

**CRTI (SEC) -101**

**Background and Introduction of  
Right to Information**

**School of Law**



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## Background and Introduction of Right to Information

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## **UNIT 1**

# **DEFINITION AND PURPOSE OF RIGHT TO INFORMATION**

### **STRUCTURE**

- 1.1 INTRODUCTION**
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  - 1.3.1 Definition of ‘Right to Information’
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## 1.1 INTRODUCTION

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Article 21 of the Indian constitution gives the right to life to all the citizens which implicitly gives the right to information. Article 19 (1) (a) gives all the citizens freedom of speech and expression which also covered 'right to know'. In which right to know about working of the government also included.<sup>1</sup> Hence the question arises about the need of separate enactment of 'right to information' act and about its purpose.

Right to information is not limited to 'right to know' about the governance. Expression 'right to information' is more meaningful and comprehensive. It ensures greater and effective access to information about the government's activity at all the levels.

In the present unit we are trying to find the answer of need of separate enactment of right to information act and its purpose and definition.

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## 1.2 OBJECTIVES

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After reading this unit you will be able to know:

- About the need of separate Right to Information Act
- What is information
- About the definition of 'public authority'
- Definition of 'right to information'
- Need of Right to Information Act, 2005
- Purpose of 'Right to Information'

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## 1.3 SUBJECT

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### 1.3.1 Definition of 'Right To Information'

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

Whereas, "record" includes-<sup>2</sup>

- (i) Any document, manuscript and file;
- (ii) Any microfilm, microfiche and facsimile copy of a document;
- (iii) Any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- (iv) Any other material produced by a computer or any other device;

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<sup>1</sup>S.P. Gupta and others v. President of India and others, AIR 1981. SC;

<sup>2</sup>Section 2(i), RTI Act, 2005

And “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-<sup>3</sup>

- (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 computer or in any other device;

The term “public authority” means any authority or body or institution of self-government established or constituted,-<sup>4</sup>

- (a) by or under the constitution;
- (b) by any other law made by parliament;
- (c) by any other law made by 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 Organization substantially financed’

Directly or indirectly by funds provided by the appropriate Government;

It is noteworthy to mention here the term ‘appropriate Government’ means, in case of center it is ‘Central government’ and in the matter related to a state it is ‘State Government’.

In the light of above definitions, definition of ‘Right to Information’ comprehensively included:

- A citizen has a right to obtained any- 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, from any public authority, which is held by a public authority or which is held under its control.
- A citizen has a right to see a work document or record closely, carefully and purposefully.
- A citizen has a right noting down certain information from the documents inspected.
- A citizen has a right to take samples from the material being purchased or used by the Public Authorities.
- A citizen has a right to obtained 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 computer or in any other device.

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<sup>3</sup>Section 2(j), RTI Act, 2005

<sup>4</sup>Section 2(h), RTI Act, 2005

- A citizen has **no** right to obtained information from other than public authority i.e. from private body, institution or organization including NGO's which are self-financed.

However it is not included in the definition but noteworthy to mention here, that:

- The Act gives the right to information only to the citizens of India. It does not make provision for giving information to Corporations, Associations, Companies etc. which are legal entities/persons, but not citizens.
- Under the Act only such information is required to be supplied, which already exists and is held by the public authority or held under the control of the public authority.
- Right to information is not absolute. Section 8 and 9 provided the provisions about the information which are exempted for disclosure.

### **1.3.2 Purpose of Right to Information**

#### **1.3.2.1 Need of separate Legislation**

Article 21 and article 19(1) (a) of the Indian constitution implicitly gives the right to information. But there is no such machinery setup under government which provided information held by public authority. And the public authority is not obliged under any such law to provide information to seeking citizens. There is no legal boundation on public authority for providing information and also no sanction for denying. Hence for implementation of the right to information there is need of a legislation which promoted transparency and accountability in the working of public authorities. Being the largest democracy in the world right to information is a pivotal tool of a participatory democracy. Without adequate and firm information citizens cannot choose their representatives whose are honest and save their democratic rights. Hence cannot exercise their right as citizen. The Act is legislated to provide to set up the machinery to implement the right to information for citizens.

Besides implicitly guaranteed by the constitution, in India the free flow of information is severely restricted. Some legislative framework like Official Secret Act, 1923 etc. included many provisions of restrictive legislation. After independence the continuation of old framework of bureaucracy prevalent the culture of secrecy and arrogance. Bureaucracy is not intend to serve the people and remain maintain a distance from the common people. Due to low literacy rate in India the people are not aware of their rights. In this situation the RTI puts power directly into the hands of the common people. It becomes a powerful tool against the prevailing corruption in India.

#### **1.3.2.2 Object of The Right to Information**

Right to Information Act, 2005 says,

“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 are 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 harmonize these conflicting interests while preserving the paramount of the democratic ideal;

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

❖ ***‘setting out the practical regime of right to information’***

It is the primary objective of the Act. It is well settled through the many precedents by the SC and HC, that ‘right to know’ is a fundamental right. But in practical, how to gather the information about the policies and working of the government is not known and creating ambiguous situation and is a difficult task for the common people. Therefore in order to provide systematic and concrete mechanism to avail all kind of information with reasonable restriction,<sup>5</sup> Parliament of India enacted “Right to Information Act, 2005”.

❖ ***‘to secure access to information under the control of public authorities’***

Public authorities includes all governmental organizations and NGO’s those are substantially financed by the government and also the private bodies which can be accessed by a public authority under any other law for the time being in force.<sup>6</sup> The purpose of the Act to provide direct access to the information under the control of every public authorities and indirectly access to those information regarding private bodies which is held by that public authorities.

❖ ***‘to promote transparency and accountability’***

Whereas secrecy enhance suspicion and corruption the openness and dissemination of information promotes transparency and accountability in working of any organization and authority. Act imposes duty on the public authorities to held and maintain the information and provide access all the information specified in the section 4(b) by applying suo moto<sup>7</sup>. The sole purpose of the Act to eradicate any type of corruption in government offices and make aware people through the dissemination of information. The information also can admit as evidence in any legal procedure.

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<sup>5</sup>Section 8 and 9, RTI Act, 2005

<sup>6</sup>Section 2 (f), RTI Act, 2005

<sup>7</sup>Section4, RTI Act, 2005



❖ *‘the constitution of a Central Information Commission and State Information Commissions’*

To ensure the accountability of Public Information Officer and timely disposal of information to the applicant the Act make the provision to constitute Central Information Commission at the center and State Information Commission at the state level. If a PIO without any reasonable cause fails to receive an request for information, malafidely denies a request for information or gives incorrect , incomplete or misleading information knowingly, the applicant can file a direct complaint to the Central or State Information Commission. The citizen can file Second Appeal and complain in such Commissions without any fee. The status of Chief Commissioners and other Commissioners are same as the Chief and other Election Commissioners respectively. Thus providing proper remedy with objectivity.

❖ *‘for matters connected therewith or incidental thereto’*

Right to Information is the only Act that provide controlling power in the hand of citizens and public authorities are obliged to provide the information which is directly or indirectly connected to them and not explicitly exempted from disclosure by the Act. It is also provided by the Act that, if seeking information is not belongs to particular Public Authority, in such case, that Public Authority instead of rejection, is obliged to transfer to the relevant Public Authority. Hence securing the only purpose of the Act i.e. uninterrupted flow of information towards the citizens.

It is clear from above points that basic object of the Right to Information Act is to empower the citizens, to promote transparency and accountability in the working of the Government. Easy access to information enhance people’s participation in democratic process. It set out a practical regime for securing information and gave a powerful tool to the citizens to get information from the Government as a matter of right. The Act is a big step towards making the citizens informed about the activities of the Government.

Democracy and Right to information are not separate but dependent on each other and it is clear in the object, as stated in the Act. Informed citizenry and transparency of information are vital for the smooth functioning of democracy. The Act enhance accountability in governance. It brought transparency in the functioning of public authority. RTI Act is revolutionary in controlling corruption and delays in the implementation of government-sponsored programs.

The main objective of the RTI Act is to enhance transparency, accountability, predictability and participation which are characteristics of good governance. Through RTI people can question the progress on various welfare schemes started by the government.

The Right to Information Act, 2005 is a land mark legislation in the sense that is a law which casts a direct accountability on the public officer for non-performance. If the concerned officer does not provide information in time, a penalty can be imposed by the Information Commissioner. If the information provided is false, also a penalty can be imposed. A penalty can also be imposed for providing incomplete or for rejecting your application for malafide reasons. This fine is deducted from the officer’s personal salary. Thus the purpose of the Act

is to ensure free flow of information among the citizens who desire to have it and to remove all the hurdle in its way for achieving the same.

The free flow of information is necessary for healthy democracy. But on the other hand random and uncontrolled revelation of information is likely to conflict with other public interests including efficient operations of the governance, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. In its endeavor to balance out and harmonize these conflicting interests while preserving the paramount of the democratic idea, the Parliament enacted the RTI Act.

In a case the Supreme Court said, “The purpose of the Act is to harmonize the conflicting public interest, that is ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm and adversely affect other public interest which include efficient functioning of the governments, optimum use of limited fiscal resources preservation of confidentiality of sensitive information, on the other hand.”<sup>8</sup>

Section 4(1)(b) of the Act, in particular, requires every public authority to publish sixteen categories<sup>9</sup> of information, within 120 days from the enactment of this Act. It is important here to note that only publication of information is not sufficient. The public authority is obliged to update such information every year. As far as possible, the information should be updated as and when any development takes place.

The Information Commissions, after the end of each year, are required to prepare reports on the implementation of the provisions of the Act during that year. Each Ministry or Department is required, in relation to the public authorities within its jurisdiction, to collect and provide information to the concerned Information Commission for preparation of the report.

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## 1.4 SUMMARY

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It is clear from above discussion that the RTI Act is very wide and comprehensive law. It is legislated with the aim of fulfillment of the right to information guaranteed by the constitution to its citizen.

For the ease of the reader we can summaries the definition and purpose of the right to information into the following points:

- Right to information is the fundamental right of every citizen
- Right to information is implicitly guaranteed by the constitution
- The Act is a big step towards making the citizens informed about the activities of the Government.
- The act provided a machinery setup for access to information held by and under the control of every public authority.

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<sup>8</sup>Institute of Chartered Accountants of India v. Shaunak H. Satya, AIR 2011 SC 3336 (2011) 8 SCC 781: JT 2011(10) SC 128: (2011) 9 SCALE 639

<sup>9</sup>See glossary

- The term information include records, documents, memos, e-mails, opinions, advices, press releases, contracts, reports, papers, samples, models, and any other material produced by a computer or any other device;
- Information relating to any private body which can be accessed by a public authority under any other law for the time being in force, is also accessible.
- Right to information also covers inspection of records, documents etc. Taking notes from them and also taking certified samples of material.
- Every public authority is obliged under the provisions of Act to provide information on request whether written or by electronics means, except which are explicitly prohibited by the act.
- There is also provision of penalty for not providing information to the requester.
- Central information Commission is to be constituted under Central Government and State Information Commission are to be constituted in every state
- RTI puts power directly into the hands of the common people. It becomes a powerful tool against the prevailing corruption in India.
- The Act ensure that the records are duly catalogued and indexed in such a manner and form that it may facilitate the right to information.
- After the end of each year, Commission, are required to prepare reports on the implementation of the provisions of the Act during that year.

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## 1.5 GLOSSARY

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1. SUO MOTU: It is a Latin legal term; It means- self initiative or on its own motion. It is used where a government agency acts on its own cognizance.
2. SECTION 4 (1)(B): it requires every public authority to publish following sixteen categories of information: (i) the particulars of its organisation, functions and duties; (ii) the powers and duties of its officers and employees; (iii) the procedure followed in the decision making process; (iv) the norms set by it for the discharge of its functions; (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; (vi) a statement of the categories of documents that are held by it; (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; (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; (ix) 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; (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made; (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 authorisations granted by it; (xiv) details in respect of the information, available to or held by it, reduced in an electronic form; (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; (xvi) the names, designations and other particulars of the Public Information Officers.

3. MALAFIDE: In bad faith or with intend to deceive.
4. ARTICLE 21: This Article of the Indian Constitution guaranteed the ‘right of life and personal liberty’.
5. ARTICLE 19 (1)(a): This Article of the Indian Constitution guaranteed the ‘right to freedom of speech and expression’.

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## 1.6 SAQS

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### 1. SHORT ANSWER QUESTIONS

- (i) What do you mean by ‘right to information’?
- (ii) How do you define the term ‘information’?
- (iii) What is meant by ‘inspection’?
- (iv) Are private bodies covered under the RTI Act?

### 2. FILL IN THE BLANKS

- (i) The basic object of the Right to Information Act is to empower the....., to promote transparency and accountability in the working of the Government.
- (ii) After the end of each year, ..... are required to prepare reports on the implementation of the provisions of the Act during that year.

### 3. TRUE AND FALSE TYPE QUESTIONS

- (i) The Act is require the public authorities to retain records for indefinite period.  
(a)True, (b) False.
- (ii) The prescribed RTI fees can also be paid online.  
(a)True, (b) False.
- (iii) The Information Commissions, after the end of each year, are required to prepare reports on the implementation of the provisions of the Act during that year.  
(a)True, (b) False.

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## 1.7 REFERENCES

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1. Bare Act (RTI Act, 2005) with short notes, 2014
2. [http://rti.gov.in/rticorner/guide\\_2013-issue.pdf](http://rti.gov.in/rticorner/guide_2013-issue.pdf)
3. <https://www.drysrhu.edu.in/word/GuideonRTI.pdf>
4. [http://www.legalserviceindia.com/articles/rti\\_dh.htm](http://www.legalserviceindia.com/articles/rti_dh.htm)

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## 1.8 SUGGESTED READINGS

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1. Right to Information Act, 2005
2. Guide on Right to Information Act, 2005 (Government of India Ministry of Personal, Public Grievances & Pensions Department of Personnel & Training)<http://www.rtifoundationofindia.com/guide/Guideonrti.pdf>
3. Dr. Neelam Kant, 2014, published by Orient Publishing Company
4. Right to Information Law in India by N.V. Paranjape
5. Right to Information Act, 2005 by Jitesh Dhanrajani

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## 1.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

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1. If RTI is a fundamental right, then why do we need an Act to give us this right?
2. What rights are available under RTI Act 2005?
3. Write essay on the purpose of right to information.

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## 1.10 ANSWERS

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### SAQS

1. (i) Refer 1.3.1 (ii) Refer 1.3.1 (iii) Refer 1.3.1 (iv) yes, see definition of information
2. (i) citizen (ii) Commission
3. (i) False (ii) True (iii) True

### Terminal Questions and Answers

1. Refer 1.3.2.1
2. Refer 1.3.1
3. Refer 1.3.2.2

## **UNIT-2**

# **MOVEMENT OF RIGHT TO INFORMATION IN INDIA**

### **STRUCTURE**

#### **2.1 INTRODUCTION**

#### **2.2 OBJECTIVES**

#### **2.3 SUBJECT**

##### 2.3.1 Constitutional Perspective

###### 2.3.1.1 Preamble

###### 2.3.1.2 Freedom of Speech and right to know

###### 2.3.1.3 Right to know vis-à-vis Right to privacy

##### 2.3.2 Judicial Approach

##### 2.3.3 Statutory Enactments

###### 2.3.3.1 Indian Contract Act, 1872

###### 2.3.3.2 Transfer of Property Act, 1882

###### 2.3.3.3 The Code of Civil Procedure, 1908

###### 2.3.3.4 Official Secrets Act, 1923

###### 2.3.3.5 The Representation of Peoples Act, 1951

###### 2.3.3.6 Atomic Energy Act, 1952

###### 2.3.3.7 Commission of Inquiries Act, 1952

###### 2.3.3.8 Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954

###### 2.3.3.9 The Code of Criminal Procedure, 1973

###### 2.3.3.10 The Urban Land (Ceiling and Regulation) Act, 1976

###### 2.3.3.11 The Consumer Protection Act , 1986

###### 2.3.3.12 The Competition Act, 2002

###### 2.3.3.13 SEBI Rules

###### 2.3.3.14 Intellectual Property Law

###### 2.3.3.15 The Companies Act, 2013

2.3.4 Right to Information Movement

2.3.5 Efforts of the State Governments

2.3.6 Evolution of Information Law

## **2.4 SUMMARY**

## **2.5 SAQS**

## **2.6 REFERENCES**

## **2.7 SUGGESTED READINGS**

## **2.8 TERMINAL QUESTIONS AND MODEL QUESTIONS**

## **2.9 ANSWERS**

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## **2.1 INTRODUCTION**

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The evolution of the concept of right to information is a transition from an era of secrecy to that of transparency and accountability. The democratic form of government cannot thrive in secrecy. Democracy flourishes by sharing the information held by the government with the people. Further the new scientific developments in the area of communication has opened new avenues for the quick and easy exchange of information at every level. The evolution of right to information can be studied under different heads.

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## **2.2 OBJECTIVES**

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After reading this unit you will be able to:

- Know the Constitutional provisions on right to information.
- Describe legislative provisions protecting right to information
- Learn the basis of codification of law on right to information
- Understand formation and repeal of central laws on right to information.

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## **2.3 SUBJECT**

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### **2.3.1 Constitutional Perspective**

The Constitution of India contains certain provisions that were interpreted by the courts as guaranting right to information to the citizens.

#### **2.3.1.1 Preamble**

The Preamble of the Constitution expresses gist of the intention of constituent Assembly. While interpreting any provision of the Constitution, the Preamble must form a

part of it. In *Sahal Papers(P) Ltd. v. Union of India*, AIR 1962 SC 305 the Constitutional Bench of the Supreme Court held that freedom of speech and expression of opinion is important under democratic constitution which envisages changes in composition of legislatures and governments and must be preserved.

### 2.3.1.2 Freedom of Speech and right to know

Right to information is an integral part of freedom of speech and expression under Article 19(1). All citizens of India have a right to freedom of speech and expression. This right is not absolute. Clause 2 of Article 19 imposes limitation on the freedom of speech and expression. It empowers the State to place reasonable restrictions on the exercise of the right conferred by Article 19(1) in the interest of the sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

### 2.3.1.3 Right to know vis-à-vis Right to privacy

Right to privacy is not expressly guaranteed under the Constitution of India. However right to privacy has been held to be an integral part of Article 21 of Constitution of India. Privacy of information is important to understand. As far as the right to information is concerned, it deals with the information which is held by the public authorities and which, if disclosed, may either defame the person to whom it is related or hamper judicial process or government security.

Generally there will be a conflict between right to know and right to privacy when information is of the nature of trust relationship like medical professional and patient, research institutes and sponsors or information is held by public authority in fiduciary relationship like election commission, passport office, employer etc.

### 2.3.2 Judicial Approach

Up to 1973 the cases before Supreme Court like *Ramesh Thappar v. State of Madras*, AIR 1950 SC 124, *Express Newspaper (P) Ltd. v Union of India*, AIR 1958 SC 578, *Bennett Coleman and Co. Ltd. v. Union of India*, AIR 1973 SC 106 related to the freedom of press. In 1975, for the first time, the Supreme Court a question was raised before the Apex Court regarding disclosure of information of functioning of government officials.

The five member bench of Supreme Court in *State of U.P v Raj Narain* AIR 1975 SC 865 delivered a judgment by ratio 4:1 declaring that in a government of responsibility, all agents of public must be responsible for their conduct. However there can be a few secrets. Thereafter in *S.P.Gupta v. Union of India*, AIR 1975 SC 865, the Supreme Court held that the right to know is implicit right in right of freedom of speech and expression under Article 19(1). The disclosure of information regarding functioning of the Government must be the rule and secrecy an exception.



### **2.3.3 Statutory Enactments**

Some statutory enactments apart from the Right to Information Act, 2005 provided implicitly for the right to information to the concerned parties. These enactments are discussed as under:

#### **2.3.3.1 Indian Contract Act, 1872**

The parties to a contract are under an obligation to person(s) with whom they enter into contractual relationship to exchange substantial information about the subject matter of the contract. Suppression of substantial information by any of the parties amounts to breach of contract on the ground that the consent was not free. Similarly under Sale of Goods Act, 1930 a seller must disclose all such faults or defects in the goods that he is selling which could not be discovered by the buyer with due diligence. (Section 16)

#### **2.3.3.2 Transfer of Property Act, 1882**

Seller is under an obligation to disclose any material defect in property to buyer which the buyer could not discover with ordinary diligence and also produce all relevant documents related to property on the request of buyer. (Section 55(1)) Similarly the buyer is bound to disclose to seller any fact regarding nature and extent of seller's interest in property which materially increases the value of the property and of which the buyer is aware but of which he has reasons to believe that the seller is not aware. (Section 55(5)) Further a lessee is bound to disclose to the lessor any fact regarding the nature and extent of the interest which materially increases the value of such interest and about which the lessee and not lessor is aware. (Section 108(k))

#### **2.3.3.3 The Code of Civil Procedure, 1908**

Order XI, Rules 11 to 15 contain provisions related to disclosure of documents and information under "Discovery and Inspection".

#### **2.3.3.4 Official Secrets Act, 1923**

Section 8 casts a duty on every person to provide information to Superintendent of Police, or any other police officer empowered by an Inspector-General or Commissioner of Police, or to any member of the Armed Forces of the Union engaged on guard any information held by him relating to an offence or suspected offence. If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to three years or with fine, or with both.

If any person is having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act or which has been entrusted in confidence to him by any person holding office under Government or which he has obtained or had access owing to his position as a person who holds or has held

office under Government he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.(Section 5).

### **2.3.3.5 The Representation of Peoples Act, 1951**

This Act makes provision for providing information about the candidates to the electorate. Section 33 A states that apart from the information required to be furnished by the candidate under The Representation of Peoples Act, 1951 or any rule made under it, the candidate shall provide information in his nomination papers as to whether:

- i. he is accused of an offence punishable with imprisonment for two years or more in a case pending before a court and where charges have been framed by a court of competent jurisdiction;
- ii. he has been convicted of an offence and sentenced to imprisonment for one year or more.

The candidate or his proposer shall also deliver an affidavit sworn by the candidate to the returning officer verifying the information stated above. The above stated information shall, thereafter, be affixed by the returning officer at conspicuous place in his office for information of the electors.

### **2.3.3.6 Atomic Energy Act, 1952**

The Act provides that the Central Government may restrict the disclosure of information in the form of information contained in the form of document, sketches, photographs, plan model, drawings micro-chips etc.(Section 18) The validity of this provision was challenged in People's Union for Civil Liberties v Union of India AIR 2004 SC 1442. The Apex Court held that restrictions on disclosure of information under Section 18 of the Atomic Energy Act, 1952 were reasonable and in the interest of the national security.

### **2.3.3.7 Commission of Inquiries Act, 1952**

The Central Government or the State Government is empowered to appoint a Commission of Inquiry to enquire into any matter of public interest. (Section 5(5)). The report of the Commission should be laid before the Parliament or State Legislature within six months from the date of its submission. This provision was amended in 1986 to provide that the report of the Commission shall not be laid before the Parliament or State Legislature, if the Commission is satisfied that it is not in the interest of sovereignty and integrity of India, the security of State or friendly relations with foreign states or in public interest. However the amendment in 1990 repealed this provision with retrospective effect.

### **2.3.3.8 Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954**

The Act prohibits the advertisement of certain drugs for the treatment of certain diseases and disorders as they may be injurious to human health(Section 3). The misleading advertisements regarding certain specified drugs and of drugs claiming magic remedies is

also prohibited. Any false, defective or misinformation or misstatement in advertisement regarding effect of the drug etc. is punishable under the Act.(Section 3)

### **2.3.3.9 The Code of Criminal Procedure, 1973**

The Code of Criminal Procedure prescribes the procedure of trial of criminal cases. It contains some provisions related to right to information to a person accused of having committed an offence under Indian Penal Code or any other penal law in force in India. Section 50 provides that a n arrested person has the right to know the grounds of his arrest and also of being told that he has a right to seek bail. Section 50 A casts an obligation on the police officer or a person making arrest to inform the friend, relative or any other person nominated by arrested person to be told about the arrest of the person, grounds of arrest and place where the arrested person is being kept. The particulars of the person so informed shall be entered into record the police officer. Section 207 requires the police to supply to the accused, the copy of the police report and other relevant documents. Section 208 makes it mandatory for the police to supply the copies of statements and documents to the accused where the case is not instituted on police report and the case is triable by the Court of Session. Section 211-213 contains provisions regarding providing the information of the charges which he has to face in his trial.

### **2.3.3.10 The Urban Land (Ceiling and Regulation) Act, 1976**

Section 6 of the Act provides that every person must furnish information regarding the land owned by him in an urban area. The Government has the power to seek and collect information from industrial and commercial enterprises regarding the matters pertaining to labour welfare schemes, environmental safety or industrial safety measures and compliance of mandatory industrial rules and regulations etc.

### **2.3.3.11 The Consumer Protection Act, 1986**

A consumer has a right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect him against trade unfair trade practices.(Section 6(b))

### **2.3.3.12 The Competition Act, 2002**

The Act provides for restriction on disclosure of information which has been obtained by or on behalf of the Commission or the Appellate Tribunal relating to any enterprise, without the previous permission in writing of the enterprise, otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.(Section 57)

### **2.3.3.13 SEBI Rules**

The Securities and Exchange Board of India issued guidelines in 2000.As per these guidelines the equity shares and mutual fund schemes and plans should be duly advertised for information of public so as to caution the prospective investor that the value of such shares and units is subject to market fluctuations.

### **2.3.3.14 Intellectual Property Law**

Section 84 of Protection of Plant Varieties and Farmers Act, 2001 provides that a person may obtain information in the form of a certified copy of an entry in the Register or any other document on payment of prescribed fee. Section 87 of the Semi Conductor Integrated Circuits Layout Designs Act, 2000 and Section 148 of the Trade marks Act, 1999 make a provision of making the document available for public inspection on payment of requisite fee. Similarly Section 18 of the Designs Act, 2000 requires the disclosure of information regarding existence of copyright. The Geographical Indications of Goods(Registration and Protection ) Act, 1999 contains provisions for the inspection of documents and access of information to the public.

### **2.3.3.15 The Companies Act, 2013**

This Act makes it mandatory for the incorporated companies to give information to its shareholders on certain matters through prospectus. Failure to provide information or providing false information incurs civil as well as criminal liability.(Section 34 and 35) The Company must make the copies of memorandum and articles available to the members for their knowledge and information.(Section 17)All incorporated companies are required to publish the reports of its proceedings of Annual and General Meetings(Section 18)Where a Company has passed a resolution for its voluntary winding up , it must furnish the resolution so passed for the information of creditors and contributories(Section 307)The Declaration of solvency has also to be published for the information of all concerned when it is being wound up due to its insolvency(Section 305). The creditors and contributories have a right to inspection of books and accounts etc. in case of winding up of a company(Section 346).The Central Government has the power to direct companies to furnish information, record or statistics etc.(Section 405)

### **2.3.4 Right to Information Movement**

In early 1990s, the Right to Information movement was initiated by Aruna Roy in Rajasthan. The Mazdoor Kisan Shakti Sangathan successfully put an end to local [corruption](#) by accessing and using information.

A people's movement in a small dusty town in Rajasthan called Beawar, was started to fight against corruption. This dharna went on for 44 days and ultimately resulted in the Right to Information Act in 2005, which now allows every citizen to get information and access government records.

### **2.3.5 Efforts of the State Governments**

Much before the Central Government, it were the governments in as many as eleven states that took the initiative to enact the Right to Information Act. The following Acts were passed by the States:

The Tamil Nadu Right to Information Act, 1997

The Goa Right to Information Act, 1997

The Karnataka Right to Information Act, 2000

The Andhra Pradesh Right to Information Act, 2001

The Assam Right to Information Act, 2001

The Delhi Right to Information Act, 2001

The Kerala Right to Information Act, 2002

The Orissa Right to Information Act, 2002

The Madhya Pradesh Right to Information Act, 2003

The Maharashtra Right to Information Act, 2003

The Jammu and Kashmir Right to Information Act, 2004

### **2.3.6 Evolution of Information Law**

The Government of India set-up a 'Working Group' on the 'Right to Information and Promotion of Open and Transparent Government' in January 1997. It was headed by Mr. H. D.Shouri. The working group submitted its report and the draft Bill on Freedom of Information in May 1997. The various Ministries through which the Bill travelled took little interest in it. So it got delayed for one reason or the other. The Press Council of India, the Press Institute of India, the 'National Campaign for People's Right to Information' and the Forum for Right to Information through a unanimous resolution urged the Government of India to amend the proposed Bill in February, 2000.

The Government of India introduced the Freedom of Information Bill, 2000 in the Lok Sabha on 25th July, 2000. It was passed by the Parliament as the Freedom of Information Act 2002. However, the Act could not be brought into force as the date from which the Act could come into force, was not notified in the Official Gazette.

The United Progressive Alliance Government at the Centre set up a National Advisory Council to analyse the Freedom of Information Act 2002. The Council suggested some important changes. After considering the suggested changes, the Government decided to repeal the Freedom of Information Act 2002. A new legislation, the Right to Information Act was enacted in 2005 to provide an effective framework for effectuating the right of information recognised under Article 19 (1)(a) of the Constitution of India.

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## **2.4 SUMMARY**

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The right to information is the basis of democracy. This right is protected by the constitutional provisions, judicial interpretations and several statutory provisions of different laws. The movement to codify right to information began in 1990s in Rajasthan. Many state governments passed laws codifying the right to information. The Central government framed Freedom of Information Act, 2002. But unfortunately it was never implemented. In 2005, the Right to Information Act was enacted empowering the citizens of India to get information as a matter of right from the public authorities.

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## 2.5 SAQS

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### 1. Short Answer Question.

- a. What is the judicial approach on information as a matter of right?
- b. Give brief description about the preamble protection viz-a-viz right to information.

### 2. Fill in the blanks

- a. The Freedom of Information Act 2002 was repealed in the year\_\_\_\_\_.
- b. For the first time, the question regarding disclosure of information of functioning of government officials was raised in Apex Court in the year \_\_\_\_\_.

### 3. True or False

- a. The Tamil Nadu Right to Information Act was enacted in the year 1997.
- b. Right to information is an integral part of freedom of speech and expression under Article 19(1).

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## 2.6 REFERENCES

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Right to Information Law in India: N.V.Paranjapee

<https://www.ndtv.com/india-news/two-decades-of-the-right-to-information-movement-752461>

<https://www.omicsonline.org/open-access/right-to-information-act-in-india-an-overview-2332-0761-1000207.php?aid=76441>

<https://www.quora.com/Why-did-the-Indian-Government-choose-to-pass-the-Right-to-Information-Act>

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## 2.7 SUGGESTED READINGS

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Right to Information and Protection to Whistle blowers by Krishna Pal Mallik, Allahabad Law Agency, Haryana (2016)

Right to Information Act, 2005 by [Jitesh Dhanrajani](#)

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## 2.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

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- a. Explain the statutory provisions other than those contained in RTI Act, 2005 protecting right to information.
- b. Discuss the evolution of the concept of right to information since 1990s.

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## 2.9 ANSWERS

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**SAQs**

1. a. refer 2.3.1.1 b. refer 2.3.2

2. a. 2005 b. 1975

3. a True b. True

**TERMINAL QUESTIONS AND ANSWERS**

a. refer 2.3.3

b. refer 2.3.4, 2.3.5 and 2.3.6

## **UNIT 3**

# **STATE AND CENTRAL ACTS ON RTI**

### **STRUCTURE**

#### **3.1 INTRODUCTION**

#### **3.2 OBJECTIVES**

#### **3.3 SUBJECT: STATE & CENTRAL ACTS ON RTI**

- 3.3.1 THE J&K RTI ACT, 2009
- 3.3.2 THE RIGHT TO INFORMATION ACT, 2005
- 3.3.3 THE MP RTI ACT, 2003
- 3.3.4 THE ASSAM RTI ACT, 2002
- 3.3.5 THE DELHI RTI ACT, 2001
- 3.3.6 THE RAJASTHAN RTI ACT, 2000
- 3.3.7 THE KARNATAKA RTI ACT, 2000
- 3.3.8 THE MAHARASHTRA RTI ACT, 2000
- 3.3.9 THE GOA RTI ACT, 1997
- 3.3.10 THE TAMILNADU RTI ACT, 1997

#### **3.4 SUMMARY**

#### **3.5 GLOSSARY**

#### **3.6 SAQS**

#### **3.7 REFERENCES**

#### **3.8 SUGGESTED READINGS**

#### **3.9 TERMINAL QUESTIONS AND MODEL QUESTIONS**

#### **3.10 ANSWERS**



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### 3.1 INTRODUCTION

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In the previous Unit you learned about the various movements that led to the enactment of The Right to Information Act, 2005. In this unit you will be able to have an overview about the various Right to Information Acts that existed prior to Right to Information Act, 2005 in the various Indian states and what was their aims, objectives and impact on the people of the states where the Act was enacted. The Unit will also give us an overview of the functioning of these Acts.

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### 3.2 OBJECTIVES

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After reading this Unit you will be able to:

- (i) Know the objectives of the various State RTI Acts.
- (ii) Learn about need for enactment of these various Acts.
- (iii) *Have an overview of the procedures and penalty provisions in these Acts.*

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### 3.3 SUBJECT: CENTRAL & STATE ACTS ON RTI

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The various states had enacted RTI Acts for their respective states because at that point of time there was no central law on right to information in India. So, in order to avoid unnecessary hassle and delay in obtaining information from public authorities these Acts were enacted which helped in the proper adjudication of disputes.

#### 3.3.1 THE JAMMU AND KASHMIR RIGHT TO INFORMATION ACT, 2009

The Act was enacted on 20<sup>th</sup> March, 2009 and came into force with immediate effect and it extends to the whole of the state of Jammu and Kashmir. The Act consists of 5 chapters 28 sections and 1 schedule. The Act revelation of information in actual practice is likely to conflict with other public interest including efficient operations of the Government to, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. It is necessary to harmonize these conflicting interests while preserving the paramount of the democratic ideal. It is expedient to provide for furnishing certain information to citizens who desire to have it. The object of the Act is to allow proper information and it also states about the obligations of public authorities. The Act defines the duties of the various authorities who have been entrusted with the task of delivering public information and also stipulates those actions where the public information is not accessible. Chapter III of the Act defines the various duties and liabilities of the State Information Commission and Chapter IV talks about the appeals and penalty measures enshrined within the Act. The schedule attached to the Act talks about the procedure of the oath to be taken by the State Information Commissioner.

### 3.3.2 THE RIGHT TO INFORMATION ACT, 2005

The freedom of information, 2002, has been replaced by the Right to information Act, 2005. The freedom of information act, 2002 was made to give freedom of every citizen to provide information under the control of public authorities, based on public interest for to promote openness, transparency and accountability in administration and other related matters. However, the National Advisory council has suggested several important changes in the law to gather more access to information. The main aims were:

- (i) To build a machinery with investigating powers to challenge the decisions of the Public Information Officers (PIOs)
- (ii) Penal provision in case of failing to give correct information as per law
- (iii) Providing the constitutional provisions and effective mechanism for access to information.

The citizens of a modern democratic country must have the right to get comprehensive information about all the policies and prescriptions formulated by the government for the economic and social welfare of the country. To make a strong healthy democratic base in an economy a well informed and enlightened citizens are necessary. Therefore, the right to information is a natural rights for the citizens in a democratic framework. In order to make proper transparency and accountability in the government administration department, it is urgent required for all the citizen to have the right to information. Along with India, most of the other countries are adopting this particular rights for their citizens. Under Article 19 (1) (a), the Supreme Court of India has held that rights to freedom of speech and expression includes the rights to information. According to this the right to information is implicit in the right to freedom of speech. All the citizens must have the right to get correct information in the every sphere of their life. The apex court of India has ensured this right in the case of *State of Uttar Pradesh v. Raj Narain*<sup>10</sup>. It is impossible for any democratic country to stand without the right to information for its citizen. The United Nation Organization (UN) proclaimed a Universal Declaration of Human Rights in 1948. This was followed by the international covenant on civil and Political Rights. According to the article 19 of the covenant declares that – “everyone has the rights of freedom of opinion and expression the rights includes freedom to hold opinion without interference; and to seek, and receive and import information and ideas through any media and regardless of frontiers”.

In India the formation of law regarding rights to information got momentum in 1990s. The Law Commission of India in its 179th report first time emphasized upon the accountability and usefulness of this law in India. Hence, the law was ultimately passed and enacted as Freedom of Information Act, 2002, but never applied in reality. Therefore, as per as the recommendations made by the National Advisory Council the law has been ultimately changed and enacted as the Right to Information Act, 2005 by the parliament and got the president’s assent on 15.06.2005.

The important sections are as follows:

- (a) Section 4 (1)- Obligations of Public Authorities,

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<sup>10</sup>(1974) 4 SCC 428

- (b) Section 5 (2) - Designating PIOs,
- (c) Section 12 & 13- Constitution of central Information Commissions.
- (d) Section 15 & 16- Constitution of State Information Commissions,
- (e) Section 24- Exclude Several Intelligence and Security Organizations,
- (f) Section 27 & 28- Power to form rules and regulations by the Central and State Governments.

The Act overshadowed all the other Acts and became the Central Legislation governing Right to Information in India and it catered to all the grievances of the public and the other Acts were repealed after this Act had come into force.

### **3.3.3. THE MADHYA PRADESH RIGHT TO INFORMATION ACT, 2003**

Madhya Pradesh was one of the first states in India to actively engage in securing the right to information for the public. In October 1996, the Commissioner of Bilaspur Division, Mr Harsh Mander, issued executive orders to give people in the districts of Bilaspur, Raigarh and Sarguja the right to scrutinise government records pertaining to the public distribution system. In May 1997, at the same time that Tamil Nadu and Goa were passing right to information laws, the Madhya Pradesh Government also drafted a Right to Information Bill. On 30th April 1998 the assembly passed the bill by voice vote. Significantly, after passing the Bill in the State Assembly, the Government chose to send the Bill to the President of India for assent. Unfortunately, it appears that due to a disagreement about whether the states or the Centre have competence to enact right to information laws, Presidential assent was denied to the Bill and it was shelved. As a solution, the State Government issued a number of Executive Orders from February 1998 which operated to allow access to information from close to 50 departments. The series of Executive Orders have been compiled by the Department of General Administration in a book titled 'JananeKaHaq'. The Executive Orders specifically identified a number of topics on which Departments were required to provide information to the public. The Orders also provided for appeals on non-disclosure decisions and penalties in accordance with the MP Civil Services Conduct Rules 1965 and the MP Civil Services Classification Control and Appeal Act 1966. Despite the existence of the Executive Orders, the Madhya Pradesh Government in 2003 again decided to pursue legislation on the right to information in order to set up a more comprehensive access to information regime. Ultimately, on 24 January 2003 the Madhya Pradesh Jankari Ki SwatantrataAdhiniyam 2002 received the assent of the Governor and on 31 January 2003 was published in the Madhya Pradesh Gazette. In May 2005, the national Right to Information Act 2005 was passed by Parliament. The RTI Act 2005 received Presidential assent on 15 June and came fully into force on 12 October 2005. The RTI Act 2005 covers all Central, State and local government bodies and applies to the State Government of Madhya Pradesh. It is not clear at this time whether the Madhya Pradesh Jankari Ki SwatantrataAdhiniyam 2002 will be repealed. The Act consisted of 14 sections and Sections 7 and 8 are of poignant importance as these sections focus upon the appeal provisions and the various penalties that

need to be invoked if the public authorities fail to deliver the information desired by the petitioner.

### **3.3.4. THE ASSAM RIGHT TO INFORMATION ACT, 2003**

Assam was until recently the only state in the North East which had enacted right to information legislation. The passage of the Assam Right to Information Act 2002 came as a surprise to most. The State Act was brought in so quietly that there was hardly any discussion on its content. In any case, in May 2005, the national Right to Information Act 2005 was passed by Parliament. The RTI Act 2005 received Presidential assent on 15 June and came fully into force on 12 October 2005. The RTI Act 2005 covers all Central, State and local government bodies and will apply to public authorities in Assam. It is not clear at this time whether the Assam RTI Act will be repealed to make way for the national RTI Act. The Assam Government has started implementing the RTI Act 2005. The Government has issued Assam Right to Information Fee Rules, 2005. The Act consists of 11 Sections and gives an overview about the various mechanisms by which right to information can be claimed as a legal right within the state of Assam. It also states about the penalties and the process of claiming information.

### **3.3.5. THE DELHI RIGHT TO INFORMATION ACT, 2001**

Until recently, Delhi was one of only 9 States in India to have enacted right to information laws. The Delhi Right to Information Act 2001 was passed on 16 May 2001 and came into force on 2 October 2001. About 119 departments have been brought under the preview of the Act. Before enacting the Act, the Government of the National Capital Territory of Delhi formed a Working Group under the auspices of the Secretary Services, General Administration, Training, Administrative Reforms and Public Relations. The Working Group made recommendations to enact a law along the lines of the Goa Right to Information Act. The Working Group emphasised the value of setting up a Right to Information Council to oversee the implementation of the new right to information law. This suggestion was included in the Act as it was finally passed, although the effectiveness of the Delhi Right to Information Council in overseeing the Act and ensuring proper implementation was arguable. The Delhi Public Grievances Commission (PGC) headed by Chairman, Shailaja Chandra was set up as the Appellate Authority to hear appeals under the Delhi Right to Information Act. Citizens could lodge complaints with the Commission via the PGC website. In May 2005, the national Right to Information Act 2005 was passed by Parliament. The RTI Act 2005 received Presidential assent on 15 June and came fully into force on 12 October 2005. The RTI Act 2005 covers all Central, State and local government bodies and applies to the Government of Delhi. The Act consisted of 16 sections and dealt with the various provisions which aided towards demanding information within the territory of Delhi prior to 2005. Delhi Chief Minister, Sheila Dixit, has said with the Centre's permission the Delhi Right to Information Act 2001 will be repealed in favour of the RTI Act 2005. Currently however, the Delhi Right to Information Act 2001 is still in force concurrently with the national RTI Act. Notably though, the Delhi Government is now working to implement the new national RTI Act, on the assumption that it will be the primary legislation in Delhi used by citizens to

access information. Click here to view the Right to Information Regulation of Fee and Cost Rules 2005 and Right to Information Appeal Rules 2005 notified by the Central Government which is applicable in Delhi. An Act of poignant importance it catered to the rights of the citizens at large and helped towards resolving disputes prior to the enactment of the central Act of Right to Information.

### **3.3.6. THE RAJASTHAN RIGHT TO INFORMATION ACT, 2000**

The Act was enacted on 11<sup>th</sup> May, 2000 and it provided for the information to the citizens about the state and public bodies. It was created by the State on the 51<sup>st</sup> year of republic in India and extended to the whole of the state of Rajasthan. The Act consists of 13 sections and gives a birds' eye view of the legislation prevalent in the state of Rajasthan and section 10 of the Act enumerates the various penalties that can be invoked upon the defaulters. Section 9 elaborates the obligations of the officer in-charge of the office and the duties bestowed upon him. Sections 6 and 7 talks about the provisions of first and second appeal and where these appeals can be instituted.

### **3.3.7. THE KARNATAKA RIGHT TO INFORMATION ACT, 2000**

The Karnataka Government took steps to make information available to the public as far back as 1997. From that time, many Government departments issued Executive Orders to provide access to information on developmental projects undertaken by their Departments and to keep relevant records open for inspection or available for copying for a nominal fee. On 25 August 2000, the Executive Orders were supplemented by the Right to Information Ordinance. The Ordinance was brought in because the Karnataka Government recognised it was necessary to enact a comprehensive law to ensure openness, transparency and accountability in government administration as a matter of priority. As the State Assembly was not in session at the time this policy decision was made, the Governor passed an Ordinance on the matter as a first step. The Karnataka Right to Information Act 2000 was enacted soon after by the State Assembly on 10 December 2000. Section 13 of the Karnataka Right to Information Act, 2000 explicitly repeals the Karnataka Right to Information Ordinance 2000 although it saves all actions taken under the Ordinance. Unfortunately, the Act was not properly operationalized until July 2002, when the Government of Karnataka notified the Karnataka Right to Information Rules. In May 2005, the national Right to Information Act 2005 was passed by Parliament. The RTI Act 2005 received Presidential assent on 15 June and came fully into force on 12 October 2005. The RTI Act 2005 covers all Central, State and local government bodies. On 17 October 2005, the Government promulgated Karnataka Ordinance No.3 of 2005 repealing the Karnataka Right to Information Act 2000. The State Government has started implementing the RTI Act 2005. The Government has already issued the Karnataka Right to Information Rules 2005 modelled on the Central Government's Rules. The Government made some changes in the Karnataka Right to Information Rules 2005 with the new Karnataka Right to Information (Second Amendment) Rules 2006. The Act contains 13 sections and provides an in-depth analysis of how the Act functioned prior to the enactment of RTI Act, 2005. The important sections involve 7 and 9 which talks about the penalties and appeal provisions.

### **3.3.8. THE MAHARASHTRA RIGHT TO INFORMATION ACT, 2000**

In 2000, a sustained advocacy campaign by social activist Anna Hazare forced the Maharashtra Government to pass the Maharashtra Right to Information Act 2000. However, civil society groups were unhappy with the Act, criticising it for being too weak and demanding that it be replaced with better legislation. In 2001, the Government formed a committee comprising senior serving and retired bureaucrats, such as former Union Home Secretary Dr Madhav Godbole, eminent jurists and Shri Anna Hazare, to prepare a draft of a Freedom of Information Bill. Before the Committee could release its draft Bill, the Maharashtra Government repealed the Maharashtra Right to Information Act 2000 and replaced it with the Right to Information Ordinance 2002. The Ordinance was promulgated on 23 September 2002. However, the Ordinance lapsed on 23 January 2003 because, in accordance with Article 213(2) of the Constitution of India, an Ordinance must be converted into an Act within 6 weeks of the commencement of the next session of the Legislative Assembly following the enactment of an Ordinance. In this instance, the Maharashtra Government did not convert the Right to Information Ordinance in the winter session of the Legislative Assembly; hence it lapsed. Public pressure to enact a law on right to information continued. Consequently, in the budget session of the legislature in March 2003, the Maharashtra Government passed the Maharashtra Right to Information Act which it then sent to the President of India for assent. The Act stalled, as no action was taken for months. Finally, on 1 August 2003, Anna Hazare wrote a letter to Mr L.K. Advani, the Deputy Prime Minister of India requesting him to advise the Honourable President to give his assent to the Maharashtra Right to Information Act. Failing such action, Sri Hazare warned he would commence a fast unto death. No action was taken, and on 9 August 2003 Anna Hazare started his fast. Within one day, the Government responded. On 10 August 2003, the President of India gave his assent to the Maharashtra Right to Information Act 2002 and on 11 August 2003 the Maharashtra Government notified the Act in the Government Gazette. The Maharashtra Right to Information Rules, which were initially prepared under the Maharashtra Right to Information Ordinance, are equally applicable to Maharashtra Right to Information Act 2002. In May 2005, the national Right to Information Act 2005 was passed by Parliament. The RTI Act 2005 received Presidential assent on 15 June and came fully into force on 12 October 2005. The RTI Act 2005 covers all Central, State and local government bodies and applies to the State of Maharashtra. The Act is a short one and consists of only 9 sections and was indeed an important piece of legislation for the people of Maharashtra.

### **3.3.9. THE GOA RIGHT TO INFORMATION ACT, 1997**

The Goa Right to Information Act 1997 was the second right to information law enacted in India, after Tamil Nadu. It was passed on 31 July 1997 and received Governor's assent on 29 October 1997. It is notable that the development of the law was the result of Government initiative and not a civil society campaign. However, while the Government was responsible for initiating the Bill, civil society, led by the Goa Union of Journalists, was active in responding to the shortcomings in the Act as initially passed. Journalists protested in the Assembly against penal provisions they feared could be used against the Press. Consequently, the objectionable provisions were amended by the Government soon after the initial

enactment of the law. In May 2005, the national Right to Information Act 2005 was passed by Parliament. The RTI Act 2005 received Presidential assent on 15 June and came fully into force on 12 October 2005. The Act contains 14 sections and a schedule annexed with it. The RTI Act 2005 covers all Central, State and local government bodies and will apply to public authorities in Goa. It is not clear at this time whether the Goa Right to Information Act 2002 will be repealed. Notably though, the Goa Government has started implementing the RTI Act 2005.

### 3.3.10. THE TAMIL NADU RIGHT TO INFORMATION ACT, 1997

Tamil Nadu was the first state in India to enact an access law, namely the Tamil Nadu Right to Information Act 1997. The Act was passed by the Legislative Assembly in the first half of 1997, received the assent of the Governor on 4 May 1997 and was notified the following day. It is notable that the government initiated the process of developing a law. There was no civil society movement advocating for the right to information in the State. Though it was positive that Tamil Nadu was the first state to pass an access to information law, in fact the law is weak and has been widely criticised by civil society. Most problematically, the Act has 21 exemptions, including 12 sub-clauses, many of which are unclear in their application. Appeals are available, but only internally rather than to an independent body. The Act also fails to require proactive information disclosure by the Government. In May 2005, the national Right to Information Act 2005 was passed by Parliament. The RTI Act 2005 received Presidential assent on 15 June and came fully into force on 12 October 2005.

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## 3.4 SUMMARY

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In this Unit we have discussed about various Right to Information Acts that existed in the various Indian states prior to the enactment of The Right to Information Act, 2005. The various states had their own Acts which was indeed a boon for the states because it helped in the proper disposal of the information and also helped towards the development of a culture wherein the information can be received from the public authorities in a hassle free manner.

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## 3.5 GLOSSARY

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1. **Central Information Commission:** Sec. 2(b) of the Right to Information Act, 2005 provides that “Central Information Commission” means Central Information Commission constituted under Sec. 12(1) of the Act. It is the highest body at Central level for providing information which is constituted by the Central Government.
2. **State Information Commission:** Sec. 2(k) of the Right to Information Act, 2005 provides that “State Information Commission” means State Information Commission constituted under Sec. 15(1) of the Act. It is the highest body at State level for providing information which is constituted by the State Government.
3. **Public Authority:** It is provided in Sec. 2(h) of the Right to Information Act 2005. It means any authority or body or institution or self Government established or constituted by or under the Constitution ; by any other law made by Parliament; by any other law made by the State

legislature; by notification issued or order made by the appropriate Government, and includes any-

- (i) Body owned, controlled or substantially financed;
  - (ii) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.
- 4. Central Public Information Officer:** Sec. 2(c) of the Right to Information Act, 2005 provides that “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.
- 5. State Public Information Officer:** Sec. 2(m) of the Right to Information Act, 2005 provides that “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 Sec. 5.
- 6. Public Information Officer:** Any Officer designated by the Public Authority to provide information to persons requesting for the information under the Right to Information Act 2005.

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### 3.6 SAQS

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#### 1. Short Answer Questions-

- (a) Discuss in brief the provisions of the Maharashtra RTI Act, 2000.
- (b) Explain the important provisions of the J&K RTI Act, 2009.

#### 2. Fill in the blanks-

- (a) The J&K RTI came into force in the year \_\_\_\_\_.
- (b) There are \_\_\_\_\_ chapters in the J&K RTI Act.

#### 3. True and False type questions

- (a). The Maharashtra RTI Act is also applicable in Daman and Diu.  
(i) True, (ii) False.
- (b) The Tamil Nadu RTI Act is exclusively applicable in the State of Tamil Nadu only.  
(i) True, (ii) False.

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### 3.7 REFERENCES

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- a) The Right to Information Act, 2005.
- b) <http://cic.gov.in/>



- c) <http://rtionline.gov.in>
- d) <http://www.humanrightsinitiative.org>
- e) The RTI Acts of the various states.

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### 3.8 SUGGESTED READINGS

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- (a) *Right to Information Law & Practice* by Dr. R.K Verma and Dr. (Mrs.) Anuradha Verma, 2<sup>nd</sup> Edition 2010, Taxmann Publishers.
- (b) *The Right to Information Act, 2005: Bare Act*
- (c) *A Practical Handbook on Right to Information Act, 2005* by S.P. Kaneja, published by The Book Line (2011).
- (d) *Right to Information and Protection to Whistle Blowers* by K. P. Malik published by Allahabad Law Agency (2016)

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### 3.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

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- (a) Discuss the various enactments of RTI in the Indian States prior to 2005.
- (b) Explain the main objectives and the provisions of The Right to Information Act, 2005.

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### 3.10 ANSWERS

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#### SAQS

1. (a) Refer 3.3.8, (b) 3.3.1
2. (a) 2009 (b) 5
3. (a) False, (b) True

#### TERMINAL QUESTIONS AND ANSWERS

- (a) Refer 3.3.3 to 3.3.10, (b) 3.3.2

## **UNIT-4**

### **PUBLIC AUTHORITY: MEANING AND SCOPE**

#### **STRUCTURE**

#### **4.1 INTRODUCTION**

#### **4.2 OBJECTIVES**

#### **4.3 SUBJECT**

4.3.1 Meaning of Public Authority

4.3.2 Classification of Public Authority

4.3.2.1 Constitutional instrumentality

4.3.2.2 Statutory bodies

4.3.2.3 Notified Authorities

4.3.2.4 Body owned, controlled or substantially financed by Government Funds

4.3.2.5 Substantially financed NGOs

4.3.3 Scope of Public authority

4.3.3.1 Universities as Public Authority

4.3.3.2 Trust as Public Authority

4.3.3.3 Trade Facilitation Organisation as Public Authority

4.3.3.4 Temple as public Authority

4.3.3.5 Public Service Commission as Public Authority

4.3.3.6 Cooperative Society/ Society as Public Authority

#### **4.4 SUMMARY**

#### **4.5 GLOSSARY**

#### **4.6 SAQS**

#### **4.7 REFERENCES**

#### **4.8 SUGGESTED READINGS**

#### **4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS**

#### **4.10 ANSWERS**

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## 4.1 INTRODUCTION

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The Right to Information Act, 2005 empowers the citizens to access information under the control of public authorities. Thus what constitutes a public authority under this Act becomes extremely important. Though the Act defines public authorities, this definition has been a contentious issue ever since the RTI Act came into force. The answer to the question “who is a public authority?” sets the boundaries of the scope of the RTI Act and the transparency regime in the country.

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## 4.2 OBJECTIVES

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After reading this unit you will be able to:

- Know the meaning of public authority.
- Classify public authorities as constitutional instrumentality, statutory bodies, notified authorities, body owned, controlled or substantially financed by government funds and substantially financed NGOs
- Learn the basis of classification of public authorities.
- Understand about the scope of public authorities

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## 4.3 SUBJECT

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### 4.3.1 Meaning of Public Authority

Section 3 of the Right to Information Act confers a right on every citizen to seek information from the government or public authorities within India. Thus a citizen of India of any age, gender, religion, place, caste or creed may seek information held either by the public authority or under the control of the public authority. It implies that a company, corporation, co-operative society or incorporated body does not come under the purview of Section 3.

The expression “public authority” has been defined by Halsbury’s Law Dictionary as a person or administrative body entrusted with the functions to perform for the benefit of the public and not for private profit. It has been explained by the Supreme Court of India as a body which has public or statutory duties to perform and which performs the duties and carries out its transactions for the benefit of public. Such an authority may make a profit for the public benefit (Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, AIR 1975 SC 133).

Section 2(h) of the Right to Information Act defines the expression “public authority”. It means any authority or body or institution of self-government that is established or constituted:

- a) by or under the Constitution;
- b) by any other law made by the Parliament;
- c) by any other law made by the State Legislature;
- d) by notification issued or order made by the appropriate government.

It includes any:

- i. Body owned, controlled or substantially financed;
- ii. Non-Government organisation substantially financed, directly or indirectly by the funds provided by the appropriate government.

Thus the right to information is available only against public authority and not an individual. Further the government machinery from which the information is sought must be a body or authority or institution of self-government and should be substantially financed by the government.

#### **4.3.2 Classification of public authority**

The definition of the term public authority categories it into five parts:

- 1) Constitutional instrumentality
- 2) Statutory bodies
- 3) Notified Authorities
- 4) Body owned, controlled or substantially financed by Government Funds
- 5) Substantially financed NGOs

##### **4.3.2.1 Constitutional Instrumentality**

The category of the bodies recognised as public authority consists of the constitutional authorities. These may be executive, legislative or judicial. In this class two distinct types of authorities are included namely authorities constituted by the Constitution and the authorities constituted under the Constitution. The Houses of the Parliament, office of the President, office of the Vice- President, State Legislatures, office of Governor, Attorney General, Advocate General, administrative Heads of Union Territories, the Supreme Court of India, State High Courts, Comptroller and Auditor General of India, Public Service Commissions, Prime Minister and other Ministers in Union Cabinet, Chief Minister and other Ministers in State Cabinet are included in the authorities constituted by the Constitution. When the Chief Justice of India or Chief Justice of a High Court is taking any decision in the capacity of being the administrative head of judiciary he is functioning like any other head of the department. Therefore he falls within the ambit of public authority and therefore he has to provide any information sought through CPIO or SPIO. But while delivering any judicial decision he functions as a part of judiciary. Therefore he cannot be questioned on judgements given by him under RTI Act.

The authorities constituted under the Constitution include subordinate courts, Commissions, Tribunals, Panchayati Raj Institutions etc

##### **4.3.2.2 Statutory bodies**

This category includes all statutory bodies or institutions which are established or constituted by an Act of Parliament or State Legislature. The establishment of a body by the Parliament or State legislature is sufficient to make that body a public authority under the RTI Act. The University Grants Commission constituted under University Grants Commission Act, 1956, National Commission for Women established under National Commission for Women Act, 1990, National Commission for Protection of Child Rights constituted under Commission for

Protection of Child Rights Act, 2005 and National Human Rights Commission established under Protection of Human Rights Act, 1993 are some examples. The Office of Registrar under any Act, the Boards or Committees constituted for the enforcement of the enactment or rules made thereunder and a private self-financing university created by an Act also fall in this category. An institution of local self-government established or constituted by the Constitution or by Central or State legislation is a public authority. As the office of Public Prosecutor is constituted by the Code of Criminal Procedure, it is a public authority.

#### **4.3.2.3 Notified Authorities**

A body or institution established or constituted by the notification issued or by the order made by the appropriate Government is a public authority. This category includes all the bodies and authorities established or constituted by order or notification of appropriate Government for discharging public functions. A body or an institution not constituted under any Act but which has been notified or ordered by the appropriate Government, such notification or order has been published in the official gazette by the appropriate Government and the body or institution is either owned or controlled or substantially financed by the appropriate Government is a public authority under the RTI Act.

A Home is recognised as a Children's Home under the Juvenile Justice (Care and Protection of Children) Act, 2000 and it is owned and funded by a trust or a private body but is notified by the appropriate Government to take care of the children under the provisions of JJ Act and rules framed thereunder is a public authority. Similarly a company recognised or established by a notification or order issued by an appropriate Government is a public authority within the meaning of Section 2(h) of RTI Act.

#### **4.3.2.4 Body owned, controlled or substantially financed by Government Funds**

This category includes all establishments or bodies that are constituted by the appropriate Government through notification in official gazette or by the order of the Government issued in this regard irrespective of ownership, control or substantial finance by the Government funds. A Children's Home built on the land of the Government but maintained by a trust registered and recognised under the Juvenile Justice (Care and Protection of Children) Act, 2000 and notified by the appropriate Government is a public authority even if the entire expenditure is met by the trust and the said Children's Home is taken care of by the staff of the trust. If either the Children's Home is maintained by the trust on its own land but by accepting some financial aid from the Government or the Children's Home is controlled by the trust but the Government has deputed its own staff or the government funds the salary of some or all members of staff, it will be a public authority as the Government provides direct substantial funding irrespective of the share contribution.

National Stock Exchange of India Ltd is a company limited incorporated, established and created as a company under the provisions of the Companies Act, 1956. Section 29A of the Securities Act authorises the Central Government to delegate powers to SEBI. Under the authority delegated by the Central Government the SEBI granted recognition/ registration to National Stock Exchange of India Ltd. Thus NSE is a public authority. A private body under the control of public authority is a public authority (Dhara Singh Girls High School v. State

of Uttar Pradesh AIR 2008 All 92). A company providing service to Government like sewerage treatment system, sanitation conservancy and solid waste management is a public authority (New Tirupur Area Development Corporation Ltd v. State of Tamil Nadu, ASIR 2010 Mad 176).

#### **4.3.2.5 Substantially financed NGOs**

All NGOs are not public authority under RTI Act. Only those NGOs that receive funds either directly or indirectly from the Government are public authorities irrespective of their share contribution. Where an NGO runs a school funded substantially by the appropriate Government, such a school is a public authority.

### **4.3.3 Scope of Public authority**

#### **4.3.3.1 Universities as Public Authority**

The University is an “authority” under Article 12 of the Constitution of India. Therefore it is a “public authority” under Section 2(h) of the RTI Act, 2005. It shall provide the information when sought under the said Act. (Shivanna Naik v Bangalore University, AIR 2006 (NOC) 145 (Kant)). The academic institutions are providing the photocopy of the answer book to the examinee on the payment of prescribed fee. Different Boards and Universities have framed different rules and regulations in this regard. However this does not involve any public interest or activity and therefore such request cannot be accede to as a matter of right under the RTI Act.

#### **4.3.3.2 Trust as Public Authority**

Trusts are not public bodies. Therefore they do not come within the scope of RTI Act, 2005. This implies that they cannot be asked to provide information under the provisions of said Act even though they are regulated under Indian Trust Act, 1872. (Nagar Yuvak Shikshan Sansthan v. Maharashtra State Information Commission, Nagpur AIR 2010 Bom 61)

#### **4.3.3.3 Trade Facilitation Organisation as Public Authority**

A trade facilitation organisation is a Public Authority under the RTI Act as it is substantially financed and controlled by the Government. The Government exercises administrative control over such organisation by conducting audit through its department and receiving subsequent reports from the department concerned. (Electronics and Computer Software Export Promotion Council v. Central Information Commission 2008)

#### **4.3.3.4 Temple as public Authority**

The Temple Advisory Committees are not public authorities under RTI Act if neither the Temples are established by the Government nor does the Government finance them. (A.C. Bhanunni v SIC 2011(2) KLT 709)

#### 4.3.3.5 Public Service Commission as Public Authorities

Public Service Commission is established under Article 315 of the Constitution of India. Therefore it is “public authority “under Section 2(h).The court while deciding whether the Council for Indian School Certificate Examinations is a public authority or not, held that it is neither a statutory body nor has the government issued any notification nor is it receiving any fund from government. Thus it is not a “public authority”. (Apavitrav.Union of India 2015 (3) ALJ 697.)

#### 4.3.3.6 Cooperative Society/ Society as Public Authority

A cooperative society or a society substantially funded by the government or supported substantially by the government in any way, is a “public authority”. However merely the registration of a society with the Registrar appointed under the Societies Act, 1860 or registration of a cooperative society with the Registrar appointed under the State Cooperative Societies Act, is not a public authority under the RTI Act.

The Supreme Court in Thalappalam Ser. Coop. Bank Ltd. v State of Kerala , 2013 (12) SCALE 527 stated that for arriving at the conclusion that a State has a deep and pervasive control over the society the following relevant questions must be answered:

- 1) How was the society created?
- 2) Whether it enjoys any monopoly character?
- 3) Do the functions of the society partake to statutory functions or public functions? And
- 4) Can it be characterised as public authority?

In the instant case the Supreme Court held that there is no material to show that the cooperative societies registered under Kerala Cooperative Societies Act own, control or substantially finance these cooperative societies. Therefore these cooperative societies do not fall in the domain of “public authority”.

The Kerala High Court held that only the Registrar has the power to issue directions to the cooperative societies and thus the State has no control on affairs of society.(Trivandrum DistrictCooperative Bank v. State of Kerala, 1992(1) KLT 381) A cooperative society bank neither substantially financed nor controlled by the Government is not a “ public authority” under the RTI Act.(Dr Panjabrao Cooperative Housing Society Ltd. v. SIC, AIR 2009 Bom 75). Similarly a Cooperative Housing Society is not a “public authority” even though it is under the supervision and control of the Registrar of Societies. (Dattaprasad Cooperative Housing Society Ltd. v. SIC, Karnataka, AIR 2009 Kant 1). Where the Cooperative Bank remitted back the share capital received from the State Government and the State Government then exercised only supervisory control over it, the said bank cannot be held to be a “public authority” under RTI Act.

Different High Courts have different views on the status of cooperative society or society as a” public authority”. The Kerala High Court held that if a cooperative society is substantially financed either directly or indirectly by the State Government is a “public authority” under RTI Act. Further it was stated that the information related to cooperative society can be

accessed by the Registrar of cooperative societies. This means that despite being a private body, the Registrar has deep, pervasive and effective control over cooperative societies. (Princy v Jose, AIR 2010 Ker 6) The Andhra Pradesh High Court in Sri Bhavana Rishi Cooperative House Building Society v. A.P. Information Commission, AIR 2010 AP 127 held that Registrar of Cooperative Societies is a "public authority". The Kerala High Court held that cooperative societies financed substantially by the appropriate government and registered under the Kerala Cooperative Societies Act are public authorities for the purpose of RTI Act.

Tamil Nadu Road Development Company Ltd. and Tamil Nadu Newsprint and Papers Ltd. were substantially controlled by the Government. Therefore both these bodies were held to be public authorities under the RTI Act. (Tamil Nadu Road Development Company Ltd. v. SIC, Tamil Nadu (2008) 145 Comp Cas 248 (Mad)).

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#### 4.4 SUMMARY

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The review of emerging law on the definition of public authorities and their scope reveals that the courts have considered several criteria for adjudging whether an entity is or isn't public authority. The courts have given liberal interpretation to words like 'control' and 'substantial' to widen the scope of the RTI Act by bringing a variety of entities within the definition of public authority. However, there is no straight jacket formula on this issue and courts continue to pronounce judgments on a case-to-case basis. While one school of thought believes firmly in the need for greater legal certainty in what would be construed as a public authority, another school of thought perceives an inherent advantage in keeping it an open-ended definition. This Brief does not seek to resolve this debate.

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#### 4.5 GLOSSARY

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**1. Appropriate Government:** Section 2(a) RTI Act, 2005 defines appropriate Government as 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 the Union territory administration, the Central Government;
- ii. by the State Government,

**2. CPIO :** According to Section 2(c) RTI Act, 2005 CPIO or 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;

**3. SPIO:** According to Section 2(m) RTI Act, 2005 SPIO or "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;



**4. Includes:** The word “includes” when used in interpretation clause enlarges the meaning of words and phrases occurring in the body of the statute. It connotes the entities which answer the description following those words need not fall within the definition of entities that precede those words.

**5. Control/ Controlled:** The words control or controlled has not been defined by the RTI Act. The scope of these words can be understood with reference to the words used before and after it. The Supreme Court held that the meaning of the word control figuring in between the words “body owned” and “substantially financed” means the control of the substantial nature by the appropriate government. Mere supervision or regulation of a body by the Government would not make that body a “public authority”. The control of the appropriate Government on the body must be of substantial nature. (Thalappalam Ser. Coop. Bank Ltd. V State of Kerala 2013 (12) SCALE 527)

**6. Substantially financed:** The literal meaning of the term substantial is massive. The term “substantially financed” means the degree of finance must be actual, positive and real and not merely moderate. Giving privileges, grants, subsidiaries or exemptions cannot be termed as substantial funding. Further the schemes of the Government for the betterment or welfare of the cooperative sector like deposit guarantee scheme, scheme of assistance from NABARD is not included in the term “substantially financed”. The appropriate Government could provide for direct or indirect substantial finance. Also the term substantial finance cannot be interpreted to mean hundred per cent finance. It simply means that if an institution or body is not entirely financed by the appropriate Government it would still be included in the definition of public authority. The disbursement of substantial amount of loan cannot be considered as substantial financing.

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## 4.6 SAQS

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### 1. Short Answer Question.

- a. What do you mean by “public authority” under the Right to Information Act, 2005?
- b. Give brief classification of public authority” under the Right to Information Act, 2005.

### 2. Fill in the blanks

- a. Section \_\_\_\_\_ of the Right to Information Act confers a right on every citizen to seek information from the government or public authorities within India.
- b. Section \_\_\_\_\_ of the Right to Information Act defines the expression “public authority”.

### 3. True or False

- a. A trade facilitation organisation is a Public Authority under the RTI Act.
- b. All NGOs are not public authority under RTI Act.

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## 4.7 REFERENCES

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<http://www.accountabilityindia.in>

Right to Information and Protection to Whistle blowers by Krishna Pal Mallik, Allahabad Law Agency, Haryana (2016)

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## 4.8 SUGGESTED READINGS

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Right to Information Law in India by N.V. Paranjape

Right to Information Act, 2005 by JiteshDhanrajani

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## 4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

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a. Explain the constitutional instrumentality as “public authority” under Right to Information Act, 2005.

b. Discuss the scope of “public authorities” as provided in the Right to Information Act, 2005.

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## 4.10 ANSWERS

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### SAQs

1. a. refer 4.3.1      b. refer 4.3.2

2. a. 3              b. 2(h)

3.a True          b. True

### TERMINAL QUESTIONS AND ANSWERS

a. refer 4.3.2.1

b. refer 4.3.3

## **UNIT 5**

### **OBLIGATIONS OF PUBLIC AUTHORITIES**

#### **STRUCTURE**

##### **5.1 INTRODUCTION**

##### **5.2 OBJECTIVES**

##### **5.3 SUBJECT**

5.3.1 Maintaining all record in computerized form. (Section 4(1) (a))

5.3.2 Suo Moto disclosure of Information (Section 4(1) (b))

5.3.3 Dissemination of Information (Section 4(2)-(4))

5.3.4 Designation of Public Information Officers and Assistant Public Information Officers

5.3.5 Designation of First Appellate Authority (Section 19 (1))

5.3.6 Furnishing Information to Information Commission (Section 25(2))

##### **5.4 SUMMARY**

##### **5.5 GLOSSARY**

##### **5.6 SAQS**

##### **5.7 REFERENCES**

##### **5.8 SUGGESTED READINGS**

##### **5.9 TERMINAL QUESTIONS AND MODEL QUESTIONS**

##### **5.10 ANSWERS**

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## 5.1 INTRODUCTION

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Public authorities are the repository of information under the Right to Information Act, 2005. The Act casts an obligation on public authorities to facilitate the citizens to access the information held under their control. The obligations of the authority are infact the obligations of the head of the authority.

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## 5.2 OBJECTIVES

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After reading this unit you will be able to:

- Explain the obligations of public authority.

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## 5.3 SUBJECT

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Chapter II of the RTI Act relates to the Right to information and obligations of public authorities. Section 3 states that every person has the right to access information held by public authority. The public authorities are directed to create a system by which they can disclose certain information. The RTI Act imposes a number of obligations on the public authorities. These obligations may be studied as under:

### 5.3.1 Maintaining all record in computerized form. (Section 4(1) (a))

Every public authority has to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act. The public authority shall ensure that all records are computerised within a reasonable time. This obligation is, however, subject to availability of resources. The computerised resources are to be connected through a network all over the country on different systems so that access to such records is facilitated.

### 5.3.2 Suo Moto disclosure of Information (Section 4(1) (b))

Within one hundred and twenty days from the enactment of this Act, every public authority has to publish information pertaining to

- i. the particulars of its organisation, functions and duties; the powers and duties of its officers and employees;
- ii. the procedure followed in the decision making process, including channels of supervision and accountability;
- iii. the norms set by it for the discharge of its functions; the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- iv. a statement of the categories of documents that are held by it or under its control;

- v. 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;
- vi. 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; a directory of its officers and employees;
- vii. the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- viii. the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- ix. the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- x. particulars of recipients of concessions, permits or authorisations granted by it; details in respect of the information, available to or held by it, reduced in an electronic form;
- xi. 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;
- xii. the names, designations and other particulars of the Public Information Officers;
- xiii. such other information as may be prescribed and thereafter update these publications every year;
- xiv. publish all relevant facts while formulating important policies or announcing the decisions which affect public; (**Section 4(1)(c)**)
- xv. provide reasons for its administrative or quasi-judicial decisions to affected persons. (**Section 4(1)(d)**).

### 5.3.3 Dissemination of Information (Section 4(2)-(4))

Every public authority shall take steps to provide as much information as possible suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information. However while disseminating material under Section 4(1) the cost effectiveness, local language and the most effective method of communication in that local area shall be taken into consideration. Further the information should be easily accessible, available free or at such cost of the medium or the print cost price as may be prescribed.

Here the word "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

### **5.3.4 Designation of Public Information Officers and Assistant Public Information Officers.**

Section 5 (1) provides that all public authorities have an obligation to designate as many officers as the Central Public Information Officers or State Public Information Officers, within one hundred days of the enactment of this Act, as it deems necessary, in all administrative units or offices under it to provide information to persons under this Act. Sub section (2) of Section 5 further provides that 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, to receive the applications for information or appeals under this Act for forwarding the same to the Central Public Information Officer or the State Public Information Officer or senior officer .

The Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information. The Public Information Officer may seek the assistance of any other officer as he or she considers necessary for the proper discharge of his or her duties. Any officer, whose assistance has been sought by the Public Information Officer, is under an obligation to render all assistance to such Public Information Officer for discharging the duties under the RTI Act.

### **5.3.5 Designation of First Appellate Authority (Section 19 (1))**

The public authority must designate an officer senior in rank to the Public Information Officer as First Appellate Authority to hear the appeals under section 19(1). If the public authority does not designate any one as First Appellate Authority to hear an appeal under Section 19(1) or compliant under Section 18, then the Head of the Department or office will automatically be the First Appellate Authority.

### **5.3.6 Furnishing Information to Information Commission (Section 25(2))**

Sub Section 2 of Section 25 provides that each Ministry or Department shall collect and provide such information to the Information Commission, as is required to prepare a report under Section 25. Every Ministry or Department shall comply with requirements concerning the furnishing of that information and keeping of the records for the purposes of this section.

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## **5.4 SUMMARY**

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**Maintaining all record in computerized form** , suo moto disclosure of information , **dissemination of information**, designation of public information officers and assistant public information officers and of first appellate authority **and** furnishing information to information commission are the main obligations of public authority .

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## 5.5 GLOSSARY

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**1. Central Information Commission:** Section 2(b) of RTI Act, 2005 provides that "Central Information Commission" means the Central Information Commission constituted under sub-section (1) of section 12;

**2. Central Public Information Officer:** Section 2(c) of RTI Act, 2005 provides that "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;

**3. Chief Information Commissioner and Information Commissioner:** Section 2(d) of RTI Act, 2005 provides that "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12;

**4. Information:** Section 2(f) of RTI Act, 2005 provides that "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;

**5. Prescribed:** Section 2(g) of RTI Act, 2005 provides that "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

**6. Record:** Section 2(i) of RTI Act, 2005 provides that "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;

**7. Right to information:** Section 2(j) of RTI Act, 2005 provides that "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—

- a) inspection of work, documents, records;
- b) taking certified samples of material, notes, extracts or certified copies of documents or records;
- c) 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;

**8. State Information Commission:** Section 2(k) of RTI Act, 2005 provides that "State Information Commission" means the State Information Commission constituted under sub-section (1) of section 15

**9. State Chief Information Commissioner and State Information Commissioner:**

Section 2(l) of RTI Act, 2005 provides that "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;

**10. State Public Information Officer:** Section 2(m) of RTI Act, 2005 provides that "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;

**11. Public Authority :** Section 2(h) of RTI Act, 2005 provides that "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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

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## 5.6 SAQS

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### 1. Short Answer Question.

- a. Write a note on designation of First Appellate Authority.
- b. How is the information maintained in computerized form by the public authority?

### 2. Fill in the blanks

- a. Chapter \_\_\_\_\_ of the RTI Act relates to the Right to information and obligations of public authorities.
- b. The suo moto disclosure of information was to be done within \_\_\_\_\_ days from the enactment of the Right to Information Act, 2005.

### 3. True or False

- a. The public authority must designate an officer senior in rank to the Public Information Officer as First Appellate Authority to hear the appeals under section 19(1).
- b. Every public authority shall take steps to provide as much information as possible suo motu to the public at regular intervals.



## 5.7 REFERENCES

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<https://righttoinformation.wiki/guide/guidelines-for-public-authority>

Right to Information and Protection to Whistle blowers by Krishna Pal Mallik, Allahabad Law Agency, Haryana (2016)

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## 5.8 SUGGESTED READINGS

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Right to Information Law in India by [N.V. Paranjape](#)

Right to Information Act, 2005 by [Jitesh Dhanrajani](#)

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## 5.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

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- a. What are the obligations of public authority under Right to Information Act, 2005?
  - b. Discuss suo motu disclosure of information by public authority.
- 

## 5.10 ANSWERS

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### SAQs

1. a. refer 5.3.5      b. refer 5.3.1
2. a. II              b.120
3. a True      b. True

### TERMINAL QUESTIONS AND ANSWERS

- a. refer 5.3.1 to 5.3.6
- b. refer 5.3.2

## **UNIT 6**

# **INSTRUMENTALITIES OF PUBLIC AUTHORITIES**

## **STRUCTURE**

### **6.1 INTRODUCTION**

### **6.2 OBJECTIVES**

### **6.3 SUBJECT**

#### **6.3.1 Central Information Commission**

6.3.1.1 Constitution of Central Information Commission

6.3.1.2 Qualification of a Commissioner

6.3.1.3 Term of office and conditions of service

6.3.1.4 Oath before entering into office

6.3.1.5 Salaries and allowances of Commissioner

6.3.1.6 Removal of Information Commissioner from office

#### **6.3.2 State Information Commission**

6.3.2.1 Constitution of State Information Commission

6.3.2.2 Qualification of a Commissioner

6.3.2.3 Term of office and conditions of service

6.3.2.4 Oath before entering into office

6.3.2.5 Salaries and allowances of Commissioner

6.3.2.6 Removal of State Information Commissioner from office

#### **6.3.3 Powers and functions of the Information Commissions**

6.3.3.1 Complainants

6.3.3.2 Powers of Information Commission while inquiring

6.3.3.3 Remedies

6.3.3.4 First Appeal

6.3.3.5 Second Appeal

6.3.3.6 Penalties in case of Complaint

6.3.3.7 Recommendation for Disciplinary Action

### **6.4 SUMMARY**

### **6.5 GLOSSARY**

### **6.6 SAQS**

### **6.7 REFERENCES**

### **6.8 SUGGESTED READINGS**

### **6.9 TERMINAL QUESTIONS AND MODEL QUESTIONS**

### **6.10 ANSWERS**

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## 6.1 INTRODUCTION

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Where a information seeker is aggrieved by the decision of first appellant authority or the information seeker wants to file a complaint either against the public information authority or the complaint of not getting the information asked for he may approach the authority known as information authority. The RTI Act provides for two information commissions- Central Information Commission and State Information Commission. Both the Commissions are independent and autonomous body of persons empowered to deal with matters under RTI Act.

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## 6.2 OBJECTIVES

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After reading this unit you will be able to:

- Explain the Constitution of Central and State Information Commission.
- Know about the qualifications, term of office and conditions of service, oath , salaries and allowances of the Commissioners
- Understand the process of removal of Information Commissioner from office
- Know about the Powers and functions of the Information Commissions
- Learn about the remedies available under Right to Information Act, 2005.

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## 6.3 SUBJECT

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The Central Information Commission or the CIC is appointed by the Central Government and the State Information Commission or SIC is appointed by the State Government. However there is no hierarchy between CIC or SIC.

### 6.3.1 Central Information Commission

#### 6.3.1.1 Constitution of Central Information Commission

Chapter III of the RTI Act deals with Central Information Commission from Section 12 to Section 14. Section 12 sub section 1 of RTI Act empowers the Central Government to constitute Central Information Commission to exercise the powers conferred on and to perform the functions assigned to it under the Act. The Central Government shall issue a notification in this behalf in Official Gazette.

The Central Information Commission shall be a multi member body autonomous body. The Commission consists of the Chief Information Commissioner and Information Commissioners not exceeding ten (Section 15(2)).

As specified in Section 12(3), the Chief Information Commissioner and Information Commissioners are appointed by the President of India on the recommendation of a committee including the following members:

- a) the Prime Minister, who shall be the Chairperson of the committee;
- b) the Leader of Opposition in the Lok Sabha; and
- c) a Union Cabinet Minister to be nominated by the Prime Minister

### **6.3.1. 2 Qualification of a Commissioner**

According to Section 12, sub-sections (5) and (6), the Chief Information Commissioner and Information Commissioners:

- a) 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;
- b) shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory;
- c) shall not hold any other office of profit or
- d) shall not be connected with any political party; or
- e) shall not be carrying on any business or pursuing any profession.

### **6.3.1. 3 Term of office and conditions of service**

According to section 13(1) and section 13(2) the Chief Information Commissioner and Information Commissioner shall hold office for a term of five years or till he attains the age of sixty five years, respectively, whichever is earlier from the date on which he enters into the office. The Chief Information Commissioner shall not be eligible for reappointment. The Information Commissioner as provided in Section 13(2) shall not be eligible for re-appointment as such Information Commissioner. However every Information Commissioner shall be eligible for appointment as Chief Information Commissioner on vacating his office. Where the Information Commissioner is appointed as Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and Chief Information Commissioner.

### **6.3.1. 4 Oath before entering into office**

Section 13(3) provides that 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.

### **6.3.1. 5 Salaries and allowances of Commissioner**

According to Section 13 (5) the salaries and allowances payable to Commissioners are as under:

- a) The salary, allowances and other terms and conditions of service of the Chief Information Commissioner shall be the same as that of Chief Election Commissioner;
- b) The salary, allowances and other terms and conditions of service of the Information Commissioner shall be the same as that of Election Commissioner;

If the Chief Information Commissioner or Information Commissioner, at the time of his appointment is, in receipt of a pension other than a disability pension or a wound pension under the Government of India or the Government of the State, the salary as Chief Information Commissioner or Information Commissioner shall be reduced by the amount of

that pension. The amount of pension which is commuted and the pension equivalent of other forms of retirement benefits shall also be reduced from the salary as Chief Information Commissioner or Information Commissioner. However the pension equivalent of retirement gratuity shall not be reduced from the said salary.

In case the Chief Information Commissioner or Information Commissioner, at the time of his appointment, is receiving retirement benefits as a result of any previous service rendered in a corporation or a company owned or controlled by the Central Government or the State Government or an Information Commissioner, his salary shall be reduced by amount of pension equivalent to retirement benefits.

The salaries, allowance and other conditions of service of the Chief Information Commissioner and the Information Commissioner shall not be changed to their disadvantage after their appointment.

### **6.3.1. 6 Removal of Information Commissioner from office**

Section 14 provides that 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. This section empowers the President of India to remove the Chief Information Commissioner or Information Commissioner on ground of proved misbehaviour or incapacity. In case of allegations of misbehaviour or incapacity directed against Chief Information Commissioner or Information Commissioner, the President shall make a reference to the Supreme Court. The President may suspend from office and may also prohibit from attending the office, the Chief Information Commissioner or an Information Commissioner in respect of whom reference has been made to Supreme Court, until the President has passed orders on the receipt of the report of the Supreme Court on such reference. After conducting an inquiry, the Supreme Court shall submit a report to the President. If the Supreme Court recommends the removal of the Chief Information Commissioner or an Information Commissioner, as the case may be, on ground of misbehaviour or incapacity, he, ought on such grounds be removed by the President.

The Chief Information Commissioner or an Information Commissioner shall be deemed to be guilty of misbehaviour if he is 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 there from otherwise than as a member and in common with the other members of an incorporated company.

The President may also order the removal of Chief Information Commissioner or an Information Commissioner from office 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 Information Commissioner.

### **6.3.2 State Information Commission**

Chapter IV of the RTI Act deals with State Information Commission from Section 15 to Section 17.

#### **6.3.2.1 Constitution of State Information Commission**

Section 15(1) of RTI Act empowers the State Government to constitute State Information Commission to exercise the powers conferred on and to perform the functions assigned to it under the Act. The State Government shall issue a notification in this behalf in Official Gazette.

The State Information Commission shall be a multi member body autonomous body. The Commission consists of the State Chief Information Commissioner and State Information Commissioners not exceeding ten(Section 15(2)).

As specified in Section 15(3), the State Chief Information Commissioner and State Information Commissioners are appointed by the Governor of the State on the recommendation of a committee including the following members:

- a) the Chief Minister, who shall be the Chairperson of the committee;
- b) the Leader of Opposition in the Legislative Assembly; and
- c) a Cabinet Minister to be nominated by the Chief Minister

#### **6.3.2.2 Qualification of a Commissioner**

According to Section 15, sub-section (5) and (6), the State Chief Information Commissioner and State Information Commissioners:

- a) 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;
- b) shall not be a Member of Parliament or Member of the Legislature of any State or Union Territory;
- c) shall not hold any other office of profit or
- d) shall not be connected with any political party; or
- e) shall not be carrying on any business or pursuing any profession.

#### **6.3.2.3 Term of office and conditions of service**

According to section 16(1) and section 16(2) the State Chief Information Commissioner and State Information Commissioner shall hold office for a term of five years or till he attains the age of sixty five years, whichever is earlier from the date on which he enters into the office. The State Chief Information Commissioner shall not be eligible for

reappointment. The State Information Commissioner as provided in Section 16(2) shall not be eligible for re-appointment as such Information Commissioner. However every State Information Commissioner shall be eligible for appointment as State Chief Information Commissioner on vacating his office. Where the State Information Commissioner is appointed as State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and State Chief Information Commissioner.

#### **6.3.2.4 Oath before entering into office**

Section 16(3) provides that the State Chief Information Commissioner or 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

#### **6.3.2.5 Salaries and allowances of Commissioner**

According to Section 16 (5) the salaries and allowances payable to Commissioners are as under:

- c) The salary, allowances and other terms and conditions of service of the State Chief Information Commissioner shall be the same as that of Election Commissioner;
- d) The salary, allowances and other terms and conditions of service of the State Information Commissioner shall be the same as that of Chief Secretary to the State Government;

If the State Chief Information Commissioner or State Information Commissioner, at the time of his appointment is, in receipt of a pension other than a disability pension or a wound pension under the Government of India or the Government of the State, the salary as State Chief Information Commissioner or State Information Commissioner shall be reduced by the amount of that pension. The amount of pension which is commuted and the pension equivalent of other forms of retirement benefits shall also be reduced from the salary as State Chief Information Commissioner or State Information Commissioner. However the pension equivalent of retirement gratuity shall not be reduced from the said salary.

In case the State Chief Information Commissioner or State Information Commissioner, at the time of his appointment, is receiving retirement benefits as a result of any previous service rendered in a corporation or a company owned or controlled by the Central Government or the State Government his salary shall be reduced by amount of pension equivalent to retirement benefits.

The salaries, allowance sand other conditions of service of the State Chief Information Commissioner and the State Information Commissioner shall not be changed to their disadvantage after their appointment.

#### **6.3.2.6 Removal of State Information Commissioner from office**

Section 16 (4) provides that the State Chief Information Commissioner or the State Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office. Section 17(1) of the RTI Act empowers the Governor to

remove the State Chief Information Commissioner or State Information Commissioner on ground of proved misbehaviour or incapacity. In case of allegations of misbehaviour or incapacity directed against State Chief Information Commissioner or State Information Commissioner, the Governor shall make a reference to the Supreme Court. The Governor may suspend from office and may also prohibit from attending the office, the State Chief Information Commissioner or the State Information Commissioner in respect of whom reference has been made to Supreme Court, until the Governor has passed orders on the receipt of the report of the Supreme Court on such reference. After conducting an inquiry, the Supreme Court shall submit a report to the President. If the Supreme Court recommends the removal of the State Chief Information Commissioner or the State Information Commissioner, as the case may be, on ground of misbehaviour or incapacity, he, ought on such grounds be removed by the Governor.

Section 17(4) provides that the State Chief Information Commissioner or the State Information Commissioner shall be deemed to be guilty of misbehaviour if he is 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 there from otherwise than as a member and in common with the other members of an incorporated company.

Governor(as provided in Section 17 (3), RTI Act, 2005) may also order the removal of State Chief Information Commissioner or State Information Commissioner from office if the State Chief Information Commissioner or 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 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 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 State Information Commissioner.

### **6.3.3 Powers and functions of the Information Commissions**

Section 18 in Chapter V of the RTI Act. Section 18 empowers the Information Commissions to receive and inquire into a complaint from the aggrieved person under the RTI Act. Section 18(1) limits the scope of authority . Power vested in Information Commission under Section 18 of RTI Act is supervisory in nature.

#### **6.3.3 .1 Complainants**

According to Section 18 (1) the Central Information Commission or State Information Commission may receive and inquire into a complaint from any of the following person:



1. Any person who has been unable to submit a request to Public Information Officer (either of Centre or of State) by reason that no such officer has been appointed under this Act.
2. Any person who has been unable to submit a request Assistant Public Information Officer (either of Centre or of State) because of the refusal of Assistant Public Information Officer to accept his or her application for information or appeal under this Act for forwarding the same to the Public Information Officer (either of Centre or of State) or First Appellate Authority or Information Commission.
3. Any person who has been refused access to any information requested under this Act
4. Any person who has not been given a response to a request for information or access to information within the time limit specified under this Act.
5. Any person who has been required to pay an amount of fee which he or she considers unreasonable.
6. Any person who believes that he or she has been given incomplete, misleading or false information under this Act.
7. Any person in respect of any other matter relating to requesting or obtaining access to records under this Act.

Where the Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof. This is provided in Section 18(2).

### **6.3.3 .2 Powers of Information Commission while inquiring**

Section 18(3) states that the Information Commission while inquiring into any matter under section 18, shall 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:

- a) summoning and enforcing the attendance of persons and compel 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.

Section 18 (4) of the RTI Act provides that in case of any inconsistency contained in any other Act of Parliament or State Legislature, the respective Information Commission 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.

Section 18 clearly provides that Information Commission shall conduct the inquiry itself without delegating such power to any committee or officer.

### **6.3.3 .3 Remedies**

Where the Public Information Officer rejects an application for information or refuses to act on such application within the specified time limit, the aggrieved person has two remedies under the RTI Act. The aggrieved information seeker may either approach the First Appellate Authority or make a complaint to the Information Commissions stating therein that either he has been denied the requested information or there has been inaction on his request for information.

### **6.3.3 .4 First Appeal**

The First Appellate Authority is generally the Head of the Department or Organisation or senior officer thereof who is declared as the first appellate authority under the RTI Act. The First Appeal may be filed within a period of thirty days. It may be allowed from the expiry of such period or from the receipt of such a decision. It may be allowed after the expiry of the period of thirty days if First Appellate Authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

The First appeal 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.

### **6.3.3 .5 Second Appeal**

A person aggrieved by the decision of first appellate authority may file a second appeal to Information Commission against the First Appellate Authority. According to Section 19 (3) the second appeal against the decision under section 19 (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Information Commission. The second appeal may be admitted after the expiry of the period of ninety days if Information Commission is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Section 19(7) provides that the decision of the Information Commission shall be binding. Further Section 19(8) provides that while deciding matters under Chapter V the Information Commission has the power to:

1. require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including:-
  - a) by providing access to information, if so requested, in a particular form
  - b) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
  - c) by publishing certain information or categories of information;
  - d) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
  - e) by enhancing the provision of training on the right to information for its officials;
  - f) by providing it with an annual report.
2. require the public authority to compensate the complainant for any loss or other detriment suffered;
3. impose any of the penalties provided under this Act;

4. reject the application.

Section 19 (9) provides that Information Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

### **6.3.3 .6 Penalties in case of Complaint**

According to Section 20 (1), where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Public Information Officer has, without any reasonable cause:

- a) refused to receive an application for information; or
- b) has not furnished information within time; or
- c) malafidely denied the request for information; or
- d) knowingly given incorrect, incomplete or misleading information; or
- e) destroyed information which was the subject of the request; or
- f) 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.

### **6.3.3 .7 Recommendation for Disciplinary Action**

According to Section 20(2) of the RTI Act, if Information Commission at the time of deciding any complaint or appeal is of the opinion that the Public Information Officer has without any reasonable cause and persistently:

- a) failed to receive an application for information; or
- b) has not furnished information within the time specified under sub-section (1) of section 7; or malafidely denied the request for information; or
- c) knowingly given incorrect, incomplete or misleading information; or
- d) destroyed information which was the subject of the request; or
- e) 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.

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## **6.4 SUMMARY**

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The Right to Information Act, 2005 provides for the constitution of two Information Commissions - Central and State. The RTI Act lays down the qualification, term of office and condition of service, oath before entering into office and salaries and allowances of the Commissioners. It also provides for the removal of the Commissioners. Apart from this the powers and functions of the Information Commissions have also been laid down.

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## **6.5 GLOSSARY**

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**1. Central Information Commission:** Section 2(b) of RTI Act, 2005 provides that "Central Information Commission" means the Central Information Commission constituted under sub-section (1) of section 12;

**2. Central Public Information Officer:** Section 2(c) of RTI Act, 2005 provides that "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;

**3. Chief Information Commissioner and Information Commissioner:** Section 2(d) of RTI Act, 2005 provides that "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12;

**4. Information:** Section 2(f) of RTI Act, 2005 provides that "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;

**5. Prescribed:** Section 2(g) of RTI Act, 2005 provides that "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

**6. Record:** Section 2(i) of RTI Act, 2005 provides that "record" includes—

- e) any document, manuscript and file;
- f) any microfilm, microfiche and facsimile copy of a document;
- g) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
- h) any other material produced by a computer or any other device;

**7. Right to information:** Section 2(j) of RTI Act, 2005 provides that "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—

- d) inspection of work, documents, records;
- e) taking certified samples of material, notes, extracts or certified copies of documents or records;
- f) 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;

**8. State Information Commission:** Section 2(k) of RTI Act, 2005 provides that "State Information Commission" means the State Information Commission constituted under sub-section (1) of section 15

**9. State Chief Information Commissioner and State Information Commissioner:** Section 2(l) of RTI Act, 2005 provides that "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;

**10. State Public Information Officer:** Section 2(m) of RTI Act, 2005 provides that "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;

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## 6.6 SAQS

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### 1. Short Answer Question.

a. What is the qualification of the Chief State Information Commissioner under the Right to Information Act, 2005?

b. Give constitution of Central Information Commission under the Right to Information Act, 2005.

### 2. Fill in the blanks

a. Chapter \_\_\_\_\_ of the RTI Act deals with Central Information Commission

b. The First Appeal may be filed within a period of \_\_\_\_\_ days.

### 3. True or False

a. A person aggrieved by the decision of first appellate authority may file a second appeal to Information Commission within ninety days from the date on which the decision was actually received.

b. State Chief Information Commissioner shall hold office for a term of five years or till he attains the age of sixty five years

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## 6.7 REFERENCES

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Right to Information and Protection to Whistle blowers by Krishna Pal Mallik, Allahabad Law Agency, Haryana (2016)

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## 6.8 SUGGESTED READINGS

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Right to Information Law in India by [N.V. Paranjape](#)

Right to Information Act, 2005 by [Jitesh Dhanrajani](#)

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**6.9 TERMINAL QUESTIONS AND MODEL QUESTIONS**

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- a. Explain the Powers and Functions of Information Commissions under Right to Information Act, 2005.
  - b. Discuss the process of removal of the State Information Commissioners. How is this process different from the process of removal of Central Information Commissioners?
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**6.10 ANSWERS**

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**SAQs**

1. a. refer 4.3.1      b. refer 4.3.2
2. a. III              b. thirty
3. a True      b. True

**TERMINAL QUESTIONS AND ANSWERS**

- a. refer 6.3.3
- b. refer 6.3.1. 6 and 6.3.2. 6

## **UNIT-7**

### **DUTIES OF PUBLIC INFORMATION OFFICER**

#### **STRUCTURE**

#### **7.1 INTRODUCTION**

#### **7.2 OBJECTIVES**

#### **7.3 SUBJECT: DUTIES OF THE PUBLIC INFORMATION OFFICER OF A PUBLIC AUTHORITY**

7.3.1 A List of Duties of the PIOs

7.3.2 Which information to be provided under the Act

7.3.3 In Which Form Information is to be provided

7.3.4 Ensuring Payment of Required Fee or Exempted Status

7.3.5 Time Period for Supply of Information

7.3.6 Giving of Information Held Partially

7.3.7 Transfer of Application to Another Public Authority

7.3.8 Third Party Information

#### **7.4 FACTS ONE SHOULD KNOW:**

#### **7.5 SUMMARY**

#### **7.6 GLOSSARY**

#### **7.7 SAQS**

#### **7.8 REFERENCES**

#### **7.9 SUGGESTED READINGS**

#### **7.10 TERMINAL QUESTIONS AND MODEL QUESTIONS**

#### **7.11 ANSWERS**

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## 7.1 INTRODUCTION

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As you know by now, the Right to Information Act prescribes a three-tier mechanism to ensure that the information sought is provided to the applicant within a reasonable time. Initially information is to be sought from an authority designated as Public Information Officer (PIO). When the information is either refused or not supplied or the applicant is not satisfied with supplied /provided information, then its first appeal may be filed to a departmental higher authority designated as Appellate Authority. Where the person seeking information is not satisfied with the Appellate Authority's decision on first appeal, a second appeal may be filed to the State Public Information commission.

A Public Information Officer of a "public authority" plays a pivotal role in making the right of citizens to information a reality. It is, therefore, essential for a Public Information Officer to study the Act carefully and understand its provisions correctly.<sup>11</sup>

The Right to Information Act casts specific duties on the Public Information Officer and makes him liable for penalty in case of default.

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## 7.2.OBJECTIVES

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After reading this Unit you will be able to:

- List the various Duties of PIO towards an applicant seeking information
- List the various Duties of PIO towards Third Party
- Explain different Duties of PIO towards applicant and third party

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## 7.3 SUBJECT:DUTIES OF THE PUBLIC INFORMATION OFFICER:

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The various duties of the PIO as prescribed under different provisions of the Right to Information Act are as follows:

### 7.3.1 A List of Duties of PIO:

- i. To deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information;
- ii. To check whether the applicant has made the payment of application fee or whether the applicant is a person belonging to a Below Poverty Line (BPL) family exempt from such fee;
- iii. In response to requests from persons seeking information on payment of prescribed fee, to provide information held by or under the control of the public authority that includes permitting inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts from computers;

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<sup>11</sup> See, Guide to Right to Information Act, 2005, Government of India Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training , New Delhi (2009)



- iv. To provide information on payment of prescribed fee “as expeditiously as possible”,-- in any case within a maximum of thirty days of the receipt of the request,--- or reject the request for any of the reasons specified in Sections 8 and 9;
- v. To provide assistance to enable access to the information to any information-seeker who is sensorily disabled;
- vi. To answer the RTI application compulsorily within a time period of 48 hours of the receipt of the request, where the information sought for concerns the life or liberty of a person;
- vii. To take into consideration the representation made by a third party under Section 11 before providing any information pertaining to such third party;
- viii. Not to deny to any person seeking RTI, information which cannot be denied to any member of Parliament or State legislature;
- ix. To give reason for not providing with the complete documents demanded, if out of various information sought, only a few are being answered by PIO;
- x. To communicate to the person making the request for information the reasons for rejection of such request, the period within which an appeal against such rejection may be preferred and the particulars of the appellate authority.

**7.3.2 Which information is to be provided / supplied under the Act:** It is noteworthy that under the Act a Public Information Officer is required to provide /supply only such information that already exists and is held by or under the control of the public authority. The Public Information Officer is not supposed “to create” information; or “to interpret” information; or “to solve the problems” raised by the applicants; or “to furnish replies to hypothetical questions”. Some Information Seekers request the Public Information Officers to cull out information from some document(s) and give such extracted information to them. A citizen has a right to get ‘material’ from a public authority which is held by or under the control of that public authority. The Act, however, does not require the Public Information Officer to deduce some conclusion from the ‘material’ and supply the ‘conclusion’ so deduced to the applicant. It means that the Public Information Officer is required to supply the ‘material’ *as held by the public authority*, but not to do research on behalf of the citizen to deduce anything from the material and then supply it to him.<sup>12</sup>

**7.3.3 In Which Form Information is to be provided:** If you apply for any information under the RTI Act, the Act requires that such information needs to be provided in the form in which it is sought. For instance, if the information is sought in the form of photocopy, it shall be provided in the form of photocopy. If it is sought in the form of a CD, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs,- it shall be provided in that form provided such information is already stored in a computer or in any other device from which the information may be e-mailed or transferred to CD, diskettes etc. and so on. There might, however, be situations where an applicant asks/ demands for information in a particular form, but under certain circumstances doing that might either disproportionately divert the resources of the public authority or may cause harm to the safety or preservation of the records. In such situations, supply of information in the desired form may be refused. Sometimes the applicants expect the

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<sup>12</sup> Ibid

Public Information Officer to give information in some particular proforma devised by the applicants on the plea that they have a right to get information in the form in which it is sought. But the PIO cannot be compelled to re-shape or re-process or transcribe or translate or condense or abridge or explain the information in any manner.

**7.3.4 Ensuring Payment of Required Fee or Exempted Status:** On receiving the application, the Public Information Officer is required to check whether the applicant has made the payment of application fee or whether the applicant is a person belonging to a Below Poverty Line (BPL) family. If application is not accompanied by the prescribed fee or the BPL Certificate, it cannot be treated as an application under the RTI Act. The Act however requires that Public Information Officer should sympathetically consider even applications containing neither a proof of fee-paid nor any BPL

**7.3.5 Time Period for Supply of Information:** The Public Information Officer should supply the information within thirty days of the receipt of the request. Where the information sought for concerns the life or liberty of a person, the same should be provided within forty-eight hours of the receipt of the request. If request for information is received through the APIO, the information may be provided within 35 days of receipt of application by the APIO in normal course and 48 hours plus 5 days in case the information sought concerns the life or liberty of a person.

It is the Public Information Officers of the intelligence and security organizations specified in the Second Schedule of the Act, who may receive applications seeking information pertaining to allegations of corruption and human rights violations. Information in respect of allegations of violation of human rights, which is provided only after the approval of the Central Information Commission, should be provided within forty-five days from the date of the receipt of request. Time limit prescribed for supplying information in regard to allegations of corruption is the same as in other cases i.e. within thirty days of the receipt of the application.

**7.3.6 Giving of Information Held Partially:** Sometimes you will see that a person makes an application to a public authority for information, a part of which is available with that public authority and the rest of the information is scattered with more than one other public authorities. In such a case, the Public Information Officer of the public authority receiving the application should give information relating to it and advise the applicant to make separate applications to the concerned public authorities for obtaining information from them. The Act requires the supply of such information only which already exists and is held by the public authority or held under the control of the public authority. The Act does not require a public authority to collect the information from various public authorities to supply it to the applicant.

**7.3.7 Transfer of Application to Another Public Authority:** If the application is accompanied by the prescribed fee or the Below Poverty Line Certificate, the Public Information Officer should check whether the subject matter of the application or a part thereof concerns some other public authority. *If the subject matter of the application concerns any other public authority, it should be transferred to that public authority.* If only a part of the application concerns the other public authority, a copy of the application may be sent to that public authority, clearly specifying the part which relates to that public authority.

While transferring the application or sending a copy thereof, the concerned public authority should be informed that the application fee has been received. The applicant should also be informed about the transfer of his application and the particulars of the public authority to whom the application or a copy thereof has been sent.<sup>13</sup>

Transfer of application or part thereof, as the case may be, should be made as soon as possible and in any case within five days from the date of receipt of the application. If a Public Information Officer transfers an application after five days from the receipt of the application, he would be responsible for delay in disposal of the application to the extent of number of days which he takes in transferring the application beyond 5 days.

The Public Information Officer of the public authority to whom the application is transferred, should not refuse acceptance of transfer of the application on the ground that it was not transferred to him within 5 days.

**7.3.8 Third Party Information:** If an applicant seeks any information which relates to or has been supplied by a third party and that third party has treated that information as confidential, the Public Information Officer shall consider whether the information should be disclosed or not. If the Public Information Officer intends to disclose the information, he shall within five days from the receipt of the application, give a written notice to the third party. The third party shall within a period of ten days, express its opinion whether the information may be disclosed or not. If the PIO still takes a decision to disclose such third party information to the applicant, this decision shall be communicated to such third party who shall have a right to appeal. In such cases, the information should not be disclosed by the PIO till the appeal is decided.

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#### **7.4 FACTS ONE SHOULD KNOW:**

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##### **Can I submit my application only with the PIO?**

No, in case the PIO is not available you can submit your application with the Assistant PIO or any other officer designated to accept the RTI applications.

##### **Where can I locate the concerned PIO?**

A list of PIOs/APIOs and Appellate Authorities for all Central and State departments/Ministries is available online at [www.rti.gov.in](http://www.rti.gov.in)

##### **What if I can not locate my PIO or APIO?**

In case you have problems locating your PIO/APIO you can address your RTI application to the PIO C/o Head of Department and send it to the concerned public authority with the requisite application fee. The Head of Department will have to forward your application to the concerned PIO.

##### **Do I have to personally go to deposit my application?**

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<sup>13</sup> See, Guide to Right to Information Act, 2005, Government of India Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi (2009)

Depending on your state rules for mode of payment you can deposit your application for information from the concerned departments of your state government via post by attaching a DD, Money Order, Postal Order or affixing Court fee Stamp

**Is there a time limit to receiving information?**

Yes. If you file your application with the PIO, you must receive information within 30 days. In case you have filed your application with Assistant PIO then information has to be made available within 35 days. In case the matter to which the information pertains affects the life and liberty of an individual, information has to be made available in 48 hours.

**Do I have to give reasons why I want a particular information?**

Absolutely not! You are not required to give any reasons or additional information other than your contact details (i.e., Name, Address, and Phone No.). Sec 6(2) clearly says that no information other than contact details of the applicant shall be asked.

**Can the PIO refuse to give me information?**

A PIO can refuse information on 11 subjects that are listed in section 8 of the RTI Act. These include information received in confidence from foreign governments, information prejudicial to security, strategic, scientific or economic interests of the country, breach of privilege of legislatures, etc. There is a list of 18 agencies given in second schedule of the Act to which RTI Act does not apply. However, they also have to give information if it relates to matters pertaining to allegations of corruption or human rights violations.<sup>14</sup>

**Who will give me information?**

One or more existing officers in every Government Department have been designated as Public Information Officers (PIO). These PIOs act like nodal officers. You have to file your applications with them. They are responsible for collecting information sought by you from various wings of that Department and providing that information to you. In addition, several officers have been appointed as Assistant Public Information Officers (APIOs). Their job is only to accept applications from the public and forward it to the right PIO.

**What should I do if the PIO or the concerned Department does not accept my application?**

You can send it by post. You should also make a formal complaint to the respective Information Commission under section 18. The Information Commissioner has the power to impose a penalty of Rs 25,000/- on the concerned officer who refused to accept your application.

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**7.5 SUMMARY:**

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In this unit we have discussed the duties of the Public Information Officer of a public authority towards the person seeking information through a written application after submission of prescribed fee.

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<sup>14</sup>[http://www.conservationindia.org/wp-content/files\\_mf/What\\_is\\_Right\\_to\\_Information\\_and\\_how\\_to\\_use\\_it\\_final.pdf](http://www.conservationindia.org/wp-content/files_mf/What_is_Right_to_Information_and_how_to_use_it_final.pdf)

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## 7.6 GLOSSARY

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**1. Public Information Officer-** Any Officer designated by the Public Authority to provide information to persons requesting for the information under the Right to Information Act 2005.

**2. Assistant Public Information Officer -** appoint someone to a specified office or post.

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## 7.7 SAQS

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1. Short Answer Questions-

a) Which information PIO can provided under the Act?

b) What is the time period for supply of Information under the Act?

**2. Fill in the blanks-**

a) The Public Information Officer should supply the information within..... days of the receipt of the request.

b) Information in respect of allegations of violation of human rights, which is provided only after the approval of the Central Information Commission, should be provided within..... from the date of the receipt of request.

**3. True and False type questions**

a) There is a time limit for receiving information?

b) Answering the RTI application is compulsory within a time period of 48 hours of the receipt of the request, where the information sought for concerns the life or liberty of a person;

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## 7.8 REFERENCES

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a) [https://en.wikipedia.org/wiki/Right to Information Act, 2005](https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005).

b) The Right to Information Act, 2005.

c) [www.ingaf.in/INGAF/RTI-ACT/Guideonrti.pdf](http://www.ingaf.in/INGAF/RTI-ACT/Guideonrti.pdf)

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## 7.9 SUGGESTED READINGS

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6. Right to Information Act, 2005

7. Guide on Right to Information Act, 2005 (Government of India Ministry of Personal, Public Grievances & Pensions Department of Personnel & Training)<http://www.rtifoundationofindia.com/guide/Guideonrti.pdf>

8. Dr. Neelam Kant, 2014, published by Orient Publishing Compan

9. Right to Information Law in India by N.V. Paranjape

10. Right to Information Act, 2005 by Jitesh Dhanrajani

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**7.10 TERMINAL QUESTIONS AND MODEL QUESTIONS**

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- a) What are the important duties of the Public Information Officer ?
- b) Explain different duties of PIO towards applicant and third party

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**7.11 ANSWERS**

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**SAQS**

- 1. (a) Refer 7.3.2                      (b) Refer 7.3.5
- 2. (a) Refer 7.3.5                      (b) Refer 7.3.5
- 3. (a) True                                (b) True

## Terminal Questions and Answers

- (a) Refer, 7.3.1                      (b) ) Refer 7.3.6 , 7.3.8

# **UNIT-8**

## **RESPONSIBILITIES OF PUBLIC INFORMATION OFFICER (APIO)**

### **STRUCTURE**

#### **8.1 INTRODUCTION**

#### **8.2 OBJECTIVES**

#### **8.3 SUBJECT: RESPONSIBILITIES OF THE ASSISTANT PUBLIC INFORMATION OFFICER OF A PUBLIC AUTHORITY**

##### 8.3.1 Duty to forward Information Requests to the PIO

###### 8.3.1.1 Forwarding Information Requests

###### 8.3.1.2 For applications received personally

###### 8.3.1.2 For applications received by post or courier

##### 8.3.2 Duty to forward appeals to the AA and the Central Information Commission

###### 8.3.2.1 For appeals received in person:

###### 8.3.2.2 For appeals received by post or courier

#### **8.4 SUMMARY**

#### **8.5 GLOSSARY**

#### **8.6 SAQS**

#### **8.7 REFERENCES**

#### **8.8 SUGGESTED READINGS**

#### **8.9 TERMINAL QUESTIONS AND MODEL QUESTIONS**

#### **8.10 ANSWERS**

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## **8.1 INTRODUCTION**

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The Right to Information Act (RTI Act) covers all levels of governments– Centre, State, district and nearby self governing our bodies like Panchayats and Municipal our bodies. It also covers non- governmental enterprises – i.e. NGOs, VOs, businesses and different private bodies – which are financed appreciably with public budget provided by way of the government. This means every citizen has the right to put in application requesting facts or copies of records held by these bodies and such data or information should be received through the concerned body.

The citizen's right to information is not explicitly referred under the fundamental rights chapter of the Constitution. But in more than 15cases the Supreme Court of India has declared that thefundamental right to life and liberty [Art. 21] and the fundamental right to freedom of speech and expression [Art. 19(1)] encompass each citizen's fundamental right to get entry to information held by the public body or government. Parliament passed the RTI Act to permit all citizens to use their fundamental right to access information from public bodies.

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## **8.2 OBJECTIVES:**

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After reading this Unit you will be able to know:

- Responsibilities of the Assistant Public Information Officer of a Public Authority
- Duty of APIO to forward Information Requests to the PIO
- Duty of APIO to forward appeals to the AA and the Central Information Commission

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## **8.3 RESPONSIBILITIES OF APIO (ASSISTANT PUBLIC INFORMATION OFFICER)**

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### **8.3.1 Duty to forward Information Requests to the PIO**

Under the provision the APIOs will act like a one-manner post office. Every APIO has the responsibility and duty to get hold of requests from citizens and forward them to the PIO of the concerned public authority this is possibly to have the information being sought by the applicant. The RTI Act allows the public authority only five extra days over and above the restrict of 30 days to provide information to the applicant if the request is forwarded by the APIO. So it's important to send the application to the PIO without any delay. The citizen has the right to send a complaint to the CIC if the APIO does not accept his application and forward it to the PIO. If confirmed responsible, the APIO can be fined by the CIC from at the very least Rs. 250/- up to a maximum of Rs. 25,000/- for each offence.

**Note-1.** An APIO isn't liable for giving information to the requestor. It is the responsibility of the Public Information Officer to give information to the requestor

**Note-2.** A APIO does now not have the power to ask the requestor why he/she wishes such information. (The RTI Act states clearly that the requestor must no longer be asked to provide reasons for seeking information)



### **8.3.1.1 For applications received personally**

#### **Step 1 : Receiving the Application**

As far as possible the APIO will receive citizens' applications for Information personally

#### **Step 2 : Checking the Application**

APIO will check whether the application contains the following details and enclosures

- i) Name of the applicant
- ii) Contact details of the applicant including complete postal address, telephone numbers and email address (if any)
- iii) Name of the public authority from whom the information is being requested
- iv) Nature and details of the information requested
- v) Period for which information is being requested (if applicable)
- vi) Whether proof of payment of application fee is attached or not
- vii) If the applicant claims fee waiver whether proof of BPL status is attached or not
- viii) Whether the applicant wishes to receive the information by post?
- ix) Date on which application is being submitted.

#### **Step 3 : Collecting Application Fees/Proof of Identity**

If the applicant has not already attached proof of payment of application fees APIO will collect the prescribed application fee in cash.

or

If the applicant has not attached proof of BPL identity in support of his/her claim for fee waiver he will request the applicant to furnish the same.

#### **Step 4 : Issuing Acknowledgement**

APIO will Issue a written acknowledgement in for every complete application obtained. The Central Government has now not notified the sort of format yet. This acknowledgement can also consist of details consisting of the name and address of the applicant, the date on which the application was received and the mode of payment of application fee .An acknowledgement must be issued to BPL applicants additionally. In addition to the aforementioned information the acknowledgement issued to a BPL applicant may consist of identity proof that has been attached for claiming fee waiver. APIO will sign and stamp the acknowledgement.

#### **Step 5 : Registering Complete Applications**

APIO will enter the detail of the entire application into the RTI register. All complete applications have to be entered into the register the same day they are received.

#### **Step 6: Dispatching Complete Applications to the concerned PIO**

APIO will dispatch the complete application along with the duplicate of the acknowledgement issued, to the concerned PIO by way of post or courier on the same day of receiving. If for some reason it is not possible to dispatch the application on the same day he will dispatch it on the subsequent working day. The Central Government has not prescribed a format that may be used for the cover letter. It can be develop on such format to be used within the public authority. This covering letter format could contain information which includes name of the APIO, contact number, Address ,date of receipt of application, registration number, fees collected (if any) and enclosures (if any).

### **8.3.1.2 For applications received by post or courier**

APIO will check whether the application contains the following details and enclosures

- i) Name of the applicant
- ii) Contact details of the applicant including complete postal address, telephone numbers and email address (if any)
- iii) Name of the public authority from whom the information is being requested
- iv) Nature and details of the information requested
- v) Period for which information is being requested (if applicable)
- vi) Whether proof of payment of application fee is attached or not
- vii) If the applicant claims fee waiver whether proof of BPL status is attached or not
- viii) Whether the applicant wishes to receive the information by post?
  - If the application is complete in all respects, APIO will enter the detail of the application in the prescribed RTI Applications register on the same day of receiving.
  - After registering the application within the RTI Applications Register acknowledgement should be issued in the prescribed format and dispatch it to the applicant through post/courier on the same day. If for some reason it is not possible to dispatch the receipt on the same day it must be dispatched on the following working day.
  - If the application clearly mentions the public authority from which application/records is being asked it should be dispatched to the concerned PIO on the same day of receiving?
  - If the application is not addressed to a specific public authority read the nature of information being asked. This will help identifying the general public authority that is most probable to own the facts requested or may be consulted for this reason.) then APIO will dispatch the complete application to the concerned PIO with a covering letter.

**Note:** If the applicant has not attached proof of payment of application fee and has additionally no longer claimed charge waiver it is essential to send a communication via publish/courier to the sender inquiring for him to provide proof of payment of the prescribed

fee or go to the workplace to pay the fees in cash. If the application contains a contact telephone number call up the applicant advising him/her to pay the application fees. This action saves time and effort and prevents wastage of stationery.

- Similarly if the applicant has not attached evidence of identity in spite of claiming charge waiver inside the application - it is essential to send a communication by using post/courier to the sender soliciting for him/her to provide evidence of BPL identity. If the application contains a contact phone number name up the applicant advising him/her to furnish evidence of BPL identity. This action saves effort and time and forestalls wastage of stationery.

- If any of the details are lacking or illegible return the application via post/courier to the sender inquiring for him/her to fill in the lacking or doubtful information. If the application consists of a contact phone number call up the applicant asking for him/her to go to the office to fill in the lacking information.

### **8.3.2 Duty to forward appeals to the AA and the Central Information Commission**

The APIO additionally has the responsibility and duty to receive appeals against the decision of PIOs and forward them to the Appellate Authority or the Central Information Commission as required in the letter of appeal submitted by the aggrieved citizen.

#### **8.3.2.1 For appeals received in person:**

##### **Step 1 : Receiving Appeals**

As far as possible please receive citizens' appeals personally. APIO is empowered to receive appeals addressed to the Appellate Authority (AA) and the Central Information Commission (CIC).

##### **Step 2 : Checking Appeals**

Check whether the appeal contains the following details and enclosures –

- i) Name of the appellant
- ii) Contact details of the appellant including complete postal address, telephone numbers and email address (if any)
- iii) Authority to which appeal is being sent (whether AA or the CIC)
- iv) Details of the authority against whose decision the appeal is being made (whether CPIO or the AA)
- v) Nature and details of the information requested originally
- vi) Copy of the information request submitted to the PIO/appeal letter sent to the AA (whichever is applicable)
- vii) Rejection letter issued by the PIO against the appellant's information request (if any)
- viii) Copy of the order issued by the AA (if any)
- ix) Date on which appeal is being submitted.

**Step 3 : Issuing acknowledgement**

APIO will issue a written acknowledgement in the prescribed format for every complete appeal received. The Central Government has not notified any format for this purpose. APIO may develop a simple acknowledgement format for use within the public authority.

**Step 4 : Registering the Appeals**

APIO will enter details of every complete appeal letter in the RTI Appeals register. He may develop a format for this purpose for use within the public authority.

**Step 5: Dispatching Appeals**

Every complete appeal must be dispatched to the concerned AA or the CIC (as the case may be) on the same day of receiving along with a covering letter in the prescribed format. If for some reason it is not possible to dispatch the appeal on the same day it should be dispatched on the following working day. The covering letter will include details of APIO name, designation and contact address, date of receipt of appeal, registration number and details of enclosures.

**8.3.2.2 For appeals received by post or courier**

Follow **Step 2**.

Check whether the appeal contains the following details and enclosures –

- i) Name of the appellant
- ii) Contact details of the appellant including complete postal address, telephone numbers and email address (if any)
- iii) Authority to which appeal is being sent (whether AA or the CIC)
- iv) Details of the authority against whose decision the appeal is being made (whether CPIO or the AA)
- v) Nature and details of the information requested originally
- vi) Copy of the information request submitted to the PIO/appeal letter sent to the AA (whichever is applicable)
- vii) Rejection letter issued by the PIO against the appellant's information request (if any)
- viii) Copy of the order issued by the AA (if any)
- ix) Date on which appeal is being submitted.

If the appellant has not filled in one or more of the above details return the appeal letter by post/courier to the sender requesting him/her to fill in the missing or unclear details. If the appeal letter contains a contact telephone number please call up the appellant requesting him/her to visit your office to fill in the missing details. This action saves time and effort and prevents wastage of stationery.

- If the appeal is complete in all respects, enter the details of the appeal in the prescribed RTI Appeals register on the same day of receiving .

- After registering the appeal please issue a receipt in the prescribed format and dispatch it to the appellant by post/courier on the same day. If for some reason unable to dispatch the receipt on the same day ,dispatch it on the following working day.
- If the appeal clearly mentions the public authority to which the appeal is being made dispatch it to the concerned AA on the same day of receiving it. If for some reason unable to dispatch the application on the same day dispatch it on the following working day.
- If the application is not addressed to a specific public authority please read through the appeal letter. This will help you identify the AA that is most likely to decide upon the appeal. (The directory published by the Central Government on the RTI portal- <http://rti.gov.in> may be consulted for this purpose.) then dispatch the complete application to the concerned AA. The appeal should be accompanied with a covering letter in the prescribed format. The Central Government has not notified any format till date. However a simple format can be develop for use within the public authority.

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#### **8.4 SUMMARY-**

In this unit we learn about assistant public information officer and his role. We learn about the important role of assistant public information officer in forwarding application of request of information to PIO and forwarding appeals, the steps to be followed by APIO in forwarding information requests and Appeals.

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#### **8.5 GLOSSARY**

**1. Public Information Officer-** Any Officer designated by the Public Authority to provide information to persons requesting for the information under the Right to Information Act 2005.

**2. Assistant Public Information Officer -** appoint someone to a specified office or post.

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#### **8.6 SAQS**

##### **1. Short Answer Questions-**

- a) What do you mean by Assistant Public Information Officer.
- b) State the steps of forwarding Application of Information from APIO to PIO

##### **2. Fill in the blanks-**

- a) The RTI Act allows the public authority only..... extra days over and above the restrict of 30 days to provide information to the applicant if the request is forwarded by the APIO
- b) The citizen has the right to send a complaint to the..... if the APIO does not accept his application and forward it to the PIO.

##### **3. True and False type questions**

- a) APIO does now not have the power to ask the requestor why he/she wishes such information.
- b) The APIO additionally has the responsibility and duty to receive appeals against the decision of PIOs and forward them to the Appellate Authority or the Central Information Commission

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## **8.7 REFERENCES**

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- a) [https://en.wikipedia.org/wiki/Right\\_to\\_Information\\_Act,\\_2005](https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005).
- b) The Right to Information Act, 2005.
- c) [www.ingaf.in/INGAF/RTI-ACT/Guideonrti.pdf](http://www.ingaf.in/INGAF/RTI-ACT/Guideonrti.pdf)

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## **8.8 SUGGESTED READINGS**

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11. Right to Information Act, 2005
12. Guide on Right to Information Act, 2005 (Government of India Ministry of Personal, Public Grievances & Pensions Department of Personnel & Training) <http://www.rtifoundationofindia.com/guide/Guideonrti.pdf>
13. Dr. Neelam Kant, 2014, published by Orient Publishing Compan
14. Right to Information Law in India by N.V. Paranjape
15. Right to Information Act, 2005 by Jitesh Dhanrajani

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## **8.9 TERMINAL QUESTIONS AND MODEL QUESTIONS**

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- a) What is the procedure adopted by the Assistant Public Information Officer after receiving the application for information?
- b) What is the procedure followed by APIO before forwarding the Appeals.

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## **8.10 ANSWERS**

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### **SAQS**

- 1.(a) Refer 8.3.1 (b) 8.3.1.1, 8.3.1.2
- 2.(a) 8.3.1 (b) 8.3.1
- 3.(a) True, (b) True

### Terminal Questions and Answers

- (a) Refer 8.3.1 (b) 8.3.2

## **UNIT-9**

# **ISSUES AND CONSTRAINS FACED BY PUBLIC INFORMATION OFFICERS**

### **STRUCTURE**

#### **9.1 INTRODUCTION**

#### **9.2 OBJECTIVES**

#### **9.3 SUBJECT**

9.3.1 lack of behavioral training:

9.3.2 need an external enterprise for training:

9.3.3 obsolete record management guidelines:

9.3.4 non-availability of basic infrastructure

9.3.5 limited use of it:

9.3.6 lack of motivation among pios:

9.3.7 ineffective implementation of section 4(1) (b)

#### **9.4 SUMMARY**

#### **9.5 GLOSSARY**

#### **9.6 SAQS**

#### **9.7 REFERENCES**

#### **9.8 SUGGESTED READINGS**

#### **9.9 TERMINAL QUESTIONS AND MODEL QUESTIONS**

#### **9.10 ANSWERS**

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## 9.1 INTRODUCTION

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Currently there exist insufficient measures and procedures in the Information Commission to view the adherence stages of the vital provision of the Act. The Information Commission receives to know the failure of the Public Authority in providing the records within 30 days (or 48 hours or 35 days or 40 days (as can be the case) as soon as the appeal or complaint is filed. Due to inadequate facilities the flow of information is inevitably delayed. Due to inadequate record management procedures with the Public Authorities. It is a recognised truth that the document keeping procedure within the Government is a huge assignment. This situation is in addition irritated because of non-availability of skilled PIOs and the enabling infrastructure (computer systems, scanners, net connectivity, photocopiers and many others.). Public Authorities need to meet the requirements of the RTI Act to study their modern report maintaining approaches and different constraints and plan out the resources.

Lack of refresher education and occasional level of focus on key SIC judgments: RTI implementation remains inside the technique of evolution, ensuing in new dimensions being brought routinely. Hence RTI refresher training or primary understanding repository wishes to be had to the PIOs. However, given the modern levels of fundamental training to the PIOs, the refresher education (covering the Key landmark orders exceeded through SIC) nonetheless seems a far off truth. A few projects have been taken by means of CIC (<http://cic.gov.in>) and Centre for Good Governance and a website for RTI (<http://www.rti.org.in>) has been created under capacity building project, in which know-how repositories and landmark judgments are provided. However the notice of these projects/websites among the PIOs is notably low.

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## 9.2 OBJECTIVES

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After reading this unit you will be able to know about the issues and constrains faced by the public information officers.

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## 9.3 SUBJECT

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### 9.3.1 lack of behavioral training

1-It is widely recognized that the training provided to the PIOs is limited to RTI Act. While that is the bare minimum, the PIOs are predicted to provide assistance to the applicants as per the Section 5(3) of the Act.

2- Manager reliable facts as per the record management guidelines.

These areas require specialized training to equip the PIOs for the above stated role.

### 9.3.2 need an external enterprise for training

All education institute surveys reveals that the useful resource constraint and need for external help to conducting RTI training wished the guide of an external agency for undertaking RTI education of PIOs and APIOs of states and centre.



The training of PIOs is a big challenge generally due to

- a) huge range of PIOs to be trained
- b) frequent transfers of PIOs to different posts.

The training institutions also possess a large constraint with respect to the availability of training assets. Also, it turned into discovered that inside the current way of presenting training, there's a low involvement of the Public Authority and an insufficient feel of urgency in getting their PIOs trained. There is a sizable dependence on the ATI institutes for training of the PIOs. At the same time it's also referred to that there are a large number of non-earnings organizations which are sporting out the trainings in legitimate/ un-legitimate capacities – these are untapped resources which may be used by the PA, appropriate Government and Training Institutes.

### **9.3.3 obsolete record management guidelines**

Ineffective file management machine and collection of information from field places of work main to postpone in processing of RTI programs:

As in step with Section 4(1a) of the Act, a Public Authority needs —to maintain all its records duly catalogued and indexed in a way and form which helps the Right to Information under this Act and make certain that every record which can be appropriate to be computerized are, inside an inexpensive time and subject to availability of resources, computerized and connected through a network all around the country on different systems so that access to such records is facilitated

It is well known that even in Central Government Ministries, the status of record keeping is a problem area. In most of the places, the current rules pertaining to record management only cater to categorization of records based on time period for storage before destruction. In most states, file maintaining processes have now not been revised for many years. Most notably the exercise of cataloguing, indexing and orderly storage is absent, that's critical for quick-turn around in case of information record request under RTI Act. Even while information are saved, retrieval of intelligible information is a challenge. It is possibly because of this situation that there may be an inclination to provide bulk unprocessed information rather than relevant and pertinent information.

Laying down detailed procedures by using themselves could now not suffice. A permanent mechanism with sufficient authority, expertise, and obligation needs to be created in each Public Authority to coordinate and supervise proper report-keeping. It is liked that there can be aid constraints for a Public Authority to undertake comprehensive computerization, but the point which wishes to be highlighted is that there has been limited attempt being installed to plan out the tasks (with or without computerization) a good way to reap the goal inside an affordable time. This inadequacy may be related to absence of institutional mechanism in Public Authorities specializing in RTI and inter alia focusing on the record keeping guidelines.

### **9.3.4 non-availability of basic infrastructure**

The Implementation of RTI requires the PIOs to provide records to the applicant via photocopies, soft copies etc. While these facilities are taken into consideration to be without problems available at a district level, it's far a task to get data from Block/ Panchayat level. PIOs spotlight that the dearth of infrastructure hampers the RTI implementation on the PA level. In order to service RTI requests, fundamental infrastructure consisting of photocopier machines at each Public Authority and basic level of automation together with essential applications and connectivity is needed.

### **9.3.5 limited use of it**

The use of Information Technology in acceptance or delivery of RTI applications is minimum within the Public Authorities. Isolated IT answers have been advanced by some Departments independently but these systems are just restrained to tracking the status of RTI applications. Some PAs like Kandivali Municipal Corporation and Kamrup Metro District have developed software program packages for inner tracking of the popularity of RTI programs but no widespread software has been developed at State level. At the Central stage RTI MIS advanced by way of NIC has been deployed in Central Ministries and Departments; this system has the following features –

- Facility to update the list of PIOs and AAs
- Auto generation of responses for PIOs and AAs
- Reporting and MIS generation

Currently efforts are underway to combine this system with the appeal management system being utilized by the CIC to provide a unbroken RTI workflow.

It changed into additionally found that there's a honest quantity of IT utilization at the SIC stage. Amongst the ones surveyed, Information Commissions Central Information Commission and SIC Andhra Pradesh had been the the front runners in utilization of IT. CIC has supplied the facility of filing and tracking appeals and proceedings online on its internet site. Similarly SIC Andhra Pradesh has additionally provided the power for tracking of appeals and complaints on-line and through SMS. Barring SIC Uttar Pradesh, all of the other SICs under survey have published their selections on their websites.

As has been cited earlier, the issue of implementation of the RTI Act at an operational level rest with the Public Authority. The suitable Government and Information Commission can play simplest a facilitative and adjudicative function. Unless the Public Authorities examine the problems of implementation and identify sources required, there would no longer be any cognizance on implementation. The ARC report had mentioned that G.O.I may allocate one per cent (1%) of the funds of the Flagship Programmes<sup>3</sup> for a period of five years for enhancing the infrastructure requirements. However this has now not been applied.

### **9.3.6 lack of motivation among pios**

In addition to loss of resources, PIOs lack the inducement to implement RTI Act. During the RTI workshops organised inside the surveyed states, PIOs referred to that there were no

incentives for taking over the obligation of a PIO; however penalties have been imposed in instances of non compliance. It was also observed that there's a extensive variance inside the seniority levels of PIOs. For instance PIOs were appointed at the extent of college instructors inside the School Education Department in Andhra Pradesh. During the records provider survey, 89% of the PIOs stated that there have been no additional allocation of staff for RTI related activities.

### **9.3.7 ineffective implementation of section 4 (1) (b)**

As per the the Act, one of the basic responsibilities of the Public Authorities (PAs) is to disseminate information on suo moto basis. Section 4(1) (b) sub clauses i-xvi; in particular mention the sort of information which wishes to be provided by the PAs. Beyond this stipulated information, the Act additionally mandates the PAs to offer other records as in step with Section 4(1) (b) sub clause xvii, Section 4 (1) (c), Section 4 (1d) and 4 (2).

As per our observations and interactions with numerous Government offices/Public Authorities, the key observations and assessment are as follows: -

The internal techniques within the Public Authorities aren't defined, with the intention to deal with the requirement of the applicable suo moto clauses. Various Departments and Ministries of Government of India have within the final 12 months published the necessities specific under section 4(1) (b) at the website. However the fame of the same within the State Government departments and web sites is extensively terrible (it is assumed that the supply of information at the website is a extra convenient way of disseminating and updating the information).

- Information proactively disclosed is not up to date often leading to obsolescence of facts provided. As consistent with the Act, the information needs to be updated annually, however plenty of records wishes to get up to date on actual time foundation e.g. Details of the Officers, PIOs etc.

- The PIOs also are now not aware that they are able to disseminate information on suo-moto basis. This results in higher number of RTI applications. The PIOs could employ this clause and disseminate information proactively and accordingly eliminating the need to file RTI applications

- At places where suo-moto information is being provided, the quality of disclosure is quite low and does not cater to the information needs of the citizens. There is not any/ inadequate mechanism within the Public Authorities to put in force the provisions of the Act. Neither the State Government nor the Information Commissions have taken adequate steps to make sure compliance of the basic minimum requirement for filing RTI applications.

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## **9.4 SUMMARY**

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In this unit we learn about the issues and constrains faced by the public information officers like Lack of Behavioral Training , Need an external enterprise for training

Obsolete record management Guidelines ,Non-availability of basic Infrastructure ,Limited use of IT, Lack of motivation among PIOs ,Ineffective implementation of Section 4(1) (b)

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## 9.5 GLOSSARY

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**1. Infrastructure**-It consists of the basic facilities such as communications, power supplies and buildings, which enable to work properly.

**2. Motivation**- The act or process of giving someone a reason for doing something

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## 9.6 SAQS

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### 1. Short Answer Questions-

- a) What is the need of external enterprise for the training of PIO's?
- b) Is limited use of IT a issue faced by the PIO's?

### 2. Fill in the blanks-

- a) The PIOs are predicted to provide assistance to the applicants as per the Section .....of the Act.
- b) Information Commissions, Central Information Commission and .....had been the front runners in utilization of IT.

### 3. True and False type questions

- a) The use of Information Technology in acceptance or delivery of RTI applications is minimum within the Public Authorities.
- b) At places where suo-moto information is being provided, the quality of disclosure is quite low and does not cater to the information needs of the citizens.

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## 9.7 REFERENCES

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- a) [https://en.wikipedia.org/wiki/Right to Information Act, 2005](https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005).
- b) The Right to Information Act, 2005.
- c) [www.ingaf.in/INGAF/RTI-ACT/Guideonrti.pdf](http://www.ingaf.in/INGAF/RTI-ACT/Guideonrti.pdf)

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## 9.8 SUGGESTED READINGS

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16. Right to Information Act, 2005
17. Guide on Right to Information Act, 2005 (Government of India Ministry of Personal, Public Grievances & Pensions Department of Personnel & Training)<http://www.rtifoundationofindia.com/guide/Guideonrti.pdf>
18. Dr. Neelam Kant, 2014, published by Orient Publishing Comapan
19. Right to Information Law in India by N.V. Paranjape
20. Right to Information Act, 2005 by Jitesh Dhanrajani

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## 9.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

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- a) What are the main issues faced by the PIO's in providing Information
- b) Is Ineffective implementation of Section 4 (1) (b) a issue faced by the PIO's

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## 9.10 ANSWERS

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### SAQS

- |                |                |
|----------------|----------------|
| 1(a) Refer 9.4 | (b) Refer 9.7  |
| 2(a) Refer 9.3 | ( b) Refer 9.7 |
| 3(a) True,     | (b) True       |

### Terminal Questions and Answers

- |                        |               |
|------------------------|---------------|
| (a) Refer – whole unit | (b) Refer 9.7 |
|------------------------|---------------|

# **UNIT 10**

## **PROCESS OF DISPOSAL OF INFORMATION REQUESTS**

### **STRUCTURE**

#### **10.1 INTRODUCTION**

#### **10.2 OBJECTIVES**

#### **10.3 SUBJECT**

10.3.1 Preparation of the Information application.

10.3.2 Points to keep in mind before making request before the Public Authority

10.3.3 Procedure after receiving any request for information under RTI

10.3.3.1 Applications Received Without Fee

10.3.3.2 Transfer of Application

10.3.4 Disclosure of Third Party Information

10.3.5 Providing Information

10.3.6 Supply of Information

10.3.6.1 Supply of Part Information

10.3.6.2 Prescribed Time Period for Supply of Information

#### **10.4 SUMMARY**

#### **10.5 GLOSSARY**

#### **10.7 SAQS**

#### **10.8 REFERENCES**

#### **10.9 SUGGESTED READINGS**

#### **10.10 TERMINAL QUESTIONS AND MODEL QUESTIONS**

#### **10.11 ANSWERS**

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## 10.1 INTRODUCTION

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In the previous units you have read that The Right to Information Act, 2005 was enacted by the Parliament of India to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of the public authorities, before this another law, ‘ The Freedom of Information Act, 2002’ was in force. For the purpose of the Right to Information Act, 2005 Public Information Officers (PIOs) are designated by the public authorities in all administrative units or offices under it to provide information to the citizens on their request. Any officer whose assistance is sought by the PIO shall render his assistance to discharge his duties, in case of contraventions of the provisions of this Act; such officer shall be treated as PIO. Time limit to provide requested information in various conditions has been provided by the Act.

This Act directs public authorities to disclose all information held by them except those which are exempted under the Act. A citizen shall submit the application for obtaining the information to a Public Information Officer (PIO) or Assistant PIO of the Public Authority (Public Authority as explained in Block 2 unit-4). There is no prescribed format of the application seeking information. The application can be written in English or Hindi or the State’s official language. Grounds for rejection of RTI application and procedure to be adopted in case of the third party application are also provided therein the Act.

To use this act as a tool for getting any information and if you are seeking any information from any public authority you must be aware of some basic knowledge regarding procedure for requesting information, time limit to get the information and fee that is to be paid. Detail study of disposal of the information application is discussed in this chapter.

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## 10.2 OBJECTIVES

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After reading this unit you will be able to:

- Explain the process of information request.
- Know about the particulars that an application seeking information must contain either it is provided written application or in case of the information sought electronically.
- Understand about the time period that is provided in various cases for the disposal of an application.
- Learn about the process of disposal involved in various cases where the desired information is not held by the Public Information Officer or it is available in part only.
- Disclosure of third party information.
- Know about the requirements in supply of Information.

### 10.3.1 Preparation of the Information application

There is no such prescribed format to write an application for seeking information under Right to Information, But you should try to provide some of the basic information to the PIO so that they may provide you desired information within

time. Applicant shall provide his particulars clearly in the information application so that the concerned PIO may provide information accordingly. Applicant may provide as following-

- The applicant may address to PIO or APIO and if possible specify the department/name of the office, address from where he is seeking information.
- The name of the applicant.
- The address of the applicant.
- The particulars of the desired information.
- Whether the photocopy of the document is required or inspection will be conducted by the applicant.
- Particulars of the deposited fee or if belongs to BPL category provide proof for the same.
- Signatures of the applicant and date of the application.

### **10.3.2 Points to keep in mind before making request before the Public Authority**

Before preparing any information application you should keep some of the points in your mind which will help you in getting information easily and in time. Some of the points are as follows-

- a. Firstly you should know about the information that you can receive by Right to Information. Thus Information is any material in any form. It includes records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form. It also includes information relating to any private body which can be accessed by the public authority under any law for the time being in force.
- b. The applicant should know that from which public authority the desired information may be obtained. Application given to wrong Public Authority may cause unnecessary delay in getting the information or sometimes the application may be returned.

### **10.3.3 Procedure after receiving any request for information under RTI**

The Public Information Officer of a public authority plays a pivotal role in making the right of citizens to information a reality. The Act casts specific duties on him and makes him liable for penalty in case of default. It is, therefore, important for a Public Information Officer to keep the following aspects in view in disposal of the applications under the Act.

#### **10.3.3.1 Applications Received Without Fee**

After receiving the application, the Public Information Officer should check whether the applicant has made the proper payment of application fee or whether the applicant is a person belonging to a Below Poverty Line (BPL) family. If application is not accompanied by the prescribed fee or the BPL Certificate, it cannot be treated as an application under the RTI Act. However, Public Information Officer should consider



such application sympathetically and try to supply information sought by way of such an application.

### **10.3.3.2 Transfer of Application**

The time limits for providing the information will begin to take effect from the date of receipt of an application. It is provided in the Right to Information Act that the PIO may seek the assistance of any other officer as he/ she considers it necessary for the proper discharge of his or her duties. Any Officer, whose assistance has been sought, shall render all assistance to the PIO and for the purposes of any contravention of the provisions of the Act, such other officer shall be treated as PIO. (See Section 5(4) and 5(5) of the Act.)

Sometimes requests are made to a public authority or PIO for information which does not concern that public authority or only a part of which is available with the public authority, remaining or whole of the information concerns another public authority or many other public authorities. Section 6(3) provides that-

Where an application is made to a public authority requesting for information,

- (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 application.

where an application is made to a public authority requesting for any information which is held by another public authority or the subject matter of which is more closely connected with the functions of another public authority, the public authority to which such an application is made, shall transfer the application within 5 days to that other public authority and shall inform the applicant for the same.

A situation may arise when a person makes an application to a public authority for information, a part of which is available with that public authority and the rest of the information is scattered with more than one other public authorities. In such a case, the Public Information Officer of the public authority should give information relating to it and advise the applicant to make separate applications to the concerned public authorities for obtaining information from them. If no part of the information sought, is available with it but is scattered with more than one other public authorities, the Public Information Officer should inform the applicant that information is not available with the public authority and that the applicant should make separate applications to the concerned public authorities for obtaining information from them.

### **10.3.4 Disclosure of Third Party Information**

Information, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Such information shall not be disclosed unless the competent authority is satisfied that larger public interest is there in the disclosure of such information.

If an applicant seeks any information which relates to or has been supplied by a third party and that third party has treated that information as confidential, the Public Information Officer shall consider whether the information should be disclosed or not. The Public Information Officer would have before disclosing such information within five days from the receipt of the application, give a written notice to the third party that the information has been sought by the applicant under the RTI Act and that he intends to disclose the information. He shall request the third party to make a submission, regarding whether the information may be disclosed. The third party shall be given a time of ten days, from the date of receipt of the notice by him, to make representation against the proposed disclosure. The Public Information Officer shall decide regarding disclosure of the information on the basis of the submission of the third party. Such a decision should be taken within forty days from the receipt of the request for information. After making the decision, the Public Information Officer should give a notice of his decision to the third party in writing.

### **10.3.5 Providing Information**

The information to the applicant should ordinarily be provided in the form in which it is sought. But, if the supply of information sought in a particular form may cause harm to the safety or preservation of the records, supply of information in that form may be denied. However, the applicant may be invited to inspect the same stating the reasons.

In some cases, the applicants expect the Public Information Officer to give information in some particular proforma devised by them stating that they have a right to get information in the form in which it is sought. It need be noted that the provision in the Act simply means that if the information is sought in the form of photocopy, it shall be provided in the form of photocopy, or if it is sought in the form of a floppy/disc, it shall be provided in that form subject to the conditions given in the Act. It does not mean that the PIO shall re-arrange or re-shape or create the information. The PIO is not expected to draw conclusions or interpret for providing the information.

### **10.3.6 Supply of Information**

The Public Information Officer should check whether the information sought or a part thereof is exempt from disclosure under Section 8 or Section 9 of the Act. Where a request for information is rejected, the Public Information Officer should 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.

The furnished information should be specific and clear and there must not be ambiguity in the information.

#### **10.3.6.1 Supply of Part Information**

Where a request is received for access to information which is exempt from disclosure but a part of which is not exempt, and such part can be severed in such a way that the severed part

does not contain exempt information then, access to that part of the information/record may be provided to the applicant.

### **10.3.6.2 Prescribed Time Period for Supply of Information**

The Public Information Officer should supply the information within thirty days of the receipt of the request. Where the information sought for concerns the life or liberty of a person, the same should be provided within forty-eight hours of the receipt of the request. If request for information is received through the APIO, the information may be provided within 35 days of receipt of application by the APIO in normal course. In case of an application transferred from one public authority to another public authority, reply should be provided by the concerned public authority within 30 days of the receipt of the application by that public authority in normal course and within 48 hours in case the information sought concerns the life or liberty of a person.

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## **10.4 SUMMARY**

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In this unit we have discussed that the applicant before seeking any information from any public authority, may itself identify that to which public authority the application of request is to be made. There is no format of the application but the applicant shall furnish some particulars so that information can be easily obtained. After receiving the application of information the PIO shall check whether the proper fee has been paid by the applicant or the applicant belongs to BPL category. The PIO shall transfer the application to the other Public authority if the desired information is not concerned to him or part of that is available to him and other part is available to other public authority. The PIO may seek assistance from the other officer for the information and in case of refusal in assistance by that officer or contraventions thereof he or she shall be deemed as PIO. In case of third party information if the PIO satisfies himself that in the larger public interest it is to be provided he or she may supply the information but where the third party has supplied the information as confidential, the PIO within time limit shall ask for his statements regarding to the information required by the applicant. The PIO shall provide the information in the form it is available. It is not expected from the PIO to interpret or draw conclusions for providing information. PIO shall not create any information but provide in the form as it is available to the public authority. The provided information shall be clear and specific, it shall not be ambiguous. The PIO shall mention the name, designation and address of the departmental (first appellate) appellate authority in providing the information to the applicant.

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## **10.5 GLOSSARY**

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**1. Public Authority-** It is provided in section 2(h) of the Right to Information Act 2005. It means any authority or body or institution or self Government established or constituted by or under the Constitution ; by any other law made by Parliament; by any other law made by the State legislature; by notification issued or order made by the appropriate Government, and includes any-

- (i) body owned, controlled or substantially financed;
- (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

**2. Public Information Officer-** Any Officer designated by the Public Authority to provide information to persons requesting for the information under the Right to Information Act 2005.

**3. Designated-** appoint someone to a specified office or post.

**4. Third Party-** It is provided in section 2(n) of the Right to Information Act, 2005. It means a person other than the citizen making a request for information and includes a public authority.

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## 10.7 SAQS

### 1. Short Answer Questions-

- a) What do you mean by information under The Right to Information Act, 2005.
- b) In how many maximum days the application shall be transferred to the other Public Authority under section 6(3) of the Act.

### 2. Fill in the blanks-

- a) The Public Information Officer should check whether the information sought or a part thereof is exempt from disclosure under Section ...or Section ...of the Act.
- b) The PIO shall not ..... or ..... or ..... the information.

### 3. True and False type questions

- a) There is specified format of requesting any information.  
(i) True, (ii) False.
- b) There is time limit fixed for providing the information.  
(i) True, (ii) False.

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## 10.8 REFERENCES

- a) [https://en.wikipedia.org/wiki/Right\\_to\\_Information\\_Act,\\_2005](https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005).
- b) The Right to Information Act, 2005.
- c) [www.ingaf.in/INGAF/RTI-ACT/Guideonrti.pdf](http://www.ingaf.in/INGAF/RTI-ACT/Guideonrti.pdf)

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## 10.9 SUGGESTED READINGS

Dr. Neelam Kant, 2014, published by Orient Publishing Company.

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## 10.10 TERMINAL QUESTIONS AND MODEL QUESTIONS

- a) In preparation of the information application what are the required essentials?

- b) What is the procedure adopted by the Public Information Officer after receiving the application for information?
- c) What is the procedure for disclosure of third party information?
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### **10.11 ANSWERS**

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#### **SAQS**

1. (a) Refer 10.3.2, (b) 5 days
2. (a) 8 or 9, (b) re arrange, re-shape, create.
3. (a) False, (b) True

#### **Terminal Questions and Answers**

- (b) Refer 10.3.1, (b) 10.3.3 (c) 10.3.4

# **UNIT 11**

## **FEE AND COSTS AND EXEMPTION FROM PAYMENT**

### **STRUCTURE**

#### **11.1 INTRODUCTION**

#### **11.2 OBJECTIVES**

#### **11.3 SUBJECT**

11.3.1 Provisions of fee in the Right to Information Act, 2005

11.3.2 Provisions of extra fee in the Right to Information Act, 2005

11.3.3 Provisions of exemption from fee in the Act.

11.3.4 Rules in the State of Uttarakhand prescribed for fee and Costs

11.3.4.1 Rules for persons of below poverty line

#### **11.4 SUMMARY**

#### **11.5 GLOSSARY**

#### **11.6 SAQS**

#### **11.7 REFERENCES**

#### **11.8 SUGGESTED READINGS**

#### **11.9 TERMINAL QUESTIONS**

#### **11.10 ANSWERS**

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## 11.1 INTRODUCTION

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In the previous units you have read that the applicant before seeking any information from any public authority may itself identify that to which public authority the application of request is to be made. There is no format of the application but the applicant shall furnish some particulars so that information can be easily obtained. After receiving the application of information the PIO shall check whether the proper fee has been paid by the applicant or the applicant belongs to BPL category. The PIO shall transfer the application to the other Public authority if the desired information is not concerned to him or part of that is available to him and other part is available to other public authority. The PIO shall mention the name, designation and address of the departmental (first appellate) appellate authority in providing the information to the applicant.

In *State of Uttar Pradesh v. Raj Narain*, The Supreme Court underlined the significance of right information in the democratic system and observed that “in a government of responsibility like ours, where all agents of the public must be responsible for their conduct, these can be a few secrets.” The Right to Information Act, 2005 is the facet of human rights and acknowledged universally, it directs public authorities to disclose all information held by them subject to the conditions, accompanying such fee as may be prescribed.

The Right to information Act, 2005 provides provisions for the reasonable fee that is to be charged from the applicant and further provides that no such fee shall be charged from the persons who are below poverty line. The prescribed fee has to be determined by the appropriate Government. Fee and costs and exemptions have been discussed in this chapter.

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## 11.2 OBJECTIVES

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After reading this unit you will be able to:

- ❖ Know the provisions those provides for charging fee from the demand side.
- ❖ Know about the charges that are to be paid according to the demand made to the Public Authority.
- ❖ Learn about the exemptions from fee to the person of the below poverty line.
- ❖ Learn about the fee that is to be paid for information in various forms.
- ❖ Understand various aspects concerning fee provisions.

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## 11.3 SUBJECT

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### 11.3.1 Provisions of fee in the Right to Information Act, 2005

A person, seeking any information under the Right to Information Act, 2005 shall make a request to the concerned Public Authority as contemplated under section 6(1) of the Act. The Act further provides the provision of the fee that is to be accompanied with the application for seeking information under the Act.

According to Section 6(1) of the Right to Information Act, 2005, 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 :

In this part the Act states about the accompanying fee that is prescribed and the word prescribed herein denotes the meaning that is given under Section 2(g) of the Act as following,-

*“Prescribed” means prescribed by the rules made under this Act by the appropriate Government or the competent authority, as the case may be;*

The definition of the appropriate Government has been explained in the previous unit.

### **11.3.2 Provisions of extra fee in the Right to Information Act, 2005**

Section 7 of the Right to Information Act, 2005 speaks for the extra fee if the decision is taken to provide the information, according to the cost determined. This section provides in detail the procedure in the case of charging extra fee. According to Section 7(3) –

Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the 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 dispatch 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;
- (b) information concerning his or 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.

In simple words when the desired information need to be charged extra fee after calculating its cost according to the prescribed rate then information in this regard shall be given to the applicant and the time period intervening between the dispatch of the said information and payment shall not be included in the mandatory time period provided by the Act. The concerning PIO demanding extra fee shall provide the calculation made by him and provide the particulars of the appellate authority to the



applicant so that he may approach appellate authority in case of feeling aggrieved from said demand.

Section 7(5) enumerates provision for fee if the information is in the printed or in any electronic form as following-

Section 7(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-sections (6), pay such fee as may be prescribed:

It is to clarify here that sub section 6 states the condition when the fee shall be exempted and it is discussed below.

### **11.3.3 Provisions of exemption from fee in the Act.**

There are two conditions provided in the Right to Information Act that exempts from taking any fee. Section 7(5) provides for the fee in case the information is in printed or in any electronic format as discussed above, but it speaks of the exemption in case of the persons who are of below poverty line as follows,-

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 be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

The other condition is where a public authority fails to comply with the time limits specified in the Act. Section 7(6) enumerates as following,-

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 (1).

From the above sub-sections of Section 7 it is clearly revealed that two conditions are provided in the Act when fee is exempted, in brief as follows,-

- ❖ from the persons who are of below poverty line.
- ❖ where a public authority fails to supply information with the time limits specified in the Act.

### **11.3.4 Rules in the State of Uttarakhand prescribed for fee and Costs**

In the State of Uttarakhand, Right to Information Rules 2013 have been framed and following fee and costs have been prescribed,-

- ❖ A request for obtaining information under sub- section(1) of section 6 shall be accompanied by an application fee of rupees 10 by way of cash against proper receipt or by non judicial stamp paper or treasury challan or demand draft or bankers cheque or Indian Postal Order payable to the Public Information Officer or Assistant Public Information Officer of the concern Public Authority.

❖ For providing the information under sub section (3) of section 7, the fee shall be charged by way of cash against proper receipt or by non judicial stamp paper or treasury challan or demand draft or bankers cheque or Indian Postal Order payable to the Public Information Officer of the Public Authority at the following rates:-

- Rupees two for each page ( in A4 or A3 size paper) created or copied; and actual charges or cost price of a copy in larger size paper;
- For inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour ( or fraction thereof) ;
- Actual cost or price for samples or models.

But no fee shall be charged from the person of below poverty line.

❖ For providing the information under sub-section (5) of section 7, the fee shall be charged by way of cash against proper receipt or by non judicial stamp paper or treasury challan or demand draft or bankers cheque or Indian Postal Order payable to the Public Information Officer of the Public Authority at the following rates:-

- For information provided in C.D./D.V.D. rupees twenty per C.D./D.V.D; and
- For information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication.

#### **11.3.4.1 Rules for persons of below poverty line**

Fee for the persons of below poverty line are as following,-

- If the desired information, belong to the applicant or his family members then the information shall be provided free of cost.
- If it belongs to another person than the applicant or his family members then 50 pages (A-4 size) or if it can be prepared in Rs. 100 then it shall be provided without any fee. If desired information is more than this limit then person of below poverty line shall be permitted to inspect records, take notes or photocopies at his own cost.

But persons of below poverty line shall have to accompany self attested copy of the BPL card along with the application.

From the above mentioned sections and rules it clear that the fee and cost are to be determined by the appropriate Government and the rules framed in this regard are also mentioned. In this regard a judgment of the CIC is important in the matter of *Abne Ingti v. CPIO, Delhi University, New Delhi*, whereby directions were issued for all the universities in India, including deemed universities and all examining bodies to provide copies of answer sheet only at a cost of Rs 2 per page and make necessary changes to their respective notifications also.

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## 11.4 SUMMARY

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The Right to information Act, 2005 enumerates provisions for the fee and cost in taking any information from public authority under this Act. The fee and cost is to be determined by the appropriate Government. On demand of extra fee, if it is required according to the information then PIO shall intimate regarding this to the applicant and show how the tendered amount from the applicant is calculated. The PIO shall mention the particulars of the appellate authority also if in case the applicant is not satisfied with the demand he may approach appellate authority. The tendered amount shall be reasonable in accordance with the rules framed by the appropriate Government. There are exemption clause also in the Right to Information Act, 2005, the two conditions are when the Public Authority fails to comply in supply of information as prescribed by the Act, then information is to be provided free of cost and the second one is when the applicant is of the below poverty line category.

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## 11.5 GLOSSARY

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Accompanying- along with

Access- obtain or retrieve

Exemption- free from an obligation

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## 11.6 SAQS

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### 1. Short Answer Questions-

- a) What do you mean by prescribed?
- b) In the State of Uttarakhand what are the charges prescribed for inspection of record?

### 2. Fill in the blanks-

- a) Prescribed is provided under Section ...of the Act.
- b) Section ..... enumerates provision for fee if the information is in the printed or in any electronic form.

### 3. True and False type questions

- a) There is only one condition for exemption of fee.  
(i) True, (ii) False.
- b) Persons of below poverty line shall have to accompany self attested copy of the BPL card along with the application.  
(i) True, (ii) False.

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## 11.7 REFERENCES

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- a) [www.aiu.ac.in/RTI\\_cell/CIC\\_SA\\_A\\_2015\\_901116\\_M\\_176862.pdf](http://www.aiu.ac.in/RTI_cell/CIC_SA_A_2015_901116_M_176862.pdf)
- b) State of Uttar Pradesh v. Raj Narain, AIR 1975SC 865

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## 11.8 SUGGESTED READINGS

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- 1. Dr. Neelam Kant, 2014, published by Orient Publishing Company.
- 2. The Right to Information Act, 2005.

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## 11.9 TERMINAL QUESTIONS

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- a) What are the provisions of fee in the RTI Act, 2005?
- b) State provisions of extra fee in the RTI Act, 2005.
- c) What are the provisions of fee prescribed in the State of Uttarakhand?

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## 11.10 ANSWERS

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### SAQS

- 1. (a) Refer 11.3.1, (b) 11.3.4
- 2. (a) Section 2(g), (b) Section 7(5).
- 3. (a) False, (b) True

### Terminal Questions and Answers

- (a) Refer 11.3.1, (b) 11.3.2 (c) 11.3.4

## **UNIT 12**

### **INTERFACE AND ISSUES WITH THE DEMAND SIDE**

#### **STRUCTURE**

#### **12.1 INTRODUCTION**

#### **12.2 OBJECTIVES**

#### **12.3 SUBJECT**

##### 12.3.1 Interface between the Public Authorities and the Information seekers

###### 12.3.1.1 Pro Active Disclosure

###### 12.3.1.2 Obligations of public authorities

##### 12.3.2 Constraints with the demand side

###### 12.3.2.1 Reasons of the issues that are faced by the demand side

###### 12.3.2.2 Low public awareness

###### 12.3.2.3 Steps to Awareness

###### 12.3.2.4 Strengthening implementation

#### **12. 4.ISSUES DURING THE APPELLATE STAGE**

#### **12.5 SUMMARY**

#### **12.6 GLOSSARY**

#### **12.7 SAQS**

#### **12.8 REFERENCES**

#### **12.9 SUGGESTED READINGS**

#### **12.10 TERMINAL QUESTIONS AND MODEL QUESTIONS**

#### **12.11 ANSWERS**

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## 12.1 INTRODUCTION

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In the previous units you have read that The Right to Information Act, 2005 was enacted by the Parliament of India and several provisions have been made therein to facilitate the citizens of India in obtaining any information from any Public Authority. Duties and responsibilities have been imposed on the Public Information Officers to provide desired information to the applicant within time. There are obligations of Public Authorities which are to be fulfilled by their instrumentalities. Public Information Officers (PIOs) are designated by the public authorities in all administrative units or offices under it to provide information to the citizens on their request. Failure on providing information under the act may cause imposition of penalty on the PIO.

This Act directs public authorities to disclose all information held by them subject to the conditions and it is a right of every citizen to avail this right. A decade has passed after the commencement of the Right to Information Act, 2005 but there are certain anomalies due to which proper implementation of the Act is still not achieved, or the object of the Act has not been fulfilled. The object of the Act was to provide desired information to every citizen of India but due to insufficient planning at Public Authority level to identify the constraints and to ensure that citizens are provided the required information creates hurdles in fulfilling the basic object of the Act. There are certain reasons that are to be identified and solutions to those may be traced accordingly.

Proactive and suo motu disclosure of the information by the Public Authorities works as an interface in between the Public Authorities and demand side as it can become friendly by promotion of information Literacy. Different studies show that there is lack of awareness and other certain reasons because of which citizens are facing problems in obtaining information from the Public Authorities. Detail study of constraints on demand side is to be studied in this chapter and solutions for the same are tried to be given for the same. For example many times the applicant does not receive information within time and faces many problems due to this. The cause behind delay is the working capacity of the Public Authorities; therefore there is a need for capacity enhancement in Public Authorities for handling RTI queries. For e.g. there should be proper staff, infrastructure and monitoring for handling RTI queries. In this chapter interface between PIO and demand side as well as constrains faced by the applicants is discussed.

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## 12.2 OBJECTIVES

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After reading this unit you will be able to:

- Know about the interface between Public Authorities and the demand side (the information seeker).
- Know about the issues faced on the demand side.
- Learn about the constraints faced by the demand side.
- Know about the issues faced at the appellate stage by the applicant/appellant.
- Understand the practical problems that are faced due to several reasons by the demand side.

- Understand the solutions that may be recommended to solve problems in implementations of the Act.
- Learn about the various programmes that may be prepared by the government for the awareness of citizens.

### **12.3.1 Interface between the Public Authorities and the Information seekers**

In a democratic society every citizen has right to know how they are governed along with the functioning of the government that may be performed in a transparent manner. Right to Information Act provides a forum for government and also a government and citizen's interface by ensuring accountability and responsibility by adopting open procedure through transparency by the Public Authorities. Pro active disclosure is an interface in between the Public Authorities and the information seekers under the Right to Information Act, 2005. Right to Information laws not only require Governments to provide information upon request, they also impose a duty on public bodies to actively disclose, disseminate and publish, as widely as possible, information of general public interest even before it has been requested. This has following positive effects:

- It minimises the time, money and effort required by the public to access important but routine information;
- It helps people to better understand what information they can access and how and where to seek it;
- It reduces the overall number of individual requests that bureaucrats have to process, thereby reducing the administrative burden on government of implementing access to information laws.

#### **12.3.1.1 Pro Active Disclosure**

The RTI Act has a very comprehensive proactive disclosure provision at section 4. Specifically, S.4(1)(b) of the Act sets out a list of 17 categories of information which have to be proactively disclosed by all public authorities. At a basic level, S.4 requires every public authority to routinely disclose information about its functions, decision-making norms, documents held, employee contacts, and budgets. It goes further though, and even requires regular disclosure of information about subsidy schemes (including details of beneficiaries) and the recipients of licenses, concessions and permits. Considering the amount of corruption in these areas, it is hoped that greater transparency will result in greater accountability. Section 4(3) of the Central Act specifically requires that all information "shall be disseminated widely and in such a form and manner which is easily accessible to the public". This is an important provision because it establishes that it is not enough to merely collect information and store it in a cupboard at the head office! Instead, it is essential that all members of the

public can access the information easily and through several cheap options, no matter where they live, and that it is in a language and style that can be understood.

### **12.3.1.2 Obligations of public authorities.-**

Section 4 of the Right to Information Act, 2005 puts an obligation on the public authority to maintain all its records for providing information. The information detailed in this section has to be compulsorily published by the public authority on its own without any request from anybody and information mentioned in this section need be supplied to citizens on request. Section 4 of the Act is divided in 4 sub section and each sub section makes it obligatory for the public authorities to provide information to the citizens suo motu. Detailed study of this section has been provided in the previous unit 5 of block 4.

Suo motu disclosure information is not sufficient in itself, promotion of information literacy is necessary to achieve the goals for which the Right to Information Act, 2005 has been enacted. Multimedia programmes may be designed for the promotion of information literacy by all the public authorities. Training with the help of educational institutions, in collaboration with media agencies may be arranged by the Public Authorities so as to ensure greater interface between the information seekers.

### **12.3.2 Constraints with the demand side**

There are certain issues that are faced by the information seekers during the process of receiving any information, some of the constraints are as following-

- ❖ No assistance is given by the PIOs as it is provided under Section 6 of the RTI Act that PIOs are required to provide reasonable assistance to the applicant in drafting and submission of the application.;
- ❖ Sometimes it is not known to the applicant that from where he can obtain the desired information;
- ❖ Locating the concerned PIO in a Public Authority as in some places no notice boards or incomplete and old list of PIOs are provided in the State Websites.
- ❖ Sometimes there is negative attitude of the PIO while receiving the RTI Application.
- ❖ Non-availability of User Guides for RTI implementation for information seekers.

#### **12.3.2.1 Reasons of the issues that are faced by the demand side**

The issues faced by the demand side are due to some of the reasons and they can be solved by taking some measures to ensure the smooth functioning of the system. Some of the reasons along with the solutions are sated as following-



### 12.3.2.2 Low public awareness

There is low level of Public awareness among the citizens about the Right to information and the reason for low awareness is because of many reasons.

- ❖ It has been noticed that the awareness among the women is comparatively low than the men.
- ❖ Due to illiteracy also people are not aware of their rights
- ❖ It has been observed that the awareness level among the rural population is very low as compared to the urban population.
- ❖ The quality of the awareness in common public is significantly low.
- ❖ Citizens are not aware of how to use the information to solve their problems.

### 12.3.2.3 Steps to Awareness

- ❖ By various campaigns increase public knowledge and awareness;
- ❖ By way of encouraging citizens involvement in various awareness programmes;
- ❖ Various programmes may be conducted in rural areas for the awareness of the peoples.

### 12.3.2.4 Strengthening implementation

Section 26 of the Act contemplates that the appropriate Government may develop and organize educational programmes to advance the understanding of the public, especially disadvantaged communities, regarding how to exercise the rights contemplated under the Act. The Governments have duty to take steps in this regard to ensure that awareness may spread among the common people and by way of organizing different awareness programmes through different mediums it can be achieved. Another major challenge is to develop capacities or efficiency of the public authorities for access to information. The efficiency and capacity of the public authority is to be enhanced so that the spirit of the Right to Information Act may be protected. For this purpose public authorities need to be trained and equipped with facilities to meet out the demand of the information. For e.g. there should be proper staff, infrastructure, monitoring and training mechanism etc for handling RTI queries. Some of the steps that may be taken by the public authorities for the proper implementation of the RTI are as follows-

- ❖ By keeping and ensure good standards of records management;
- ❖ To identify areas for proactive disclosure and to ensure the proactive disclosure is updated ;

- ❖ To establish proper infrastructure and systems for implementation of RTI;

## **12. 4.Issues during the appellate stage**

If any applicant did not get the information within time or is not satisfied with the received information, first departmental appeal may be preferred by him and if he is not satisfied thereto he may prefer second appeal before the Information Commission or the Central Information Commission under section 19 of the Act, as the case may be. There are certain problems faced by the appellants at the appellate stage as follows-

- ❖ Sometimes the applicant is not aware with the provisions of filing first appeal or second appeal.
- ❖ Due to unawareness of proper forum of filing the appeal the applicant is unable to prefer any appeal before the authority.
- ❖ Due to unawareness applicant hesitate to prefer appeal before information commission, in some cases it has been observed that applicants think that the information commission is lenient toward PIOs so it is wastage of time and money to prefer appeal before information commission.
- ❖ Due to Illiteracy, or people from the rural areas think that they have to hire any professional for their representation before the information commission , and do not want to involve in any unnecessary litigation.

These issues may be resolved by taking some steps by the appropriate government. The government has to spread awareness regarding second appeal before the information commission so that the Right to Information Act may be implemented in its spirit. There are websites of the Information Commissions but access of every citizen has not been made easy so far because of various reasons.

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## **12.5 SUMMARY**

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Right to Information is very important right in democratic system, it is a fundamental right of every citizen. The Right to Information Act, 2005 since its enactment has revealed many mysteries unknown to us. Despite several hurdles this impacted a lot. Certain provisions are there in the Act to facilitate the information seekers which works as an interface between the demand side and the supply side. Proactive disclosure of the information is the information that has to be provided by the Public authority suo motu. The provided information helps the demand side as well as the supply side. There are certain anomalies which crept in the proactive disclosure as the information is not properly updated in time. Besides the pro active disclosure the demand side has remedy to obtain the information through filing proper application but it has been seen that many constraints are faced by them and they can

be solved by the awareness programmes and enhancing the efficiency and capacity of the public authorities. Likely there are issues in preferring the second appeal before the Information Commission as well and they may be resolved by taking necessary steps.

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## 12.6 GLOSSARY

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Instrumentalities- agency;

Constraints- A limitation or restriction;

Interface- A point where two systems, subjects, organizations, etc. meet and interact.

Appropriate Government- It is defined under section 2(a) of the Act.

Public Authority- It is defined under section 2(h) of the Act.

Pro Active- creating a situation.

Suo motu- initiating in its own.

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## 12.7 SAQS

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### 1. Short Answer Questions-

- a) What do you mean by the pro active disclosure under the Right to Information Act, 2005.
- b) State some reasons for low public awareness about the Act.

### 2. Fill in the blanks-

- a) Obligations of public authorities are provided in Section ...of the Act.
- b) The appeal may be preferred under section..... of the Act.

### 3. True and False type questions

- a) Pro active disclosure by the public authority is necessary.  
(i) True, (ii) False.
- b) There is provision for preparing programmes of the awareness under the Act.  
(i) True, (ii) False.

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## 12.8 REFERENCES

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- a) [https://en.wikipedia.org/wiki/Right\\_to\\_Information\\_Act,\\_2005](https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005).
- b) The Right to Information Act, 2005.
- c) [www.humanrightsinitiative.org/programs/ai/rti/india/officials\\_guide/proactive\\_disclosure.htm](http://www.humanrightsinitiative.org/programs/ai/rti/india/officials_guide/proactive_disclosure.htm)

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## 2.9 SUGGESTED READINGS

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1. Dr. Neelam Kant, 2014, published by Orient Publishing Company.

2. [https:// books.google.co.in/books?isbn=8184501684](https://books.google.co.in/books?isbn=8184501684) ( E-Governance and Right to Information written by P.K.Saini &R.K.Gupta)

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## 12.10 TERMINAL QUESTIONS AND MODEL QUESTIONS

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- a) State some of the constraints faced by the demand side.
- b) State some of the issues during the appellate stage.
- c) What steps can be taken to strengthen the implementation of the Act?

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## 12.11 ANSWERS

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### SAQS

1. (a) Refer 12.3.1.1, (b) 12.3.2.2
2. (a) Section 4, (b) Section 19.
3. (a) True, (b) True

### Terminal Questions and Answers

- (b) Refer 12.3.2, (b) 12.4 (c) 12.3.2.4