

Right to information essay

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The Right to Information Act 2005 (RTI) is an Act of the Parliament of India “to provide for setting out the practical regime of right to information for citizens.” The Act applies to all States and Union Territories of India except the State of Jammu and Kashmir. Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009.

Under the provisions of the Act, any citizen may request information from a “public authority” (a body of Government or “instrumentality of State”) which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 12 October 2005. [1] Information disclosure in India was hitherto restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act now relaxes. Framework Disclosure of State information in British India was (and is) governed from 1889 by the Official Secrets Act. This law secures information related to security of the State, sovereignty of the country and friendly relations with foreign states, and contains provisions which prohibit disclosure of non-classified information. Civil Service conduct rules and the Indian Evidence Act impose further restrictions on government officials’ powers to disclose information to the public. Freedom of Information Act 2002 Passage of a national level law, however, proved to be a difficult task.

Given the experience of state governments in passing practicable legislation, the Central Government appointed a working group under H. D. Shourie and <https://assignbuster.com/right-to-information-essay/>

assigned it the task of drafting legislation. The Shourie draft, in an extremely diluted form, was the basis for the Freedom of Information Bill, 2000 which eventually became law under the Freedom of Information Act, 2002. [citation needed] This Act, never came into effective force because the enabling Rules were not notified. State Level LawsThe RTI Laws were first successfully enacted by the state governments of — Tamil Nadu (1997), Rajasthan (1997), Goa (2000), Delhi (2001), Maharashtra (2002), Karnataka (2002), Assam (2002), Madhya Pradesh (2003), and Jammu and Kashmir (2004). The Maharashtra and Delhi State level enactments are considered to have been the most widely used. The Delhi RTI Act is still in force.

Jammu ; Kashmir, has its own Right to Information Act of 2009, the successor to the repealed J; K Right to Information Act, 2004 and its 2008 amendments Scope The Act covers the whole of India except Jammu and Kashmir, where J; K Right to Information Act is in force. It is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is also defined in the Act that bodies or authorities established or constituted by order or notification of appropriate government including bodies “ owned, controlled or substantially financed” by government, or non-Government organizations “ substantially financed, directly or indirectly by funds” provided by the government are also covered in it. Private bodies Private bodies are not within the Act’s ambit directly. In a landmark decision of 30-Nov-2006 (' Sarbjit Roy versus DERC') the Central Information Commission also reaffirmed that privatized public utility companies continue to be within the RTI Act- their privatization notwithstanding. Powers The Act

empowers applicant citizens to:

- Obtain copies of permissible governmental documents.
- Inspect permissible governmental documents.

Inspect permissible Governmental works and obtain samples. Power to make rules

- The Central Government, State Governments and the Competent Authorities as defined in S. 2(e) are vested with powers to make rules to carry out the provisions of the Right to Information Act, 2005. (S. 27 & S. 28)

Partial disclosure The Act allows those part(s) of the record which are not exempt from disclosure and which can reasonably be severed from parts containing exempt information to be provided. ExclusionsCentral Intelligence and Security agencies specified in the Second Schedule like IB, Directorate General of Income Tax Investigation, RAW, Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep Police. Agencies specified by the State Governments through a Notification will also be excluded.

The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission. Information Exclusions The following is exempt from disclosure [S. 8)] Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, “
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strategic, scientific or economic" interests of the State, relation with foreign State or lead to incitement of an offense; • Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court; • Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; • Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information; • Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information; • Information received in confidence from foreign Government; • Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes; • Information which would impede the process of investigation or apprehension or prosecution of offenders; • Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers; • Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption); • Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. NB: This provision is qualified by the proviso

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to sub-section 11(1) of the Act which exempts disclosure of “ trade or commercial secrets protected by law” under this clause when read along with 8(1)(d)) Role of the government Section 26 of the Act enjoins the central government, as also the state governments of the Union of India (excluding J&K), to initiate necessary steps to:

- Develop educational programs for the public especially disadvantaged communities on RTI.
- Encourage Public Authorities to participate in the development and organization of such programs.
- Promote timely dissemination of accurate information to the public.

- Train officers and develop training materials.
- Compile and disseminate a User Guide for the public in the respective official language. Publish names, designation postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc.

Guide For the Information Seekers Under the Right to Information Act, 2005 Object of the Right to Information Act The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. An informed citizenry will be better equipped to keep necessary vigil on the instruments of government and make the government more accountable to the governed. The Act has created a practical regime through which the citizens of the country may have access to information under the control of public authorities.

What is Information 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. Right to Information under the Act 1. A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copied of documents or records; taking certified samples of material held by the public authority or held under the control of the public authority. 2. The public authority under the RIT Act 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. Only such information can be had under the Act which already exists with the public authority.

3. A citizen has a right to obtain information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-out provided information is already stored in a computer or in any other device from which the information may be transferred to diskettes. 4. The information to the applicant shall ordinarily be provided in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or may cause harm to the safety or preservation of the records, supply of information in that form may be denied.

5. 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. However, if an application is made by an employee or office-bearer of any Corporation, Association, Company, NOG etc. who is also a citizen of India, information shall be supplied to him/her, provided the applicant gives his/her full name. In such cases, it will be presumed that a citizen has sought information at the address of the Corporation etc.

Exemptions from Disclosure The right to seek information from a public authority is not absolute. Sections 8 and 9 of the Act enumerate the categories of information which are exempt from disclosure. At the same time Schedule II of the Act contains the names of the Intelligence and Security Organisations which are exempt from the purview of the Act.

The exemption of the organization, however, does not cover supply of information relating to allegations of corruption and human rights violations. The applicants should abstain from seeking information which is exempt under Section 8 and 9 and also from the organizations included in the Second Schedule except information relating to allegations of corruption and human right violations. Central Public Information Officers Application for seeking information should be made to an officer of the public authority who is designated as Central Public Information Officer (CPIO). All the public authorities have designated their Central Public Information Officer and have

posted their particulars on their respective web-sites. This information is also available on the ' RTI PORTAL' (www.rti.gov.in).

Persons seeking information are advised to refer to the web-site of the concerned public authority of the ' RIT PORTAL' for ascertaining the name of the concerned CPIO. If it is found difficult to identify or locate the concerned Central Public Information Officer of a public authority, application may be sent to the Central Public Information Officer without specifying the name of the CPOI at the address of the public authority. Assistance Available From CPIOs The Central Public Information Officer shall render reasonable assistance to the persons seeking information. If a person is unable to make a request in writing, he may seek the help of the CPIO to write his application. Where a decision is taken to give access to a sensorily disabled person to any document, the Central Public Information Officer, shall provided such assistance to enable access to information, including providing such assistance to the person as may be appropriate for the inspection.

Disposal of the Request 1. The CPIO is required to provided information to the applicant within thirty days of the receipt of a valid application. If the information sought for concerns the life or liberty of a person, the information shall be provided within forty-eight hours of the receipt of the request. If the CPIO is of the view that the information sought for cannot be supplied under the provisions of the Act, the would reject the application.

However, while rejecting the application, he shall inform the applicant the reasons for such rejection and the particulars of the appellate authority. He

would also inform the applicant the period with which appeal may be preferred. 2. If an applicant is required to make payment for obtaining information, in addition to the application fee, the Central Public Information Officer would inform the applicant about the details of further fees alongwith the calculation made to arrive at the amount payable by the applicant.

After receiving such a communication from the CPIO, the applicant may deposit the amount by way of cash against proper receipt or by Demand Draft or by Banker's cheque or by Indian Postal Order in favour of the Accounts Officer of the concerned public authority. The CPIO is under no obligation to make available the information if the additional fee intimated by him is not deposited by the applicant. 3.

Where an additional fee is required to be paid, the period intervening between the dispatch of the intimation regarding payment of additional fee and payment of fee by the applicant shall be excluded for the purpose of computing the period of thirty days within which the CPIO is required to furnish the information. 4. If the CPIO fails to send decision on the request on the information within the period of thirty days or forty-eight hours, as the case may be, the information may be deemed to have been refused. First AppealIf an applicant is not supplied information within the prescribed time thirty days or 48 hours, as the case may be, is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the CPIO. Such an appeal, should be filed within a period of thirty days from the date on which the limit of 30 days of supply of information is expired or from the date on which the information or decision of the CPIO is received. The appellate authority of the

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public authority shall dispose of the appeal within a period of thirty days or in exceptional cases with 45 days of the receipt of the appeal.

Second Appeal If the appellate authority fails to pass an order on the appeal within the prescribed period or if the appellant is not satisfied with the order of the first appellate authority, he may prefer a second appeal with the Central Informational Commission within ninety days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant. The appeal made to the Central Informational Commission should contain the following information:- i. Name and address of the appellant; ii. Name and address of the Central Public Information Officer against the decision of whom the appeal is preferred; iii.

Particulars of the order including number, if any, against which the appeal is preferred; iv. Brief facts leading to the appeal; v. If the appeal is preferred against deemed refusal, particulars of the application including number and date and name and address of the Central Public Information Officer to whom the application was made; Prayer or relief sought; vi. Grounds for prayer or relief; vii. Verification by the appellant; and viii.

Any other information, which the Commission may deem necessary for deciding the appeal. The appeal made to the Central Informational Commission should be accompanied by the following documents: i. Self-attested copies of the order or documents against which appeal is made; ii.

Copies of the documents relied upon by the appellant and referred to in the appeal; and iii. An index of the documents referred to in the appeal.

Complaints If any person is unable to submit a request to a Central Public

information Officer either by reason that such an officer has not been appointed by the concerned public authority; or the Central Assistant Central Public information Officer has refused to accept his or her application or appeal for forwarding the same to the Central Public information Officer or the appellate authority, as the case may be; or he has been refused access to any information requested by him under the RTI Act; or he has not been given a response to a request for information within the time limit specified in the Act; or he has been required to pay an amount of fee which he considers unreasonable; or he believes that he has been given incomplete, misleading or false information, he can make a complaint to the Central information Commission. Disposal of Appeals and Complaints by the CICThe Central information Commission decided the appeals and complaints and conveys its decision to the appellant/complainant and first appellate authority/CPIO. The Commission may decide an appeal/complaint after hearing the parties to the appeal/complaint or by inspection of documents produced by the appeal/complaint and CPIO or such senior officer of the public authority who decided the first appeal.

If the Commission will inform of the date of hearing to the applicant or the complainant at least seven clear days before the date of hearing. The appeal/complaint has the discretion to be present in person or through his authorized representative at the time of hearing or may opt not to be present. Important Web-sitesGiven below are the addresses of some important web-sites which contain substantial information relevant to the right to information: i. Portal of the Government of India (<http://indiaimage.nic.in>).

in). ii. Portal on the Right to Information (www.rti.gov.in). iii.

Website of the Central Information Commission (<http://cic.gov.in>) Exempted

Organisations The List of 22 exempted organizations is given below:

• Intelligence Bureau, Ministry of Home Affairs • Directorate of Revenue

Intelligence, Ministry of Finance • Central Economic Intelligence Bureau,

Ministry of Finance • Directorate of Enforcement, Ministry of Finance •

Narcotics Control Bureau • Aviation Research Centre • Special Frontier Force

• Border Security Force, Ministry of Home Affairs Central Reserve Police

Force, Ministry of Home Affairs • Indo-Tibetan Border Police, Ministry of

Home Affairs • Central Industrial Security Force, Ministry of Home Affairs •

National Security Guard, Ministry of Home Affairs • Research & Analysis Wing

of The Cabinet Secretariat • Assam Rifles, Ministry of Home Affairs •

Sashastra Seema Bal, Ministry of Home Affairs • Special Protection Group •

Defence Research and Development Organisation, Ministry of Defence •

Border Road Development Organisation • Financial Intelligence Unit, India •

Directorate General Income Tax (Investigation) • National Technical

Research Organisation • National Security Council Secretariat