate actively in shaping the Public Authority policies according to their needs. Thus, it engages and places the citizen at the centre of policymaking, not just as target, but also as an agent. The aim is to develop policies and design services that respond to citizens' needs. Every Public Authority is required to disclose what arrangements are available for contact, public relation, for submission of representations, for consultation and for participation. This helps to ensure that disagreements between government and citizens reduce. Often, major projects are started without adequate information being shared with citizens. This leads to mistrust and agitations and sometimes relevant projects suffer delays and cost escalations. It is far better for government to be transparent, so that various stakeholders move forward in tandem.*

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

Comment: *Both (vii) and (viii) imply that all departments should discuss with individuals from the public and implement their suggestions to improve their performance and to formulate policies. Also, most of these should be accessible to public. Being*

willing to be transparent will lead to participation and hence better governance.

Existence of various Boards, Committees and Councils are an integral part of the governmental process. Citizens can get valuable insights by knowing objectives of such Boards, Committees, and Councils, their constitution, manner of appointment of members. Members of these committees should be appointed based on their background and interest in a particular field and they should be expected to attend all board meetings. Duties and powers of members of such boards, frequency of meetings, and whether such meetings or minutes of meetings are open to public must be declared. If such Boards, Councils and Committees exercise any supervisory, financial or monitoring function, this should be disclosed in detail. It is desirable that minutes of meetings of such bodies should be displayed.

(ix) A directory of its officers and employees;

(x) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

Comment: *The names of officers with their designations, email IDs and telephone numbers must be displayed so that citizens can contact them. Citizens have a right to know the actual compensation of public servants, since they are paying the money. Besides if some public servants are living far beyond their salaries, it would be evident to the people and hence under scrutiny.*

(xi) The budget allocated to each of its agency, indicating the particulars of all plan proposed expenditures and reports on disbursements made;

Comment: *This would make the budgeting and expenditures transparent. Social audits could be done by citizens and they would be able to participate and give suggestions on how they would like their money to be spent. Public authorities while disclosing their budgets should undertake the following:*

(a) Keeping in view the technical nature of the government budgets, it is essential that Public Authorities prepare simplified versions of their budgets which can be understood easily by general public and these are placed in public domain. Budgets and their periodic monitoring reports may also be presented in a more user-friendly manner through graphs and tables, etc.

(b) Outcome budget prepared by Public Authorities should be prominently displayed and be used as a basis to identify physical targets planned during the budgetary period and the actual achievement vis-à-vis those targets. A monthly programme implementation calendar method of reporting would be a useful model.

(c) Funds released to various Public Authorities, their autonomous organizations/statutory organizations/attached offices/Societies/NGOs attached etc. should be put on the website on a quarterly basis and budgets of such authorities may be made accessible through links from the website of the parent Ministry/Department. If a subsidiary or subordinate office does not have a website, then the budgets and expenditure reports of such subsidiary authority should be uploaded on the website of the principal Public Authority.

(d) Wherever required by law or executive instruction, sector specific allocations and achievements of every department or public authority (where feasible) must be highlighted. For example, budget allocation and target focusing on gender, children, Scheduled Castes and Scheduled Tribes and religious minorities should be specially highlighted. The sector-wise breakup of these targets and actual outcomes must be given in simplified form to enable all citizens to better understand the budgets of public authorities.

(xii) The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(xiii) Particulars of recipients of concessions, permits or authorizations granted by it:

Comment: *If the particulars of recipients of concessions, permits and authorisations were displayed it could reduce ghost beneficiaries and indirectly corruption. Public Authority must describe the activities/programmes/schemes being implemented by them for which subsidy is provided. Information on the nature of subsidy, eligibility criteria for accessing subsidy and designation of officer competent to grant subsidy under various programmes/schemes should be disclosed. The Name of Programme, Application Procedure, Sanction Procedure, Disbursement procedure must also be disclosed along with the timelines. The details of beneficiaries should be displayed proactively, since this could reduce ghost beneficiaries and corruption.*[17] *Details of recipients of concessions, permits and authorisations should also be displayed. Citizens would monitor these and prevent frauds.*

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form;

Comment: *This clause serves two purposes, firstly it acts as a means of proactively disclosing the progress made in computerizing information under Section 4(1)(a) of the Right to Information Act in a periodic manner. Secondly, it provides people with clarity about the kinds of electronic information available to them. For example the stocks of ration available with individual fair price shops may not be held by the District Civil Supplies office, but may be available at a subordinate formation.*

All information available with Public Authority in electronic/digital form should by default be considered

17 To some extent this has been achieved in the Rural Employment Guarantee scheme.

for proactive disclosure through digital media. Automated processes for proactive disclosure would certainly reduce the cost of doing this and make the data more reliable and updated.

Frequently asked questions and frequently occurring problems should be listed on the website of Public Authority. A glossary of frequently used terms can be displayed. Much of the information and data is dynamic. Such information can be updated on a real time basis, preferably as an automated process. If for some reason it is not possible to do so in real time, such information should be updated on a monthly basis, or at the most, quarterly basis. Proper standards and records for such regular updating can also be maintained, and mentioned in the concerned public information disclosure.

(xv) 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;

Comment: *Public Authorities are expected to disclose what facilities are made for citizens to facilitate obtaining access to information and access to library, reading room if any. Working hours, holiday details etc. also should be disclosed.*

(xvi) The names, designations and other particulars of the Public Information Officers;

(xvii) Such other information as may be prescribed; and thereafter update these publications every year;[18]

18 Mishra, Satyanand (personal communication, May 18, 2016) explains that the objective behind the pro-active disclosures mandated in this sub-section is undoubtedly admirable as this way, a lot of useful information is brought to the public notice thereby enhancing transparency in the working of the government and making it unnecessary for people to seek such information through RTI. However, the scope and magnitude of the varieties of information listed in this sub-section are such that the public authorities, even when inclined to disclose would find it daunting to do so in view of the poor quality of record keeping. For example, it is not always so clear in many public authorities how decisions are actually taken or what processes or procedures are to be followed to arrive at a decision, especially in newly set up departments or public sector undertakings or organisations. Even in established ministries and departments of the government, many new practices, subjects and ideas are taken up or sometimes borrowed from international institutions and for these, the decision-making process is not adequately established. In many public authorities, no norms are fixed for many of the activities. It is not practical to expect such public authorities to conceptualise and disclose such information.

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

Comment: *This imposes responsibility on the Government departments to inform people relevant facts about policy decisions.*

(d) provide reasons for its administrative or *quasi judicial* decisions to affected persons;

Comment: *After informing the people about the facts, the reasoning for particular decisions taken, should be displayed. This would aid to keep a check on arbitrary and corrupt decision making. It would enhance trust among citizens for their government.*

(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 moto* 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.

Comment: *It is more efficient to publish information than to respond to a request. Even when a citizen is unable to access a website, PIOs would be able to give information easily by using the website*[19].

(3) For the purposes of sub-section (1) All information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer, or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Comment: *For the purposes of sub-sections (3) and (4),* "*disseminated*" *means making known or communicating the information to the public through notice boards, newspapers,*

19 According to a study by RAAG, 54% RTI applications are seeking information which should have been proactively displayed under Section 4. http://www.snsindia.org/raag-final-report-raag-applications-16-revised-may-2014.pdf

public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.[20]

Section 4 is the core and guiding framework of the Right to Information Act to ensure good governance. If Public authorities implement this diligently, it would not only reduce Right to Information queries but also dramatically improve their performance. The requirements of Section 4 are almost the same as for an ISO certification, where entire Public Authority processes and practices have to be recorded.

The Right to Information Act mandates every public authority to publish most information as a legal obligation. Citizens must monitor whether the Public authority is performing as per its declarations/commitments under this suo moto disclosure.

Primarily, all the information specified above should be made available suo moto by the Public authority, and no Right to Information application or fees are required to access this. Some citizens have taken up the cause of ensuring implementation of this important provision by approaching the offices of the Public authority and demanding inspection of their Section 4 compliance. Most of the generic and public domain information which citizens wish to access are covered under Section 4 and hence, citizens could demand inspection of proactive disclosures made under Section 4.

In case Section 4 compliance is improper, then a complaint can be filed with:

a) The Information Commission.

b) The head of the Public authority - Ministers, Secretaries.

It is obvious that no exemptions can be claimed for any of the information required to be given Suo moto as per section 4(1)(b)[21] *since it has been specifically mentioned. Parliament has mentioned certain categories of information specifically in Section 8 and 9.*

Section 4(1)(a) envisages putting in place good record management systems, which would normally involve moving

20 In the rural employment guarantee scheme MNERGA, this information is available on the website and is painted on the walls of government buildings in some villages.

21 Mendel, Toby (personal communication, July 31, 2016) is of the view that proactive publication instructions take effect subject to the exceptions. Thus, if an important policy contained national security sensitive material such as the policy on collecting information about third countries, it could be kept confidential.

to electronic records. There are a host of problems related to hard data in government offices.[22]

Dissemination of proactive disclosure

The purpose of suo moto disclosures under Section 4 is two– pronged. Firstly, placing all relevant information in public domain on a proactive basis will ensure transparent functioning of the Public Authorities. Secondly, the need for filing individual Right to Information applications will drastically reduce thereby decreasing the burden on officers.

Section 4(4) of the Right to Information Act states that information should be disseminated taking into consideration 'the most effective method of communication in that local area and the information should be easily accessible'. Given the limited reach and accessibility of internet in India, it is recommended that at village/block level, relevant information should be painted on walls and provided on boards in the local language at prominent public places.[23]

Means, methods or facilitation available to the public which should be adopted for dissemination of information could be:

- *Notice Board*
- *Office Library*
- *Kiosk in office premises or through web portal*
- *Through News papers, leaflets, brochures, booklets,*
- *Inspection of records in the offices*
- *System of issuing of photocopies of documents*
- *Printed manuals to be made available*
- *Electronic storage devices*
- *Website of the Public Authority, e-books, CD, DVD, Open Source Files, Web Drives*

22 It is well known that a significant part of the corruption in government offices takes place by claiming that certain files are not available. Bribes are paid to make them appear/disappear, and records are altered/removed/substituted. Apart from these is the problem of files being misplaced, stolen or lost. If paper files are banished and all government work is only done on computers and transferred digitally, then corruption and inefficiency would be greatly curbed. Besides, this would save a lot of trees and millions of rupees spent on paper and space for storing files. If the default mode involved automatically uploading relevant information on a daily basis, then Government working will truly become transparent and the burden on officers to deliver information will be drastically reduced.

The fact that most of the working is visible to citizens will encourage transparency and act as a deterrent to corruption. This would also lead to more reliable data being available in open domain without additional work. It would make simple the monitoring of any individual officer's work. There has been an enormous amount spent on e-governance and creating digital India with very poor accountability or impact.

23 CIC decision CIC/SG/C/2010/001291/11403Adjunct, CIC/SG/A/2010/002152/9403 and CIC/SG/C/2009/001619; 001621; 001622/6047Adjunct available at www.cic.gov.in

- *Painting data on the walls of buildings as is being done in some places in the Rural Employment Guarantee Scheme.*
- *Social Media*
- *Drama and Shows*
- *Exhibition*
- *Other means of advertisin*g

Section 5

(1) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

Comment: *It is the responsibility of the Head of the Public Authority to designate Public Information Officers (PIOs). There is no restriction on the number of PIOs in a Public authority or office.*

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be.

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

Comment: *It is understandable that the Ministries, departments, etc. are the Public Authorities, not each administrative office. However, all its offices must have Public Information Officers (PIOs) and provide information held by them. A combined reading*

of the above two subsections makes it clear that all locations - all administrative units or offices - of a Public Authority must have a Public Information Officer (PIO) or an Assistant Public Information Officer (APIO)at sub-divisional or sub-district level; i.e. a very small unit.

The citizen does not need to know the name, or designation of the PIO or APIO. Instead she only needs to know the address of the location of the Public authority. She should carefully think which office is likely to hold the information and address it to the PIO of that office. If she visits them or posts her RTI application there, a PIO or APIO must receive the application and process it. There is an additional view at this juncture.[24]

All the responsibilities and liabilities in the Act lie with the PIO. If any location of a Public Authority has no PIO or APIO, this is a contravention of the law and the Information Commission must take appropriate action against such lapses. If it is returned by the office, the applicant should retain the envelope and file a complaint. A photocopy of the envelope (which should clearly show the postman's comment) about refusal to take delivery should be attached and sent to:

a) Information Commission, under Section 18 of the Act.

b) The head of the Public authority - Ministers or Secretaries.

The responsibility of appointing PIOs rests with the head of the Public Authority. If any office of a Public authority refuses to take a Right to Information application since it has no PIO, an applicant would be within his rights to ask the Information Commission to award compensation as per Section 19(8)(b).

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

Comment: *This is an important provision which fixes the responsibility on the PIO to deal with Right to Information applications. It also puts the duty on the PIO to assist the citizen in seeking information. Unfortunately, very few PIOs pay attention to this.*

24 Mendel, Toby (personal communication, July 31, 2016) is of the view that this seems rather inefficient. Surely in most cases it would not take 5 days to do this (maybe if it had to be mailed).

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

Comment: *It is apparent that no PIO could have all the information. The law mandates that he can avail of the assistance of others who have the information.*

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

Comment: *The PIO disposes his responsibility and liability in terms of his duties under the Act, as soon as he seeks the information from the relevant officers. The PIO should send a written note or email for the information required by a RTI application to an appropriate officer who has the relevant information. The PIO can even send this communication to a senior officer. This should be done within one or two days of receiving the RTI application. In that case, any failure or penal provisions would be attracted by the other officer, often called 'deemed PIO'. It would be advisable for the head of the office to identify the deemed PIOs holding various categories of information, by an internal order. This would make it easy for the PIO to direct the queries to the right person and eliminate ambiguity. This provision envisages that not just the PIO but anybody or everybody who holds information has a duty to provide information under this Act. This is an important provision which underlines the responsibility of the entire Public Authority and all its officers to facilitate access to information to the citizen. If public authorities follow the provisions of Section 4 properly, it would be easy for the PIO to provide the information.*

Section 6

(1) A person who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which

the application is being made, accompanying such fee as may be prescribed, to:

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

Comment: *The written application, with the application fees as prescribed by the appropriate rules have to be sent to the PIO or the APIO. The Public Information Officer is required to assist the applicant who is unable to write owing to illiteracy or disability. This assistance should also apply when it is evident what information the applicant wants, but is unable to reduce it in writing. It has also been stated that the Right to Information application could be in English, Hindi or the official language of the State (for applications addressed to State PIOs).*

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

Comment: *Since the Right to Information is a fundamental right of citizens, no reasons need to be given for exercising it.*[25] *Rules and formats of some competent authorities ask for more information from the applicant than what is permitted by this provision which is a violation of the law.*[26]

(3) Where an application is made to a public authority requesting for an information, –

25 Many officers and eminent people feel this is a provision which requires overhauling. It is felt that citizens must give reasons for seeking information. In that case, it would be argued that they need to provide a reason for speaking as well. Such a condition would be violative of the fundamental rights enshrined in our Constitution.

26 No Public authority can seek any other details from the citizen except those required to contact him/her i.e. the postal address.

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

Comment: *If the citizen sends the application to the wrong Public Authority, it is the responsibility of the PIO to send it to the concerned Public authority within a period of five days. However, the citizen must take care to find the appropriate Public authority. But in case the application reaches erroneously to another PIO, then that PIO is responsible for transferring it to the right Public authority. No PIO is authorised to return a Right to Information application, saying that the applicant must approach another department or Public authority which holds the information. This provision is further proof of the extent to which this Act is designed for the convenience of the citizens.*

If the information is available in the same Public authority, it is clearly the job of the PIO to collect the information from the units or different offices by seeking assistance as envisaged in Section 5(4)and give it to the applicant.[27] *If the information is available with different Public authorities, the PIO must transfer it to them. Section 13 of the General Clauses Act, 1897 enacts a general rule of construction that words in the singular shall include the plural and vice versa if there is nothing repugnant to such a construction in the subject or context of the legislation which is to be construed. There is nothing in the Act which would show that Parliament intended that the transfer should only be to one public authority.*

This principle of law has been well-established and applied by various authorities. Hence, if a Right to Information request has to be transferred to multiple public authorities, or assistance

27 Many PIOs state that it is not possible for them to send the application to multiple officers. If the public authority works on a networked computerized system, this would not pose any challenge.

sought from different officers of the same public authority, the PIO is mandated by law to do this.

Section 7

(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty 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 sections 8 and 9:

Provided that where 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.

Comment: *The law envisages that the PIO must reply as expeditiously as possible. The maximum time allowed is 30 days. A PIO should respond within 10 days in most cases. This may be either providing required information or rejecting the application citing reasons for exemption under section 8 or 9 of the Act. Understanding this with Section 5(2) and 6(3) means when transfer of application arises, the applicant must get the information within 35 days. There is also a provision for supplying the information within 48 hours, when the information concerns the life or liberty of a person. This will apply if the liberty of a person is threatened, if she is going to, or is already incarcerated and the disclosure of the information may alter that situation. If the disclosure of the information would obviate the danger, then it may be considered under the proviso of Section 7(1). The imminent danger has to be demonstrably real. This section also states that the reasons for rejection will only be as per Sections 8 or 9.*

If the PIO does not give either the information, or a rejection on reasonable grounds as per the provisions of the RTI Act, it will amount to a deemed refusal. The implication is that it is a deemed refusal without any reasonable cause. In such an event, the Right to Information applicant should file a first appeal addressed to the First Appellate Authority, c/o the PIO.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving-

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

Comment: *There is a provision for charging some additional fees for the information being provided which has to be specified in the rules. For the Central Government and most States, it is two rupees per A4 sized page or 50 rupees for a CD. However, some competent authorities have specified different fees. The 30 day period for giving information does not include the days from the date the PIO asks for money to be paid till the date the money is paid. It also clearly mentions that the PIO must provide the calculations by which the total amount is arrived at. The additional fees have to be as per rules framed by the competent authority.*

(b) information concerning his/her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

Comment: *At the time of intimation of the fees, the PIO must also inform the particulars of the appellate authority and the time limit in which the applicant must file a first appeal (30 days). This gives the applicant the opportunity to file an appeal if she feels the decision of the PIO is not as per the law in terms of either fees, denial of information, or not giving the information in the mandated time.*

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information

Officer or State Public Information Officer, as the case may be shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

Comment: *This provision puts the responsibility on the PIO to help differently-abled persons to access the information. This must be ensured by everyone.*

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the Provisions sub-section (6), pay such fee as may be prescribed:

"Provided that the fee prescribed under sub-section (1) of section 6 and sub-section (1) and (5) of section 7 shall be reasonable and no such fee shall charged from the persons who are of below poverty line as may be determined by the appropriate Government."

Comment: *It has been specified that the additional fees payable by an applicant to get copies of records or digital information shall be reasonable. Hence, a nominal application fee of Rs. 10 and a fee of Rs. 2 per page for providing the information has been specified by most competent authorities. No public authority can ask for any fees which have not been specified in the rules. This section also specifies that for applicants below poverty line[28], no application fee or 'further fee' shall be charged.[29]*

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (I).

Comment: *If the information is provided after the 30 day period (35 days when there is a transfer of application) for any reason, no 'further fee' has to be paid for the information.*

(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall take into consideration the representation made by a third party under section 11.

28 People below poverty line are issued a card which certifies this. The photocopy of this card has to be attached with the application.

29 Mishra, Satyanand (personal communication, May 18, 2016) adds that an information seeker below poverty line as defined by relevant authorities is not required to pay any fee for the desired information, no matter whatever be the volume of such information.

Comment: *Here, the third parties' representation has to be considered by the PIO; the third party has not been given a veto about giving the information.*[30]

(8) Where a request has been rejected under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall communicate to the person making the request, –

(i) the reasons for such rejection;

(ii) the period within which an appeal against such rejection may be preferred;

(iii) the particulars of the appellate authority.

Comment: *When PIO denies information, then it is necessary for him to provide reasons. This will entail giving the relevant exemption clause and specific reasoning as to how the exemption clause is applicable. It is not sufficient for the PIO to merely quote Subsections of Section 8(1), without giving some reasoning. On the other hand, if there is no information available on record, he should state that there is no record of the information sought.*

The PIO is also duty bound to provide the particulars of the Appellate Authority and the period in which an appeal must be filed, viz. 30 days. Together with provision 7(3)(b), this means in all cases, the PIO must inform the applicant the details of the appellate authority.

(9) An information shall ordinarily be provided 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.

The form in which information is sought rests with the applicant. Information could be demanded on a CD or on hard copy. However, it is subject to the condition that it should not require diversion of a very large resource of manpower or equipment to meet this.

GROUNDS FOR REJECTION: There are only three possible grounds on which information can be denied:

a) The organisation is not a Public authority - eg. a Cooperative Society, or a Private corporate or Institution, not substantially financed or controlled by the Government.

30 This has been dealt in detail towards the end of this chapter in the comments on Section 11.

b) What is asked for 'not information' as defined under the Act: Information has to exist. Interpretations of law or decisions which do not exist, or reasons for decisions which do not exist will not be covered under the definition of 'information'.

Some examples to explain the above:

(i) 'Why have I not got a ration card?' is not asking for information; but 'I want the progress of my file relating to my application for a ration card' is asking information.

(ii) 'Why have I not got admission?' is not asking for information, whereas 'I want the cut-off marks at which admission was granted' is asking for information.

However, abiding by the spirit of Section 5(3), the PIO should help to reframe such queries.

c) The information asked for falls in the exemptions of Section 8(1) or under Section 9 applies. Section 9 bars giving information which would violate private party copyright.

Providing extracts from the records is required to be done as per Section 2(j)(ii) unless it would require too much time. If giving the information would require too much of the resource of the Public authority, it cannot refuse to give the information. If the form in which the applicant has asked for information would require too much time of the Public authority, it may offer it in another format. A common practice adopted by PIOs when the information gathering or collating in a particular format would require excessive time, is to offer inspection of files to the applicant.

Section 7(9) cannot be a ground for denial of information, which is available on records. Denial can only be justified on the basis of Sections 8 and 9 of the Act. The only exception to this is if giving any information would violate the provisions of the Constitution, in which case, the request for information, can be denied. There may be certain rare instances in which providing information sought by an applicant could bring a work by the public authorities to a halt. In such a case, Section 7(9) may be used to deny information. For example, if someone sought information

that is spread over fifty offices which is not available in a collated form, a PIO could say that even providing an inspection may disproportionately divert the resources of the public authority. On the other hand, if collation of the information can be done in a couple of hours, the PIO should do this. However, it would be wrong to refuse to provide a collation or extracts from what is already in records. Section 7(9) should only be invoked when collation or extracting information is going to take too much time. In such an event, the PIO could offer photocopies of the complete records or allow an inspection. The choice should rest with the applicant.

Section 8

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen.

Comment: *It must be clearly understood that giving information to the citizens must be the rule; and denying it an exception. The constitutional basis for this is that Right to Information has been considered to be inherent to Article 19(1)(a). Hence, the denial also has to be as per the limits laid down by Article 19(2) which states:" (2) nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence"*

The denial is based on the consideration of protecting certain interests from harm, but the exemptions must be construed narrowly and carefully. Article 19(2) must also be taken cognisance of. This law is for right to information, not denial of information.

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

Comment: *The PIO must explain how the disclosure of information is likely to 'prejudicially affect the sovereignty and integrity of India, or the security, strategic, scientific or*

economic interests of the State, relation with foreign State or lead to incitement of an offence'. If no specific reasoning is given to justify denial, the information must be provided. It must be observed that the law does not exempt files or information labelled 'confidential' as exempt. Classification as 'confidential' is an internal procedure and cannot be used to deny information, since the RTI Act has not exempted this category.[31]

(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;

Comment: *The exemption will only apply when any matter has been specifically and expressly forbidden to be made public by a court or tribunal. Even if an issue is subjudice, the information has to be provided. This exemption will only apply if a specific order of the Court or tribunal says the particular information has been prohibited from disclosure. Such a disclosure would be contempt of court and hence barred.*

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

Comment: *This will primarily apply where there is a legal stipulation to present some information like a report to Parliament or the Legislature. This provision will also apply when a specific order has been given by the Legislature to avoid disclosing some information in public domain or to prohibit some proceedings of the Parliament or Legislature from being made public.*

There is a common practice of governments appointing Commissions of Inquiry and often not making the reports public. Since the report has not been placed before Parliament can it be given in response to a RTI application?

31 Mishra, Satyanand (personal communication, June 02, 2016) agrees with the stance here. He explains that there is nothing confidential under the RTI Act; there is either information which is exempted under Section 8 or information to be disclosed. Just because someone has marked a file or paper as confidential, it is not automatically exempted. However, the judgment of the holder of the information on whether its disclosure would prejudicially affect India's relationship with a friendly country or India's strategic, scientific or economic interests should ordinarily be respected as it may not often be possible to explain the reasons behind such judgment without in fact disclosing most of the information.

As per Section 3(4) of the Commissions of Inquiry Act, "The appropriate Government shall cause to be laid before each House of Parliament or, as the case may be, the Legislature of the State the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a Memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government."

If it has not been placed within six months before the Parliament, or State Legislature, the breach of privilege has already occurred since the government has not abided by the provision of the Commissions of Inquiry Act. It cannot then be claimed that giving the report to the applicant will cause a breach of privilege, since it has already been breached by the holder of the report.

Another important point which must be noted is that if some information is denied to Legislature, this exemption does not say it should not be given to a citizen. There is an additional view at this juncture.[32]

(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;

Comment: *To qualify for this exemption, it must be established that it is 'commercial confidence, trade secret or intellectual property'. Most importantly, it must be shown that the disclosure would 'harm the competitive position of a third party'. This would mean if particular information is given by the 'third party' which can be identified as a trade secret or commercial confidence and its disclosure would harm its competitive position, then such information could be denied to the applicant. This section does not envisage denial of information such as tender bids, specifications or guarantees given by bidders to the public authorities. There is*

32 Mishra, Satyanand (personal communication, June 02, 2016) contends that the disclosure of reports of any inquiry commission report not tabled in the respective legislature within six months of its submission cannot be automatic. Since the legislature has the first right to receive and see the report, the PIO should seek the NOC from the legislature concerned. Besides, many a times, the contents of the inquiry commission report on highly sensitive issues, such as, communal riots etc., could lead to breach of public order if disclosed. The PIO cannot be unmindful of this.

an additional view at this juncture.[33] The PIO must examine and ensure whether information denied qualifies this test of damage to third party likely to be caused by disclosure.

As an example, if a Company is negotiating with some other customers for some orders and discloses this to the Public authority, it may be claimed that it is information given in commercial confidence and disclosing this information could damage its competitive position. Similarly, if a formula/ formulation is disclosed by a company, its disclosure could be exempted since disclosure could harm its competitive position. If there is no possibility of competition, exemption cannot be claimed under this clause.

(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;

Comment: *Fiduciary relationship is defined as "a relationship in which one person is under a duty to act for the benefit of the other on the matters within the scope of the relationship." "Fiduciary relationship usually arises in one of the four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client, or a stockbroker and a customer."[34]*

The traditional definition of a fiduciary is a person who occupies a position of trust in relation to someone else, therefore requiring him to act for the latter's benefit within the scope of that relationship. In business or law, it generally means someone who has specific duties, such as those that attend a particular profession or role, e.g. doctor, lawyer, banker, financial analyst or trustee.

Another characteristic of such a relationship is that the information is given by the holder of information out of

33 Mendel, Toby (personal communication, May 13, 2016) holds that it would be a good practice to disclose this information proactively.

34 The Advanced Law Lexicon, 3rd Edition, 2005.

choice. When a litigant goes to a particular lawyer, a customer chooses a particular bank, or a patient goes to a particular doctor he has a choice whether he wishes to give the information. An equally important characteristic for the relationship to qualify as a fiduciary relationship is that the provider of information gives the information for using it for his benefit. It is true that such a relationship is based on trust. A person will not choose a doctor, lawyer, banker or trustee unless there is trust. All relationships usually have an element of trust, but all of them cannot be classified as fiduciary. Information provided in discharge of a statutory requirement, or to obtain a job, or to get a licence or passport, cannot be considered to have been given in a fiduciary relationship. In such a situation, it cannot be claimed that the information has been given in a fiduciary relationship.

Another aspect to be taken into account is that information provided by the beneficiary to a fiduciary is held in trust and cannot be shared with anyone, but the reverse is not true. A doctor is not free to discuss a patient's information without the patient's consent, but there is no such binding on the patient sharing the doctor's advice or medication.

(f) information received in confidence from foreign government;

Comment: *It is likely that this provision could be used to refuse most information provided by a foreign Government, unless it has been released in Public domain. Effectively, this means that most information received from a foreign government is unlikely to be given. This is the only provision where the mere claim of information having been received in confidence has been given exemption in this law.*

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

Comment: *The danger to life or physical safety must be a reasonable probability, not a mere imagination. This clause would be invoked when somebody has given information about a wrongdoing or acted as a whistleblower, and disclosure of his identity would endanger him. However, it*

should entail a situation where some threat to the source must be a reasonable probability. This cannot be used to deny information about examiners, names of selectors or interviewers, or remarks by superior officers against their juniors. This would be the result of a hyperactive apprehension rather than a real threat. There is an additional view at this juncture.[35]

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

Comment: *Under this provision, information can be denied if one of the following conditions is satisfied:*

a) The investigation is not complete, and it can be shown that releasing the information could impede the process of investigation. This provision does not say that when an investigation is ongoing, information regarding it should not be provided. Hence, the PIO must consider whether there is a reasonable probability of the investigation being impeded if the information is provided. Similarly, when an investigation report is already submitted, it cannot be claimed that the process of investigation will be impeded. After this, only if there is any probability of somebody being apprehended or prosecuted, then it has to be established that the apprehension or prosecution will be impeded.

b) If it is shown and established that releasing the information will result in a situation which will impede apprehending the charged persons.

c) Though the investigation and apprehension of offenders may be over, releasing the information would impede the process of prosecuting the offenders. If an investigation is over and no offender is likely to be apprehended or prosecuted, the information cannot be withheld.[36] *Also, the mere fact that release of some information from the records may lead to a weakening*

35 Mishra, Satyanand (personal communication, June 02, 2016: Disclosure of the details of the examiners in any examination can pose dangers to them from disgruntled candidates and also compromise the integrity of the examination system.

36 Mendel, Toby (personal communication, May 13, 2016) remarks that if the information reveals investigative techniques that need to be used again and where exposing them would undermine their effectiveness, information should be refused.

of the prosecution case cannot be advanced as a reason to deny information, since this would imply that the truth on records is not being revealed.

(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;

Comment: *This provision is often misunderstood as being a complete bar on providing information under Right to Information about cabinet papers and the cabinet deliberations. Once a decision is taken and the matter is complete or over, it places an obligation on the government to make public the material on the basis of which the decision has been taken. This means that the government must make the basis of taking the decisions public on its own. For example, once a bill is presented in Parliament or Legislature, the matter relating to the purpose of the deliberations and cabinet related file notings is clearly complete and over.*

This provision requires that the government places before people its deliberations and reasoning for deciding to frame a law or policy. This provision reiterates the provisions of Section 4(1):

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) provide reasons for its administrative or *quasi judicial* decisions to affected persons.

It ensures that the advice given to the cabinet and its deliberations would not be revealed when it is being discussed. However, once the decision to make a law or policy has been taken, the reasons and records should be put before public. This is true empowerment of citizens and an attempt to bring in a participatory democracy and accountability. It is worth noting that this is the

only provision in Section 8 (1), which while exempting disclosure of certain information, puts the responsibility on the government to put it in public once the decision is taken. There is an additional comment at this juncture.[37]

(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 Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

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

Comment: *To qualify for this exemption, it must be personal information. In common language, we would ascribe the adjective 'personal' to an attribute which applies to an individual and not to an institution or a corporate. Therefore, it suggests that 'personal' cannot be related to institutions, organisations or corporates. Hence Section 8(1) (j) of the RTI Act cannot be applied when the information concerns institutions, organisations or corporates.*

The information requested, may be denied under section 8(1)(j), under the following two circumstances –

a) Where the information requested is personal information and the nature of the information requested is such that it has apparently no relationship to any public activity or interest; or

b) Where the information requested is personal information, and the disclosure of the said information, would cause unwarranted invasion of the privacy of the individual.

If the information is personal information, it must be seen whether the information came to the public authority as a consequence of a public activity. Generally, most of the information in public records arises from a public activity.

37 Mishra, Satyanand (personal communication, June 02, 2016) reveals that very often, the government has used this provision to block disclosure of Cabinet papers well after the respective Cabinet decision is fully implemented. Even innocuous information regarding the appointment of officers in the government is routinely denied.

Applying for a job, ration card or passport are examples of public activity. However, there may be some personal information which may be with public authorities which is not a consequence of a public activity, eg. Medical records, or transactions with a public sector bank. Similarly, a public authority may come into possession of some information during a raid or seizure which may have no relationship to any public activity.

Even if the information has arisen by a public activity, it could still be exempt if disclosing it would be an unwarranted invasion on the privacy of an individual. Privacy is to do with matters within a home, a person's body, sexual preferences etc. This is in line with Article 19 (2) which mentions placing restrictions on Article 19 (1) (a) in the interest of 'decency or morality'. There is an additional view at this juncture.[38] *If, however, it is felt that the information is not the result of any public activity, or disclosing it would be an unwarranted invasion on the privacy of an individual, before denying information it must be subjected to the acid test of the proviso: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.*

The proviso is meant as a test which must be applied before denying information claiming exemption under Section 8 (1) (j). Public servants have been used to answering questions raised in Parliament and the Legislature. It is difficult for them to develop the attitude of answering demands for information from citizens. Hence, when they have a doubt, it is worthwhile for them to first consider if they would give this information to the elected representatives. They must first come to the subjective conclusion that they would not provide the information to MPs and MLAs, and record it when denying information to citizens. There is an additional view at this juncture.[39]

38 Mendel, Toby (personal communication, May 13, 2016) suggests that it is to protect the rights of others.

39 Mishra, Satyanand (personal communication, June 02, 2016) explains that the proviso to this mandates that any information which cannot be denied to the Parliament or a State Legislature cannot be denied to any person. But unfortunately, there is no clear guidelines or schedule or list of information available anywhere based on which the PIO can conclude if the desired piece of information can or cannot be denied to the legislature, Parliament or a State Assembly. Therefore, the PIOs find it very difficult to decide which personal information should be disclosed or not.

Another perspective is that information is to be denied to citizens based on the presumption that disclosure would cause harm to some interest of an individual. If, however, the information can be given to legislature it means the likely harm is not very high since what is given to legislature will be in public domain. Hence, it is necessary that when information is denied based on the provision of Section 8 (1) (j), the person denying the information must give his subjective assessment that such information would be denied to Parliament or State legislature if sought. This must be recorded in the decision.

It is worth noting that in the Privacy bill 2014, it was proposed that Sensitive personal data should be defined as Personal data relating to: "(a) physical and mental health including medical history, (b) biometric, bodily or genetic information, (c) criminal convictions (d) password, (e) banking credit and financial data (f) narco analysis or polygraph test data, (g) sexual orientation." This is in line with Article 19 (2) of the Constitution.

(2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests.

Comment: *This clause reiterates the principle of the larger public interest being paramount. Information with the State is owned by the citizens. The only reason why some information can be denied under Section 8 (1) is the belief that giving such information will harm certain interests, and hence can be denied as per the mandate of Article 19 (2) of the Constitution. However, it is recognised that there will be some instances where public interest in disclosure is higher than the possible harm to the interest sought to be protected. It is clear that this provision applies to all the exemptions listed in Section 8.*[40] *It must be noted that the public interest in disclosure needs to be established only if it is shown that one of the exemptions of Section 8(1) is applicable.*

40 When introducing the bill in Parliament, Minister Suresh Pachouri had said, "The categories of information exempted from disclosure are a bare minimum. Even these exemptions are not absolute and access can be allowed to them in public interest if disclosure of the information outweighs the harm to the public authorities. Such disclosure has been permitted even if it is in conflict with the provisions of the Official Secrets Act 1923." https://indiankanoon.org/doc/1986213/?type=print

If no exemption is applicable, there is no need to show any public interest.

(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.

Comment: *Ideally, all information should be available to citizens. Some information which if disclosed would harm certain interests is exempted. It is well accepted that after some years such harm will not occur or will be negligible. In line with this, after a period of twenty years, only three exemption clauses can be applied to deny information. For the first twenty years, all ten exemption clauses -(a) to (j)- will apply. After 20 years, only three clauses -(a), (c) and (i)- will apply. This means that clauses (b), (d), (e), (f), (g), (h), and (j) are not applicable if 20 years are over. To give an example, if a court has forbidden disclosure of certain information, after twenty years this information cannot be denied. On the other hand, if a speaker has ordered some information not to be disclosed, it cannot be revealed even after 20 years. Also, information cannot be denied after twenty years on the ground that it would invade privacy or is held in a fiduciary capacity.*

This does not mean that a public authority must keep all information for twenty years. A public authority will destroy records as per its record retention schedule. But if the information is being held by the public authority beyond 20 years, it cannot deny it on the grounds of it being exempt under clauses (b), d), (e), (f), (g), (h), and (j).

To conclude, we can summarize the exemptions of Section 8 by subjecting them to this three-part test for exemptions:

1) the information must relate to a legitimate interest listed in the Section;

2) disclosure must threaten to cause substantial harm to that interest;

3) the harm to the protected interest must be greater than the public interest in disclosing the information.

Section 9

Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

Comment: I*f an applicant asks copies of a book in a library, or a work of art, or a film, whose copyright vests with somebody, then it would not be given. There is an additional view at this juncture.*[41]

However, by implication, if the copyright belongs to the State, it would have to be given under Right to Information. To obviate the problem of citizens asking for copies of priced publications of the State, some State rules have stated that for priced publications, the fee to be paid will be the sale price of the publication. However, no information can be denied on the ground that the copyright vests with the State.

Section 10

(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, 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 reasonably be severed from any part that contains exempt information.

Comment: *The important aspect of 'severability' must be considered by a PIO before denying information. If part of the information asked by an applicant is exempt, the balance information must be provided after removing the part which is exempted. There is an additional view at this juncture.*[42]

(2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information

41 Mendel, Toby (personal communication, May 13, 2016) is of the opinion that it would be better practice to release the information if it fell into the exceptions to (privately-held) copyright.

42 Mendel, Toby (personal communication, June 28, 2016) holds that this is a very important provision if used carefully and properly. Since it is almost impossible that the entirety of a longer document would be exempt, careful severing would almost always lead to the release of the non-exempt material. So, in most cases, the proper question to ask is not whether a document is or is not exempt but whether certain material in a document is exempt.

Officer, as the case may be, shall give a notice to the applicant, informing -

(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) the name and designation of the person giving the decision;

(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) 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, including the particulars of the senior officer specified under sub-section (1) of Section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

Comment: *If a part of the information is severed as per Section 10(1) the PIO must:*

a) Inform the applicant that a part of the information is being severed since it is exempt.

b) The reasons for denying certain information as per Section 8 (1) and reasoning how the section is applicable.

c) The name and designation of the officer giving the decision to exempt some information.

d) Details of the fees to be paid by the applicant showing the calculations.

e) Details of the first appellate authority including name, designation and address, and the time within which the first appeal should be made, i.e. 30 days.

Section 11

(1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which. relates to or has been supplied by a third party

and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure out weighs in importance any possible harm or injury to the interests of such third party.

Comment: *It is important to understand that Section 11 is a procedure and not an exemption. The exemptions for providing the information are only in Section 8 and 9 as mentioned explicitly in Section 7 (1). The wording of this provision does not contemplate any Right to Information application being rejected on the grounds of Section 11. Section 11 is a procedure to allow an affected third party to voice his objections to releasing information which might cause harm to his interests.*

The PIO is expected to follow the procedure of section 11 when he "intends to disclose any information or record". This means that the PIO has come to the conclusion that the information is not exempt as per the provisions of the RTI Act. If the PIO has come to a conclusion that the third party information is exempt as per Section 8 or 9, he must reject the application and inform the applicant accordingly.

If information 'relates to or has been supplied by a third party and has been treated as confidential by that third party' the PIO must inform the third party within five days that he 'intends to disclose the information or record, or part thereof,'. It is clearly stated in section 11 (1) that 'submission of third party shall be kept in view while taking a decision about disclosure of information'. Thus, the procedure of Section 11 comes into effect when the information exists and the PIO's view is that is not exempt, and the third party has treated it as confidential. The

PIO must send a letter to the third party within 5 days of receipt of the RTI application stating that he 'intends to disclose' the information. The PIO can only intend to disclose information if he believes it is not exempt. He must give the third party an opportunity to voice its objections about disclosing information. If the third party objects to disclosure of the information, the PIO will keep this in mind and decide whether the third party's objections are justified by the exemptions under Section 8(1) or 9. If he is not convinced that the information is covered by any of the exemptions of Section 8 or 9, he will inform the third party accordingly. If he is convinced he will deny the information to the applicant quoting the relevant section. The Act in consonance with Section 8 (2) again reiterates that if a larger public interest in disclosure is established, the information may be given if it outweighs the likely harm. However, the larger public interest override has one exception.

If a third party objects and the PIO comes to the conclusion that the information is covered by Section 8 (1) (d) (trade or commercial secrets) which could harm the competitive interest of the third party, the information shall not be given, even if a larger public interest is established. This is the only exception which has been carved out for a prior law. In the case of trade or commercial secrets protected by law, the RTI Act does not over ride the earlier law. By implication and specifically in Section 22, it has been clearly spelt out that this Act shall have effect notwithstanding anything inconsistent with it in any other law.

When the PIO puts in motion the third party reference, he is of a view that the information is not exempt, and is giving the chance to the third party to voice any objections which could be based on the exemptions under the Act. Only if the third party's objection is in line with one of the exemptions under Section 8 (1) or Section 9, the PIO will again examine the issue. If he is convinced that an exemption applies, he must change his earlier position to disclose. It must be stressed that the issue of a lager public interest needs to be invoked only if the exemption is established. Otherwise, no public interest in disclosure needs to be established. It is also evident that if there is no response from the third party, the information has to be disclosed, since the PIO has come to the conclusion that the information is not exempt.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

Comment: *This section envisages a period of ten days being given to the third party to voice his objections to the disclosure of information. If the third party objects, the PIO has to determine whether the information is exempt or not and inform the appellant and the third party of his decision. If the third party wishes to appeal against the decision of the PIO, he can file an appeal under section 19 of the Act as per the provision of Section 11(4). There is an additional view at this juncture.*[43]

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

Comment: *Section 7(1) mandates that information has to be given by the PIO within thirty days of receipt of the application. However, when a third party representation is sought, the law extends the time for giving information to forty days, since it makes an allowance of ten days for the third party response.*

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

Comment: *In case the PIO's decision is to give the information, despite the objection of the third party, the third party has an opportunity to file an appeal against such a decision. If the third party wishes to appeal against the decision of the PIO, he can*

43 Mishra, Satyanand (personal communication, June 20, 2016) contends that this provision, that is, allowing the third party concerned to whom the desired information relates an opportunity to put forth his views about the intended disclosure by the PIO, is strictly in line with the principles of natural justice. Since the said information had been supplied to the public authority concerned by the third party specifically marked confidential, he must be given an opportunity before the PIO to air his views including objections to disclosure of the information. This provision clearly implies that the PIO must pass a speaking order in case he decides to overrule the objections, if any, by the said third party.

file an appeal under Section 19 of the Act as per the provision of Section 11(4). If the third party is not in agreement with the decision of the First appellate authority, he can also file a second appeal with the Information Commission. Reading all the sub-sections of Section 11 together, it is obvious that Section 11 is not an exemption but only a procedure to give a third party a fair chance to object to release of information by establishing that it is exempt. If a veto was to be given to third party, there would be no reason to provide for appeals by the third party. There should also be some evidence to suggest that the information was provided 'in confidence' to the public authority.

Chapter III

The Central Information Commission

Section 12

(1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Central Information Commission shall consist of:

(a) the Chief Information Commissioner; and

(b) such number of Central Information Commissioners not exceeding ten as may be deemed necessary.

Comment: *The law limits the total number of Information Commissioners at ten apart from the Chief Information Commissioner. This does not mean that eleven commissioners must be appointed. The act only sets an upper limit.*

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of:

(i) the Prime Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) A Union Cabinet Minister to be nominated by the Prime Minister.

Explanation – For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the

People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of the Opposition.

Comment: *The Leader of the Opposition has been included to bring some impartiality to the process of selecting the Information Commissioners. Unfortunately, in most cases, the leaders of the Opposition have not played any effective role in ensuring impartial and independent Commissioners being appointed. Most of the Information Commissioners are selected as an outcome of political patronage, with little regard to their suitability.*

There is no time limit for disposal of seconds appeal. The first draft of this bill had a provision of forty five days for disposal of second appeals by the Information Commissions, which was removed in the final draft. If Commissions do not deliver within a reasonable time of about 60 to 90 days, the law will lose its importance.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.

Comment: *The Chief Information Commissioner assisted by the Information Commissioners exercises all the powers. The Commission is an autonomous body and cannot be directed by any other authority.*

(5) 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.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any politica1 party or carrying on any business or pursuing any profession.

Comment: *This is to avoid conflict of interest.*

(7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

Comment: *The law has a provision for establishing offices in different parts of the country. Presently, this has not been done. With the successful introduction of video-conferencing for the hearings, there does not appear to be any need to establish offices in different places.*

Section 13

(1) The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office 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 a term of five years from the date on which he enters upon his office 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 sub-section (3) of 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 —

(a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;

(b) an Information Commissioner shall be the same as that of an Election Commissioner,

Provided that the if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

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.

Comment: *The Central Information Commissioners are placed alongside Election Commissioners who are equivalent to Supreme Court judges.*

(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.

Comment: *It has been mandated that adequate staff must be provided to them.*

Section 14

(1) Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed.

Comment: *The post of the Information Commissioners has been made very secure to ensure that their independence can be maintained.*

(2) The President may suspend from office, and if deemed necessary, prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be —

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

(4) If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

Chapter IV

The State Information Commission

Section 15

(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the..... (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of:

(a) the State Chief Information Commissioner; and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

Comment: *The law limits the total number of Information Commissioners at ten apart from the Chief Information Commissioner This does not mean that eleven commissioners are sanctioned and must be appointed. The act only sets an upper limit. For many small states, it would be prudent to have only a Chief Information Commissioner.*

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of:

(i) the Chief Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Legislative Assembly; and

(iii) a Cabinet Minister to be nominated by the Chief Minister.

Explanation: For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognized as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this act.

(5) The State Chief Information Commissioner and the State 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.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

Section 16

(1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office 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 a term of five years from the date on which he enters upon his office 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 sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15:

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 a 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 —

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also 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.

(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.

Section 17

(1) Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner, or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.[44]

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be -

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

44 I am aware that two State Information Commissioners - Mr. Ramnanand Tiwari in Maharashtra and Mr. K Natarajan in Kerala - have been suspended. Mr. Deepak Deshpande, Maharashtra Commissioner resigned when he realised he was about to be suspended. Dr. H. N. Krishna in Karnataka SIC also resigned when the State CID filed a FIR against him.

(4) If the State Chief Information Commissioner or any State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

Chapter V

Powers and Functions of the Information Commissions, Appeal and Penalties

Section 18

(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person —

(a) who has been unable to submit a request to a Central Public Information Officer, or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

Comment: *Section 18 (1) provides for making complaints to the Information Commission in the following circumstances:*

a) When an appellant is unable to submit her RTI application since no PIO or APIO are appointed, or they refuse to take the RTI application.

b) When information is denied by the PIO.

c) When information has not been provided in the time limit provided.

d) Where fee in excess of that specified in the rules is being charged.

e) When an appellant has been given incomplete, misleading or false information.

f) Any other matter like noncompliance of Section 4.

For b) and c) above a provision for a first appeal is also there as per Section 19. These cases apply to a first appeal under s. 19 since it applies to both non-decisions and any decision of a PIO. Most Commissions do not entertain an appeal in these matters until the first appeal has been made. Hence, it would be a good practice for appellants to file complaints to the Commission for matters covered by a), d), e) and f) and file first appeals for b) and c).

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the case may be shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

(a) Summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office;

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

Comment: *This is a strong provision giving adequate powers to the commission, since it gives it the powers of a civil court when inquiring into a matter. The commission can summon a person to come before it and ask for evidence to be given on oath, or produce certain documents. It can also be used effectively when a commission is faced with non-compliance of its orders. Whenever a complaint is received for non-compliance of its order it can take the following steps to ensure compliance after initiating an inquiry:*

(i) Summoning the PIO with the information and taking it in its custody.

(ii) This could be given to the appellant.

(iii) Penalising the PIO for not providing information.

(iv) In case the PIO does not obey the summons, an arrest warrant could be issued against him.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament, or the State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

Comment: *This clearly lays down that no record can be denied to the Commission.*

Section 19

(1) Any person who, does not receive a decision within the time specified in sub section (1) or clause *(a)* of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such

officer who is senior in rank to the Central Public Information Officer or State Public Information Officer, as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Comment: *When the PIO does not reply within the time period of 30 days, or the applicant is aggrieved by a decision which appears to be inconsistent with the provisions of the Act, a first appeal may be filed within 30 days to an officer senior to the PIO who is designated as First Appellate Authority. If no information is received from the PIO in 30 days, it is a deemed refusal. Hence, the first appeal must be made within 30 days of the deemed refusal, which means within 60 days of the application. If, however, the first appeal is not filed the issue cannot be pursued in a second appeal with the information commission. The First appeal should mention the grounds for filing the first appeal. Generally, these could be:*

a) Not receiving any response from the PIO.

b) Not receiving the complete information sought.

c) Denial of information which is not in consonance with the law.

d) Any other situation where the requester feels that the decision of the PIO was not in line with the legal requirements.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

Comment: *If a third party has objected to release of information when asked under Section 11 and the PIO informs the third party that he will release the information as the objection is not covered by the exemptions in the Right to Information Act, the third party can file an appeal within 30 days to the First Appellate Authority.*

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal in time;

Comment: *If the appellant is not satisfied with the decision of the first appellate authority, she should file a second appeal to the Information Commission within 90 days of the unsatisfactory decision. However if the first appellate authority does not pass any order within the 30 day period it is a 'deemed refusal', and the appellant should file a second appeal within 90 days, i.e. within 120 days of filing the first appeal.*

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

Comment: *If an appellant is contesting the finding of the PIO of releasing third party information before the Commission in a second appeal, the Commission must give the third party an opportunity of hearing so that the third party can raise his objections to establish that the information is covered under the exemptions of the Right to Information Act.*

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

Comment: *The act is for securing the fundamental right of a citizen. Hence, any refusal to provide the information held by the public authority has to be justified with reasons by the PIO during an appeal proceeding. It is a good practice for the appellant to give appropriate reasons in the appeal filed explaining why the appellant is aggrieved. Usually, a personal hearing is given by the first appellate authority and by the Commission. The appellant may choose to be present at these hearings if she wishes to. However, the appeals have to be decided on the merits of the arguments before the appellate authority, verbally or written in the appeal, and the presence or absence of the appellant during*

such a hearing should have no effect on the outcome if the adjudicating body discharges its duty in a fair manner.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

Comment: *The order for the first appeal has to be passed within 30 days of the appeal being received. The first appellate authority may however extend this period to 45 days, by giving reasons in writing to the appellant. Unfortunately, there is no specified time for the Information Commission to dispose the second appeals*.[45]

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

Comment: *The decisions of the Commissions are not merely recommendatory but have to be followed as per law and have statutory force.*

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to,—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including

(i) by providing access to information, if so requested, in a particular form;

Comment: *The Commission has the statutory power to direct any public authority to take steps to provide information in a particular form when a PIO has taken an unreasonable position claiming that it would disproportionately divert its resources. The provision gives the Commission the power to 'secure compliance with the provisions of the Act' which can include non-implementation of Section 4. The commission also has the power to direct maintenance of records in a manner which would ensure the requirement of transparency*.

(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

45 Mexico requires information commissions to dispose matters within 60 days. The first draft of the RTI bill in India also had a provision that information commissions must decide within 45 days.

(iii) by publishing certain information or categories of information;

Comment: *It can also direct that a PIO must be appointed or certain categories of information must be published suo moto. The Commission may also issue orders to public authorities to put specific information in a particular form on the website or on display boards.*

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing the provision of training on the right to information for its officials;

Comment: *The Commission may give directions to a public authority to follow practices which would improve the maintenance of records. It can also direct that officers should receive proper training in implementing Right to Information Act.*

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

Comment: *A very important power given to the commission is getting a compliance report that the public authority is fulfilling its obligation to publish information suo moto as required under Section 4(1) (b).*

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

Comment: *Apart from these the commission can direct a public authority to compensate the appellant for any loss or detriment suffered by her due to non-provision of the information. The Commissions should definitely order compensation to be paid to complainant where its orders have not been complied with or there is obvious violation of the RTI Act.*

(c) impose any of the penalties provided under this Act;

Comment: *The most important power to enforce the law is the power to penalise defaulting PIOs as per the provision of Section 20.*

(d) reject the application.

Comment: *The Commission may reject the application, if it comes to the conclusion that the information sought is not information or the body is not a public authority or the information is covered by the exemptions of Section 8 (1), and there is no larger public interest. It may also reject an appeal if it finds that the information has been provided by the PIO within the specified time.*

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

Section 20

(1) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees;

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

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

Comment: *This provision provides teeth to the Act, and is responsible for the implementation and effectiveness of the RTI act. If the PIO without reasonable cause:*

1) *Refused to take a Right to Information application*
2) *Did not provide the information in the period required by the Act*
3) *Refused to give the information with malafide intent*
4) *Knowingly gave false, partial or misleading information*
5) *Destroyed the information asked for, or obstructed in providing it*

the Commission must impose a penalty of Rs. 250 per day of delay, subject to a maximum of twenty five thousand rupees. Only the Commission has the authority to impose penalty. This must be done after giving the PIO an opportunity of hearing to defend his actions and coming to the conclusion that there was no reasonable cause justifying his actions. The onus of proving that he had acted in a reasonable and responsible manner is on the PIO.

This is a unique provision which is responsible for making the PIO/ deemed PIOs directly accountable, with the threat of being penalised personally from his salary. The fact that a Public servant is liable to pay a penalty from his salary for violating the fundamental right of a citizen establishes the majesty of the individual citizen.

Perhaps there is no other provision in our laws that so directly and unambiguously fixes the responsibility on an individual public servant. The fact that a personal penalty can be imposed for disregarding the rights of an individual has motivated Public servants to begin to respect the individual citizen. Thousands of PIOs have been penalised under this provision.

(2) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the

subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

Comment: *If there is persistent default by a PIO, the commission has the power to recommend disciplinary action against the defaulting officer. However, since it is a recommendatory power, it is up to the public authority to take action.*

Chapter VI

Miscellaneous

Section 21

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made there under.

Section 22

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Comment: *This provision clearly declares the intent of the Parliament to ensure that this law will override all earlier laws including the Official Secrets Act. It also clarifies that if there is any conflict between the provisions of this Act and the earlier Acts, the provisions of this Act will be given precedence. In the words of the law, where there is any inconsistency in a law as regards furnishing of information with the RTI Act, such law shall be superseded by the Right to Information Act. Insertion of a non-obstante clause in Section 22 of the Right to Information Act was a conscious choice of the Parliament to safeguard the citizens' fundamental right to information from convoluted interpretations of other laws and rules adopted by public authorities to deny information. The presence of Section 22 of the Right to Information Act simplifies the process of implementing the right to information both for citizens as well the PIO; citizens may seek to enforce their*

fundamental right to information by simply invoking the provisions of the Right to Information Act.

Given the above, three scenarios may be envisaged:

1. *An earlier law/rule whose provisions pertain to furnishing of information are consistent with the RTI Act: Since there is no inconsistency between the law/rule and the provisions of the RTI Act, the citizen is at liberty to choose whether she will seek information in accordance with the said law/rule or under the RTI Act. If the PIO has received a request for information under the RTI Act, the information shall be provided to the citizen as per the provisions of the RTI Act and any denial of the same must be only in accordance with Sections 8 and 9 of the RTI Act only; OR*
2. *The provisions of an earlier law/rule are inconsistent with the RTI Act: Where there is inconsistency between the law/rule and the RTI Act in terms of access to information, then Section 22 of the RTI Act shall override the said law/rule and the PIO would be required to furnish the information as per the RTI Act only for a RTI application.*
3. *Where another law elaborates on an exception in the RTI Law in a manner that is not inconsistent with the RTI Law but just more detailed. Thus, in many countries there are privacy or national security laws that do this.[46] Also, it is obvious that no executive can go against the letter and spirit of the RTI Act.*

If some public authorities have rules or there are specific laws for providing information, it is for the citizen to determine which route she would prefer for obtaining the information. The right to information available to the citizens under the RTI Act cannot be denied on the basis of any other law or rule.

It is the citizen's prerogative to decide under which mechanism i.e. under the method prescribed by the public authority or the RTI Act, she would like to obtain the information. Given this provision a PIO cannot deny information sought in RTI by a citizen on the basis of another law, rule or manual.

Section 23

No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

46 Mendel, Toby (personal communication, May 13, 2016)

This clearly bars any court from hearing an appeal against any right to information order issued by a commission. The final appellate authority in RTI is the Commission. The Courts have been barred from exercising appellate jurisdiction under this act. However the High Court has writ jurisdiction. Since Parliament has specifically barred appeals except under the Act, it would be a good practise if High Courts justify how a challenge to an order of the Commission falls in its writ jurisdiction. There are five kinds of writs and the only writ which can be invoked against the orders of the information commission is a writ of certiorari. In Hari Vishnu Kamath v. Ahmad Ishaque, a eleven member bench of the Supreme Court laid down the following four propositions:

"*(1) Certiorari will be issued for correcting errors of jurisdiction;*

(2) Certiorari will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice;

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.

(4) An error in the decision or determination itself may also be amenable to a writ of certiorari if it is a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

Writ jurisdiction is enjoyed by the Supreme Court and High Courts under Article 32 and 226 of the Constitution, respectively.[47]

Unfortunately many writs are entertained by courts from public authorities which are clearly appeals. Since Parliament has not provided for appeals in Right to Information beyond the Commissions, when a court takes a challenge to an order of the Commission it should justify how the matter falls under its writ jurisdiction. There is an additional view at this juncture.[48]

47 Maria Elena Perez Jaen (former Information Commissioner) personal communication 25 August 2016 Normally a writ is a remedy for citizens against violation of their fundamental rights by the State. In Mexico, courts entertain writs only from applicants in RTI matters, not from public authorities, except in a matter concerning national security.

48 Mishra, Satyanand (personal communication, June 20, 2016) is of the view that the stay granted by superior courts on the orders of Information Commission(s) and not deciding the cases for long are also proving to be serious impediments to the exercise of citizens' right to information.

Section 24

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty five days from the date of the receipt of request;

Comment: *This provision exempts intelligence and security agencies named in the Second schedule from providing information in Right to Information. However if there is an allegation of corruption information may be disclosed. If there is an allegation of human rights violation only the Commission can authorise the release of such information. It must be noted that for an agency to be exempted, it must be an intelligence and security agency and must be mentioned in the second schedule. The aim of Parliament to get citizens to use RTI to curb corruption is evident from the fact that even security and intelligence agencies have to provide information in case of allegation of corruption.*

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

Comment: *This provision authorises the government to reduce or add more intelligence agencies to the schedule. Unfortunately, the list has only increased. There has been some misuse of this provision by governments by adding to this list agencies which do not qualify as 'intelligence or security' agencies.*[49] *The addition of such agencies is not in consonance with the law.*

49 One such illegal addition has been of adding the Central Bureau of Investigation to this list though it is neither an intelligence agency nor a security organisation. CIC/SM/C/2011/000129/SG/13251 at cic.gov.in

(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisations, being organisations established by the State Government, as that Government may, from time to time, by notification in the official gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty five days from the date of the receipt of request.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature;

Comment: *Section 24 (4) gives the same power to exempt 'intelligence and security agencies' in the States. Some States have also exempted agencies which do not qualify as 'intelligence and security agencies' which is bad in law*[50].

Section 25

(1) The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.

(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

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50 Karira CJ, personal communication, email 13 September, 2016 Some examples:

1 Kerala exempted Vigilance and Anti-Corruption Bureau (VACB)

2. UP Govt has exempted Lok Ayukta

3. Tamil Nadu has exempted Directorate of Vigilance & Anti Corruption

4. Odisha exempted Vigilance Dept

(3) Each report shall state in respect of the year to which the report relates —

(a) the number of requests made to each public authority;

(b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;

(c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;

(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

(e) the amount of charges collected by each public authority under this Act;

(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

(g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Central Government or the State Government, as the case may be may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two houses, and where there is one House of the State Legislature before that House.

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the

steps which ought in its opinion to be taken for promoting such conformity.

Section 26

(1) The appropriate Government may, to the extent of availability of financial and other resources –

(a) 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;

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

(c) promote timely and effective dissemination of accurate information by public authorities about their activities; and

(d) 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.

(2) The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

(3) The appropriate Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include –

(a) the objects of this Act;

(b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be of every public authority appointed under sub-section (1) of section 5;

(c) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;

(d) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be of a public authority under this Act;

(e) the assistance available from the Central Information Commission or State Information Commission, as the case may be;

(f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;

(g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;

(h) the notices regarding fees to be paid in relation to requests for access to an information; and

(i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

(4) The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

Comment: *This provision mandates responsibility of promoting awareness and ensuring effective implementation of RTI Act primarily on the appropriate governments. There appears scant compliance of this section by the governments. However non-government organisations and individual citizens are fulfilling this role admirably, by educating and helping individuals to file RTI applications. By taking all steps set out in sub-section (1) to (4) of section 26, appropriate governments have an opportunity to promote the temper of transparency and accountability by continuously providing and following up with corrective mechanisms to facilitate access to information. This could pave the way for a participatory democracy and greater trust and faith in the government.*

Section 27

(1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:–

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(b) the fee payable under sub-section (1) of section 6;

(c) the fee payable under sub-section (1) and (5) of section 7;

(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;

(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and

(f) any other matter which is required to be, or may be, prescribed.

Section 28

(1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(ii) the fee payable under sub-section (1) of section 6;

(iii) the fee payable under sub-section (1) of section 7;

(iv) any other matter which is required to be, or may be, prescribed.

Comment: *This provision gives the authority only to competent authorities to frame rules. Primarily, rules can provide for application fees, additional fees for providing information, formats for RTI applications and appeals. It is important to note that this power can only be exercised by competent authorities and not by public authorities*.

Section 29

(1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

Comment: *It has been observed that the fee prescribed by different appropriate Governments/Competent Authorities is at great variance. Rules framed by High Courts and Legislative Assemblies are often not in accordance with RTI Act. Rules relating to exemptions, compelling citizen to disclose reasons for seeking information, giving id proofs or lowering the penalty are beyond the provisions of RTI Act and also beyond the competence of subordinate legislation i.e. rule making powers conferred by section 28. There seems to be inbuilt deliberate legislative oversight as far as rules framed by Competent Authorities are concerned as there is no provision to place such rules on the floor of legislature. If all the competent authorities frame similar rules it would be convenient.*

Section 30

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Section 31

The Freedom of Information Act, 2002 is hereby repealed.

Comment: *The Freedom of Information Act was passed in 2002. However, it was not notified since its rules had not been made. That act has been repealed.*

The First Schedule

(See sections (3) and 16(3) 13)

FORM OF OATH OR AFFIRMATION TO BE MADE BY THE CHIEF INFORMATION COMMISSIONER/THE INFORMATION COMMISSIONER/THE STATE CHIEF INFORMATION COMMISSIONER/THE STATE INFORMATION COMMISSIONER

"I,....., having been appointed Chief Information Commissioner/Information Commissioner/State Chief Information Commissioner/State Information Commissioner swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."

The Second Schedule

(See section 24)

INTELLIGENCE AND SECURITY ORGANISATION
ESTABLISHED BY THE CENTRAL GOVERNMENT

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Sahastra Seema Bal.[i]
16. Directorate General of Income-tax (Investigation).[ii]
17. National Technical Research Organisation.[iii]
18. Financial Intelligence Unit, India.[iv]
19. Special Protection Group.[v]
20. Defence Research and Development Organisation.[vi]
21. Border Road Development Board.[vii]
22. National Security Council Secretariat.[viii]
23. Central Bureau of Investigation.[ix]
24. National Investigation Agency..[x]
25. National Intelligence Grid...[xi]

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i Added by DoPT Notification No. GSR 347 dated 28th September 2005
ii Added by DoPT Notification No. G.S.R. 235 (E). – dated 27th March 2008
iii Added by Adopt Notification No. Notification No. G.S.R. 235 (E). – dated 27th March 2008
iv Substituted by DoPT Notification No. G.S.R. 235 (E). – dated 27th March 2008 Serial number 22 and the entry relating thereto in the original schedule omitted
v Added by DoPT Notification No. GSR 347 dated 28th September 2005
vi Added by DoPT Notification No. GSR 347 dated 28th September 2005
vii Added by DoPT Notification No. GSR 347 dated 28th September 2005
viii Added by DoPT Notification No. G.S.R 726 (E). – l dated 27th March 2008
ix Added by DoPT Notification No. G.S.R 442 (E). – l dated 9th June 2011
x Added by DoPT Notification No. G.S.R 442 (E). – l dated 9th June 2011
xi Added by DoPT Notification No. G.S.R 442(E). – l dated 9th June 2011

RTI Competition Launched on 2nd October, 2016

Along with E-Book
'RTI Act – Authentic Interpretation of the Statute'
by SHAILESH GANDHI

The purpose of this competition is to create a database of people's analyses of a large number of decisions on the RTI Act, as well as a deeper awareness and understanding of the Act.

Please send your entries, feedback and questions to rticompetition@satyamevajayate.info. Anyone can participate in this competition. Submission deadline: 31st December, 2016.

Prizes: 1st Prize: Rs. 25,000

2nd Prize: Rs. 10,000

3rd Prize: Rs. 5,000

The RTI Act is a very simple Act of 11,000 words. Hence, any person can understand and use it.

The competition has two parts:

Part 1:

This involves reading some judgments on the RTI Act of the Supreme Court, High Courts and Information Commissions. After reading these, the findings of the participant of one Supreme Court judgment, three High Court judgments and ten judgments of Central or State Information Commissions must be recorded in the formats given below. (50 marks for Part 1)

Part 2:

This involves writing a 300 to 500 word analysis.

2A: Analyse any one of the judgments. (25 marks)

2B: Select any of the interpretations from the e-book and give reasons for why you agree or disagree with the author's analysis. OR Write a review of the book. (25 marks)

Read or download the book at www.satyamevajayate.info/rtibook

You can locate Supreme Court and High Court judgments from:

www.bit.ly/RTIJudgments | www.judis.nic.in | www.nfici.org (E-library section)

You can access orders of the Information Commissions from their respective websites.

Format for Part 1 of the Competition

One Supreme Court judgment on RTI Act 2005

Case Reference	Who was Petitioner Applicant or Public Authority?	Information to be given/not given #	Section of RTI Act Involved*	Whether you agree/disagree with judgment along with reasons

Three High Court judgments on RTI Act

High Court of State	Case reference	Who was Petitioner Applicant or Public authority	Information To be given/ not given#	Section of RTI Act Involved*	Whether you agree/disagree with judgment along with reasons

Ten orders of Information Commissions (Central or State Commissions)

Commission of …… State/CIC	Case Reference	Showcause issued/not issued	Information to be given/ not given#	Section of RTI Act Involved*	Whether you agree/disagree with order along with reasons

\# You need to respond based on whether the order was for disclosure of information or for denying it.

* You need to specify the sections of RTI mentioned on the basis of which the matter was decided. If no section of the Act was quoted, mention 'Nil'.

– Case reference is the appeal or case number mentioned on every judgment.

Media Comments on this book

DNA

"To push these boundaries of an established understanding, and to set a discourse, Gandhi, through his books, plans to start a discussion which is not to be within the "rigour or tradition of academic writing." He takes a fairly direct approach of an interpretor of the statute and also juxtaposes it with views whichare conflicting and otherwise to his views from other dignitaries like former chief pf central information commissioner Satyanand Mishra and renowned international expert in the field of international law, Toby Mendel and not to forget, Justice B N Srikrishna."

http://epaper.dnaindia.com/story.aspx?id=94228&boxid=27725&ed_date=2016-10-09&ed_page=5&ed_code=820009 DNA

BUSSINESS STANDARD

"Right to Information is being slowly disfigured into a right to denial of information and I hope that this book could guide citizens as well as adjudicators to follow the word of law," Gandhi said claiming, "that this is the most authentic interpretation of the RTI Act".

http://www.business-standard.com/article/pti-stories/former-cic-shailesh-gandhi-authors-e-book-on-rti-116100700367_1.html Business Standard

TIMES OF INDIA

"Another common misconception is that information relating to any private body does not come under the RTI act. Gandhi clarified that if the law allows the public authority to access it, then even citizens can seek information under the act. For instance, information about a private bank can be obtained from the regulator, in this case, RBI."

http://epaperbeta.timesofindia.com/Article.aspx?eid=31811&articlexml=Filing-an-RTI-Read-this-first-04102016001047 TOI page 1 Kochi edition

The Indian law is rated as the third best in the world as far as its provisions go, but the rating for implementation and actual transparency ranks India at number 66.

There is a growing tendency from those with power to misinterpret the RTI Act almost to a point where it does not really represent what the law says. This book is the most authentic interpretation of the RTI Act 2005, obtained after a discussion between four RTI veterans: **Toby Mendel** (International expert), **Satyananda Mishra** (former Chief Information Commissioner), **Pralhad Kachare** (former head of RTI cell in YASHADA) and **Shailesh Gandhi** (former Central Information Commissioner).

"This book addresses the long felt need for an assessment of the impact of the RTI Act on the right of the citizens to know, the sine qua non in a democracy wedded to the Rule of Law. I am sure the book will serve us a practical manual to persons interested in the subject - students, activists and the authorities in charge of implementation of the Act."

— **Justice B. N. Srikrishna**
Eminent jurist and Former Supreme Court Judge

ISBN-978-81-8462-139-6

Vakils, Feffer and Simons Pvt. Ltd.