

Right to Information Act 2005



THE
RIGHT TO
INFORMATION

<http://socialissuesindia.wordpress.com/>

Table of Contents

<u>Topic</u>	<u>Page No.</u>
Overview-----	3
Article 19 of the Constitution-----	3
Right to Information in Other Countries -----	4
Further Initiative-----	4
Need for RTI -----	5
A Historical Perspective -----	6
Rag Darbari -----	6
The Pioneers – Mazdoor Kisan Shakti Sangsthan-----	6
National Campaign on People’s RTI -----	7
Freedom of Information Bill 2000 -----	7
Freedom of Information Bill 2002 -----	7
Right to Information Bills 2004 -----	8
How to Use the RTI – Practical Tips -----	8
Important Terms-----	8
Provisions for Penalty and Compensation -----	9
How to Locate a PIO -----	9
Time Limits Specified in the RTI Act -----	10
Second Schedule of the RTI Act-----	11
How to decide which rules to follow-----	11
Success Stories -----	12
An Example of use of the Act-----	12
Stories from States -----	12
Obstacles to RTI -----	15
Post RTI Act Activities-----	16
Issues and Constraints in Implementation -----	17
Low public awareness -----	17
Difficulty in filing RTI application -----	17
Poor quality of information provided -----	18
Recommendations -----	18
Create RTI Implementation Cell -----	18
Strengthen RTI readiness -----	18
Undertake awareness Campaign -----	18
Utilize Department of Posts -----	19
Improve RTI filing procedure-----	19
Improvement in Appointment of ICs -----	19
Speed up Pending RTI cases -----	19
Bibliography -----	20

OVERVIEW – RIGHT TO INFORMATION IN INDIA

It took India 82 years to transition from an opaque system of governance, legitimized by the colonial Official Secrets Act, to one where citizens can demand the right to information. The enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy, because the greater the access of citizens to information, the greater will be the responsiveness of the governments to community needs.



The date of 12th October, 2005 shall be remembered as a new era of empowerment for the common man in India. It is applicable every where except J&K.

Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. Democracy revolves around the basic idea of Citizens being at the center of governance. And the freedom of the press is an essential element for a democracy to function. It is thus obvious that the main reason for a free press is to ensure that Citizens are informed. Thus, Citizens Right To Know is paramount.

As a party to the International Covenant on Civil and Political Rights (ICCPR), India is under an international obligation to effectively guarantee the Right to Information as per Article 19 of the ICCPR.

The formal recognition of a legal Right to Information in India occurred more than two decades before legislation was finally enacted, when the Supreme Court of India ruled in State of U.P. v Raj Narain that the Right to Information is implicit in the right to freedom of speech and expression explicitly guaranteed in Article 19 of the Indian Constitution. Subsequently, the Court has affirmed this decision in numerous cases, and has even linked the Right to Information with the right to life enshrined in Article 21 of the Constitution.

Article 19 of the Constitution



This Right to Information (RTI) is basically a derivative of the Article 19 of the Constitution which deals with protection of certain rights regarding freedom of speech etc. it says, "All the citizens shall have the right to freedom of speech and expression." The right has existed since the time India became a republic, but was difficult to enforce without going to court.

Thus, the Right to Information Act is a codification of this important fundamental right (Article 19) of citizens. The Act and its rules define a format for requisitioning information, a time period within which information must be provided, method of giving the information, some charges for applying, and list of organizations exempted from giving information.

RIGHT TO INFORMATION IN OTHER COUNTRIES



Since 1946, the United Nations has recognized that "Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated" "It is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR), and made legally binding on States Parties to the International Covenant on Civil and Political Rights (ICCPR).

A basic principle behind most freedom of information legislation is that the burden of proof falls on the body asked for information, not the person asking for it. The requester does not usually have to give an explanation for their request, but if the information is not disclosed a valid reason has to be given.

It is important to note that most freedom of information laws exclude private sector from their jurisdiction. That means, information held by the private sector cannot be accessed as a legal right. This limitation entails serious implications because now private sector is performing many functions which were previously the domain of public sector. As a result, a lot of information is now with the private sector, but it cannot be forced to disclose information

RTI Across Globe

Australia	1982
Canada	1983
Denmark	1985
South Korea	1996
Japan	1999
South Africa	2000
UK	2000
Pakistan	2002
Zimbabwe	2002
Mexico	2003
Peru	2003
Uganda	2005
Germany	2005
Switzerland	2007
USA	2007
China	2008
Indonesia	2008
Bangladesh	2009

Starting with Sweden and Finland, the principle of the freedom of information has been approved as part of legislation throughout the world in over 90 countries today, representing nearly five billion people. Most have done so in last 15 years as shown in the table here. Over 50 countries have proposals to adopt law pending.

In 1990s, the Right to Information was seen predominantly as an administrative governance reform, whereas today it is increasingly being seen as a fundamental human right.

Further Initiatives

Open Data. Both the US and the UK governments launched new open data sites to make raw datasets of public information available for the first time. This allows for the public to do its own analysis of policies and expenditures. In the UK, this included detailed spending information.

World Bank. The World Bank transparency policy released in December 2009 substantially improves the transparency of the Bank. While it is not perfect, there is hope that the policy will set the standard for other international financial institutions.

THE NEED FOR THE RIGHT TO INFORMATION



In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by countries, intergovernmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings.

The right to information forms the crucial underpinning of participatory democracy - it is essential to ensure accountability and good governance. The greater the access of the citizen to information, the greater will be the responsiveness of government to community needs. Alternatively, the more restrictions that are placed on access, the greater will be the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights as citizens or make informed choices.

The Right to Information had already received judicial recognition as a part of the fundamental right to free speech and expression. An Act was needed to provide a statutory frame work for this right. This law would lay down the procedure for translating this right into reality.

In this Age of Information, its value as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is important because every developmental process depends on the availability of information.

Right to know is also closely linked with other basic rights such as freedom of speech and expression and right to education. Its independent existence as an attribute of liberty cannot be disputed. Viewed from this angle, information or knowledge becomes an important resource. An equitable access to this resource must be guaranteed.

Soli Sorabjee stressing on the need of Right to Information aim at bringing transparency in administration and public life, says, "Lack of transparency was one of the main causes for all pervading corruption and Right to Information would lead to openness, accountability and integrity".

According to Mr. P.B. Sawant, "the barrier to information is the single most cause responsible for corruption in society. It facilitates clandestine deals, arbitrary decisions,

manipulations and embezzlements. Transparency in dealings, with their every detail exposed to the public view, should go a long way in curtailing corruption in public life."

The free flow of information in India remains severely restricted by three factors:

1. The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923;
2. The pervasive culture of secrecy, callousness and arrogance within the bureaucracy, and
3. The low levels of literacy and rights awareness amongst India's people.

The primary power of RTI is the fact that it empowers individual Citizens to requisition information. Hence without necessarily forming pressure groups or associations, it puts power directly into the hands of the foundation of democracy- the Citizen.

A HISTORICAL PERSPECTIVE

In India, the feudal social fabric has exploited the formal democratic system to its advantage because the literate and the well to do are too busy building their careers and empires to bother about social inadequacies and the illiterate and the poor are too powerless to force any change.

Rag Darbari!

The celebrated Hindi novel Rag Darbari (the Court Music) by Shrilal Shukl, written years ago poignantly and allegorically depicts how a person spends a lifetime "in vain to get a 'nakal' (copy) from the court registry if he doesn't pay the mandatory bribe". In such a country, the Right to Information movement has a widespread appeal for everyone. It has been developed through diverse strands for almost the entire period of the country's independent history.

The Pioneer – Mazdoor Kisan Shakti Sangathan

The Right to Information campaign in India began with the Mazdoor Kisan Shakti Sangathan (MKSS) movement to bring in transparency in village accounts via the demand for minimum wages in rural India. Ghost entries in muster rolls were a sign of rampant corruption in the system, which prompted MKSS to demand official information recorded in government files. The movement soon spread across India.



From very modest beginning in the villages of Rajasthan, the success of MKSS has been a source of inspiration for activists in India and throughout the world. It led to the genesis of a broader discourse on the Right to Information in India.

In 1993, a draft RTI law was proposed by the Consumer Education and Research Council, Ahmedabad (CERC). In 1996, the Press Council of India headed by Justice P.B. Sawant presented a draft model law on the Right to Information to the Government of India. It was later updated and renamed the PCI-NIRD Freedom of Information Bill, 1997. Unfortunately, the draft laws never aroused interest of the Government.

National Campaign on People's Right to Information (NCPRI)

In 1996, MKSS movement led to the formation of National Campaign on People's Right to Information (NCPRI) at the national level. Its aims to provide active support to grassroots struggles for the Right to Information and to lobby government to enact and implement effective access to information legislation.

In 1997 efforts to legislate the Right to Information, both at the State and National levels, quickened. A working group under the chairmanship of Mr. H.D. Shourie (the Shourie Committee) was set up by the Central Government and given the mandate to prepare draft legislation on freedom of information. The Shourie Committee's Report and draft law were published in 1997. It met with criticism for lack of high enough standard of disclosure. The draft law was never introduced in Parliament.

In 1999 Mr. Ram Jethmalani, then Union Minister for Urban Development, issued an administrative order enabling citizens to inspect and receive photocopies of files in his Ministry. But the Cabinet Secretary did not permit this order to come into effect.

Freedom of Information Bill, 2000

Eventually, the Shourie Committee draft law was reworked into the Freedom of Information Bill, 2000, an even less satisfactory Bill than the original draft. The 2000 Bill was sent to the Parliamentary Standing Committee on Home Affairs, which consulted the civil society groups before submitting its Report in July 2001. The Committee recommended that the Government address the flaws in the draft Bill pointed out by civil society. However, the Government did not implement that recommendation.

Freedom of Information Bill, 2002



The national Freedom of Information Bill, 2000 was introduced in Parliament in 2002. It was passed in December 2002 and received Presidential assent on January 2003, as the Freedom of Information Act, 2002. Unfortunately, a date for the Bill coming into force was never notified, such that it never actually came into operation.

In May 2004, a new UPA Government came into power at the Centre. The national campaign for Right to Information received a major boost when the UPA Government's Common Minimum Program promised that: "The Right to Information Act will be made more progressive, participatory and meaningful". The National Advisory Council (NAC) was set up to oversee implementation of the Government's Common Minimum Program. Since its

inception, the NAC took close interest in RTI. It considered the proposal from National Campaign for the People's Right to Information (NCPRI)

Meantime in 2004, the Supreme Court, considering the PIL of advocate Prashant Bhushan that wanted the central government to notify the Freedom of Information Act 2002 immediately, ordered the Central government to either notify the Act and if not issue interim guidelines. This set the ball rolling and was a major boost to the RTI movement.

Right to Information Bill, 2004

The Right to Information Bill, 2004 (RTI Bill, 2004), which was largely based on NCPRI's original draft Bill, was tabled in December 2004 during the winter session of the Lok Sabha.

The Bill was referred by Parliament to a Standing Committee. Finally the Report of the Committee (including a proposed amended version of the RTI Bill) was tabled in the Lok Sabha in May, 2005 and was quickly approved. The Right to Information Act formally came into force on 12 October, 2005.

Download Right to Information Act 2005

<http://www.rti.gov.in/rti-act.pdf>

HOW TO USE THE RTI – PRACTICAL TIPS

Refer to the following page for a list of frequently asked questions:

<http://www.righttoinformation.org/faqs.asp>

Important Terms

Right to Information empowers every citizen to seek any information from the Government, inspect any Government documents and seek certified photocopies thereof. Right to Information includes the right to:

1. Inspect works, documents, records.
2. Take notes, extracts or certified copies of documents or records.
3. Take certified samples of material.
4. Obtain information in form of printouts, diskettes, floppies, tapes, video , cassettes or in any other electronic mode or through printouts.

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.

Record includes:

1. Any document, manuscript and file
2. Any microfilm, microfiche, and facsimile copy of a document
3. Any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
4. Any other material produced by a computer or any other device;
5. An applicant cannot ask for opinions/advice/views under the RTI Act, unless the opinion/advice/view is already on "record".

However, under Section 4(1)(d), an applicant can ask for "reasons" behind a administrative or quasi judicial decision of a public authority, especially if he is an "affected person".

PIO	Public Information Officer
CIC	Chief Information Officer
SIC	State Information Commissioner
CIC	Central Information Commissioner
IC	Information Commissioner
PA	Public Authority
AA	Appellate Authority

Provisions for Penalty and Compensation

Penalty provision

Penalty can be imposed, if the PIO has:

1. Refused to receive an application
2. Not furnished the requested information within 30 days of receiving the application
3. Malafidely denied the request for information
4. Knowingly given incorrect, incomplete or misleading information
5. Destroyed information which was the subject of the request
6. Obstructed in any manner, in furnishing the information

The amount of penalty shall be Rs. 250 per day, till the information is furnished or the application is received, subject to a maximum of Rs. 25,000. The penalty has to be paid by the PIO from his salary and not by the Public Authority. The CIC or the SIC will give the PIO a reasonable opportunity to be heard before the penalty is imposed.

The CIC or the SIC can also recommend disciplinary action as per the service rules applicable to the PIO.

Compensation provision

The CIC or the SIC order the Public Authority to compensate the complainant/appellant for

Check Your RTI Awareness
Take the Online Quiz here
<http://www.rti.gov.in/raq.asp>.

any loss or detriment suffered. The complainant/appellant should be able to justify the claim for compensation as well as the amount of compensation sought.

How to Locate a Public Information Officer (PIO)

1. Visit the website of the concerned public authority and scrutinize RTI icon. For state information, also visit official portal of state govt and information commission for these details. If you do not get details of PIO, visit nearest office of relevant public authority and try to get address of PIO. Name is not important, as officers do get changed.
2. If you do not still succeed, please address your application to PIO C/o. Head of the dept/office to which information is required. If you want information of a district, you can address application to PIO of District Collectorate.
3. If the envelope is not accepted or returned by post office, send the original application with photocopy of envelope to the PIO of Office of Chief Secretary at State Capital or connected ministry at Delhi, with a request to forward the enclosed application to the concerned PIO. A reference to india.gov.in website will be useful.
4. Alternatively, you can also file RTI application for the same information with PIO of Office of Chief Secretary at State Capital or connected ministry at Delhi, and PIO will redirect the application to correct PIO within 5 days of receipt by him with intimation to you.
5. Simultaneously, file a complaint with Central Information Commission/State Information Commission for difficulties in locating PIO of a particular dept/office.
6. You can take help of local/state-level NGOs or RTI helpline phone numbers for locating correct PIO, who would be holding information required by you.
7. Most of Central Government public authorities have placed details of PIO etc on their websites. However, states are yet to follow. Some state information commissions do not have details of PIO/FAA on their website!



Time limits specified in the RTI Act

Various time limit has been prescribed under which the information can be obtained under Right to Information Act. These time limits are prescribed by the Act itself, and failing which an RTI Applicant can approach appropriate authorities for relief. Following are the various time limits specified in the RTI Act 2005

Note: 3rd Party can be anyone other than the citizen applying for information

For matters involving "Life and Liberty", the time limit for the PIO to provide information is 48 Hours.

Activity	Time Period
For PIO to reply to application	30 days from date of receipt of application
For PIO to transfer to another PA under Sec 6(3)	5 days from date of receipt of application
For PIO to issue notice to 3 rd Party	5 days from date of receipt of application
For 3 rd Party to make a representation to PIO	10 days from receipt of notice from PIO
For PIO to reply to application if 3 rd Party involved	40 days from date of receipt of application
For applicant to make First Appeal	30 days from date of receipt of PIO's reply or from date when reply was to be received
For First Appellate Authority to pass an order	30 days from receipt of First Appeal OR Maximum 45 days, if reasons for delay are given in writing
For applicant to make Second Appeal before CIC/SIC	90 days from receipt of First Appeal orders or from the date when orders were to be received
For CIC/SIC to decide Second Appeal	No time limit specified

Second Schedule of the RTI Act 2005

The Second Schedule of the RTI Act exempts certain Public Authorities under the Central Government from disclosure of information under the RTI Act 2005. However, these Public Authorities have to respond to RTI Applications which pertain to subjects of Human Rights and Corruption. They are also supposed to have a PIO and a AA.

As on 28th March 2008, the following is the list in the Second Schedule:

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Sashastra Seema Bal.
16. Directorate General of Income-tax (Investigation) .
17. National Technical Research Organization.
18. Financial Intelligence Unit, India.

19. Special Protection Group.
20. Defense Research and Development Organization.
21. Border Road Development Board.
22. National Security Council Secretariat

NOTE: Some States have also exempted certain Public Authorities from the purview of the Act. Please check separately for each State.

How to decide which rules to follow?

RTI Rules framed by Central or State Govts. prescribe formats for application or appeal, amount of fees, mode of payment of fees, other charges, etc. Following guidelines will facilitate decision as to which rules are to be followed while applying under RTI Act 2005:

1. If you want information from public authorities which are part of Central Govt. then follow rules of Central Govt, irrespective of location of the office of public authority. For example, for information from Income Tax Dept. you need to follow Central Govt rules irrespective of location of office of Income Tax Dept. where from you want information. To further clarify, if you want information from Income Tax Office located in Gujarat or Tamilnadu, you have to follow central govt. rules.
2. If you want information from public authority which is part of State Govt you need to follow rules of that state. For example if you want details of land in Gujarat, you have to follow rules of Gujarat Govt irrespective of your place of residence. For example say, you are residing in Mumbai, but want information relating to Bangalore Municipal Council, you have to follow rules of Karnataka State Govt.
3. Your place of residence is of no relevance when deciding which rules are to be applied. Rules applicable to the custodian of the information will have to be observed by applicant.
4. In case of High Courts and Supreme Court, rules specially framed by these authorities will have to be followed, while applying for information from these Courts. Subordinate Courts follow the same rules as the rules of the High Court of their State.
5. Similarly, Parliament (Lok Sabha and Rajya Sabha) and each State Legislature have their own RTI Rules.

Rules of State Governments are available on official websites of respective states and also on the websites of State Information Commissions.

SUCCESS STORIES

A Hypothetical Example Of How The RTI Act Works

A poor slum dweller applied for a ration card. He was told to produce Rs 2000 in bribe to get the card. Empowered with the knowledge of how to use the RTI Act, he made his application without giving any bribe.

He had gathered that the bribe-givers got their cards in about 4 weeks time. So he waited for a month after submitting the application. Of course, he did not receive his ration card. He waited for another one month. Then, he paid Rs 10 for the simple RTI application form to ask "up to which date the ration card applications have been

cleared and the progress of his application". He submitted the completed form.

This shook the corrupt officials because the true answer would reveal that applications after him had been approved and they will not be able to justify the delay for his application. So, they acted to protect themselves and the poor fellow got his ration card immediately.

This story has been repeated many times in getting a road repaired, getting an electricity connection, admissions in educational institutions and so on.

Stories from States

JHARKHAND

Getting Job: Sita Devi, village Kakni, PS- Saraiyahat, Dist Dumka Jharkhand

She had applied for the post of PARA TEACHER under the Sarv Shiksha Abhiyan to Dumka District Education Project in the year 2004, but the Project Officer had selected another applicant who was not academic as qualified as Sita Devi. She had filed several applications to the District Administration & the minister of education, but she failed to get justice. Lastly she went to the door of Hon'ble High Court, Ranchi, but she could not succeed. Lastly she filed an application seeking information under Right to Information and managed to get the joining letter. She finally joined her service.

Ration Card: Sokol Marandi of Dumka got ration card within 12 hours

Sokol Marandi, a 50 years old schedule tribe was trying to get ration card for more than 6months. His original ration card was destroyed and he was very much needy. He got his application drafted by an NGO and submitted it to the Food Supply Office in the evening around 4.55. p.m. on 03.07.2006. On the next morning at 7.00. a.m., the Marketing Officer visited his village and assured to provide him his ration card. On the very afternoon he was handed over his ration card

CHHATTISGARH

RTI exposes WRONG clearances to Jindal's 1000 MW Thermal Power Plant (TPP)

The Ministry of Environment & Forests awarded Clearance to Jindal's 1000 MW TPP without conducting mandatory public hearing. At the hearing before Central Information Commission on 15.02.2007, Director Dr.S.K.Aggrawal representing the Ministry that no public hearing was held before the clearance was given for the first phase (500 MW) of the project.

Ramesh Agrawal a member of Jan Chetana (which works on environmental issues) sought information on 23rd July, 2006 regarding Environmental Clearance accorded by Union Ministry of Environment and Forests to Jindal's 1000 MW Thermal Power Plant (TPP) at Tamnar District Raigarh of Chhattisgarh.

The Ministry did not provide information despite payment of Rs.318. So a complaint was lodged with Central Information Commission on 7th January, 07. Chief information Commissioner Mr. Habibullah Wajahat took the matter seriously and ordered Ministry to supply the sought information within 10 days and refund the payment Rs.318 on 6th November, 06 and also issued show cause notice to impose penalty.

MP

Implement of RTI in Collectors & S.P. offices (Narendra Singh Tomar "Anand")

Section 4 of Right to Information Act makes it mandatory to publish public information on various media including the Internet. But I noticed, the District Collectors of Gwalior, Morena, Bhind, Sheopur, Datia, Shivpuri etc & Police Superintendent of District Morena, Gwalior, Bhind, have not published their information on internet till 15th October 2005. So, as an advocate I issued a notice to them through Emails. Proper responses from District Collectors were received almost immediately and they posted necessary information on their websites within 2- 10 hours.

But District Superintendent of Police, except of Rewa and Sidhi districts, did not oblige. So I filed an application under the RTI act to S.P. Morena to get some information & also asked the web address of his Published

information on internet. This prompted action and the websites were updated within two days. I was satisfied that I got success to start implementation in these offices.

Obtaining Information from the State Government (Submitted by Vijay Kumar Asthana)

My colleague could not get promotion, so he applied under the provision of Act. Thus he was able to his ACR and came to know that he has adverse CR in the current year. Through RTI he is in a position to his ACR, which is otherwise unreachable.

ORISSA

RTI for Drinking Water: A new way of fight for right.

More than two hundred women of Baharana and Kunanga village of Banakhandi GP of Gop Block fought for safe drinking water from the Administration & used Right to Information Act for the same. The village women came to Gop Block office in a rally & demanded for safe drinking water facility in their villages. They gave a memorandum to the Block Development Officer & have deposited 108 RTI application forms to know different info regarding same.

People of the villages like Baharana, Murkundi, Kunanga, Dasabatia, Sarada etc of Banakhandi GP near Konark have been facing severe drinking water scarcity. The three tube wells in Baharana village installed by Government are salty with iron smell are not suitable for use. Interestingly, their relatives avoid to come this village due to this reason. Generally the villagers provide green coconut or bottle water to their guests for hospitality. In rainy season they collect the roof rainwater for drinking and cooking purpose. In summer every day they have to walk 2 Kilometers to a canal known as Safei Nala (Water Drainage canal) for water. Those who are unable to go long distance they use the water from nearby muddy ponds, which are also used by the villagers for bathing & cattle washing purpose.

Banakhandi Gram Panchayat near Pipili-Konark Highway has a population of 5800 and has been without safe drinking since ages.

The BDO Mr. Mishra praised their new way of fight for right and promised to visit these villages & solve their problem.

RAJASTHAN

Pandit Deen Dayal Upadhyaya Trust Land Scam

Submitted by Vivek Agrawal

We were concerned with irrational distribution of Institutional land by Jaipur Development Authority. We were aware that institutional lands are primarily allotted to politicians, bureaucrats and ex bureaucrats. Hardly any genuine NGO gets piece of land although those lands are meant for them.

With this in mind, we filed an application to Public Information Officer for land allotments and refusals. There was no response from JDA even after 45 days. Then, we filed an appeal before Jaipur Development Commissioner. But again no response. seeking justice and action. So we appealed before State Public Information Commission. Again we got disappointment to hear that our appeal is not in proper format. But accidentally the` copy was marked to Principal Secretary Urban Development, who instructed JDA to provide information.

Ultimately on July 25, 2006, JDA provided us details of allotment done during last 2 years. The first name in the list was of this Deen Dayal Upadhyaya Trust. We further collected information about land, trustees, financial transactions, legality, procedural mistakes etc. Local newspapers did not show interest in publishing this story. Then we approached two of our friends in NDTV and Rajasthan Patrika who broke this scam and later it was taken up by media followed by politicians and advocates. Recently, DDUT has surrendered the allotted land, thanks to the RTI Act.

The Power of RTI Application

(1) Submitted by Manish Sisodia

Ramkaran, from Tilonia took 5 women to submit a right to information application on the issue of old age and widow pension to the SDM's office. The SDM immediately called the concerned officer from the pension department. He told the officer that for the last 4 months these women have not received their pension, and the files should be brought to his table immediately.

Before accepting the application he began questioning the officer on the issue. The officer informed that these women had not filed their birth certificates and that was delaying the release of their pension. The SDM instructed the officer to release their pensions and take their birth dates from Ramkaran and the Patwari of the village. So even without RTI applications the five women received their four month pension on the spot.

(2) Submitted by Manish Sisodia

A gentleman wanted some personal information from UCO bank in Mount Abu in Jodhpur district, Rajasthan. He approached the bank officials on several occasions but was denied that information. He even tried submitting an RTI application but failed.

He then approached the bank with a volunteer from the Dosra Dashak, Yuva Shakti Sangathan. After a big argument the bank manager asked them to come back after a few days to take the information. The volunteer asked the manager to give it in writing on their application that they should come back after a few days to collect the information and said that they would not leave until the manager put it down in writing and gave it to them. The bank manager eventually gave the information without accepting the right to information application.

More Success Stories

RTI Cases Decided by the Courts

Canara Bank:

The bank refused to release information about its employee transfer policy and files relating to transfers. The CIC ruled for disclosure and Kerala High Court upheld CIC decision.

Diamond Jubilee School:

The school argued in Madras High Court that the school is a private institution and is not subject to RTI. The court dismissed the case and ruled that the school is subject to RTI since it gets substantial support from the government.

UPSC:

CIC ruled that UPSC must release the marks obtained by examinees, the method used to score the grades, the cut-off level for passing the examination, and sample answers of the questions. UPSC appealed to the Delhi High Court. The court upheld the CIC ruling. However UPSC appealed to division bench of the court. The division bench is scheduled to rule on the case. (CW-1770-2007)

Export Promotion Council:

The Council claimed that it is not covered under RTI, since only a part of its budget was from government and this grant was for specific projects. CIC ruled against the Council and Delhi High Court affirmed the ruling.

Arvind Kejriwal:

Arvind requested copies of files dealing with selection and posting of officers by Department of Personnel and Training (DOPT). The request was refused. Arvind appealed to CIC and CIC ruled that DOPT had to show the files to Arvind. DOPT showed the files but refused to give him copies of the files. Arvind appealed to CIC but CIC refused to intervene. Arvind filed writ to force DOPT to give copies of the files. The Delhi High Court agreed with Arvind and remanded case to CIC to rehear the case.

J K Gupta

JK Gupta asked PA for files on salary and compensation. The request was ignored. CIC ordered the files released and imposed a fine of Rs 20,000/ on the PA. The PA responded to CIC, saying that JK Gupta was Disbursement Officer of the PA and therefore should have the files anyway. (Gupta contends he is NOT the Disbursement Officer and has no access to files). CIC agreed with PA and reversed the fine. Gupta filed writ claiming CIC was wrong in accepting PA's arguments. The Delhi High Court ruled in favour of J K Gupta and remanded the case to CIC for further proceedings.

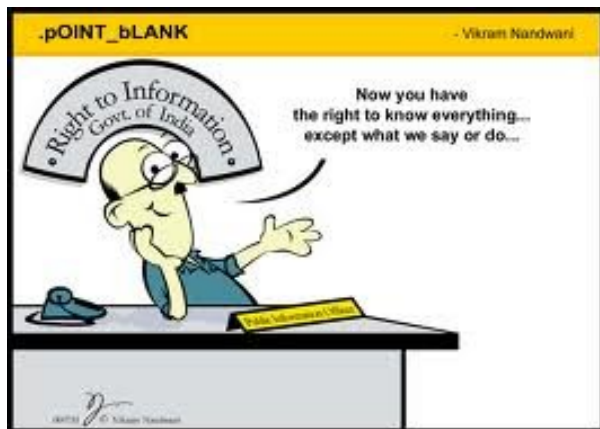
V V Minerals:

Requestor asked for documents from Director of Geology about a lease granted to V V Minerals. The PIO refused the request but the AA ordered the documents released. In response VV Mineral appealed to Madras High Court. The Court dismissed the appeal on all counts and ordered release of the documents.

Bhagat Singh

Singh asked Income Tax Department, under RTI, for files concerning an investigation into possible tax evasion by his estranged wife. Tax Dept. refused claiming exemption for records under investigation. CIC asked Tax Dept. to release the records once investigation was complete. Delhi High Court ruled against CIC, saying exemption 8 section (h) should be construed narrowly and that the section does not say that the investigation has to complete before records can be released. The court ordered release of records.

OBSTACLES TO RTI



Although section 22 of the Right to Information Act, 2005 provides it overriding effect over inconsistent legislation or rules, which is a commendable provision, its practical application by the bureaucrats may be affected by the continued presence of several restrictive pieces of legislation. The Official Secrets Act, 1923, a legacy of British rule in India, contains several provisions prohibiting the flow of information from the Government to ordinary people. It was enacted to protect against spying, but its provisions are far-reaching. They serve not only to restrict access to information, but also

to punish the disclosure of certain kinds of information, by any person. Sections 123 and 124 of the Indian Evidence Act, 1872 also impose unnecessary restrictions on making available official information as evidence.

Conduct rules for Civil Servants are also anachronistic and prohibit disclosure of official information. Section 9 of the All India Services (Conduct Rules) 1968 states that no civil servant shall communicate directly or indirectly any official document or part thereof or information to any government servant or any other person to whom he is not authorized to communicate such document or information. The Central Civil Services (Conduct) Rules, 1964 lay down similar restrictions.

Such stumbling blocks must be removed if the RTI culture of openness is to take root.

POST RTI ACT ACTIVITIES



Right to Information activists and civil society groups formed the 'Campaign to save the RTI Act' in response to some talks of tentative amendments to the Act. Such proposed amendments would narrow the scope of the Act.

The Second Administrative Reforms Commission submitted its first report on the implementation of the Right to Information law to Government of India. The report sets out key recommendations to improve the functioning of the RTI Act, which include

1. repealing the Official Secrets Act 1923 and incorporating its unauthorized communication of official information as an offence under the National Security Act,
2. ensuring that at least half the members of Information Commissions are drawn from non-Civil Service backgrounds
3. overhauling public records management with the introduction of public records offices both at the centre and state levels

4. handing responsibility for monitoring the law to the Information Commissions, and
5. formulating a road-map for effective implementation in the judiciary and legislature.

Indian Postal Orders were allowed as another acceptable mode of fee payment under the RTI Act. The modes of fee payment notified in the Central and State rules are too few in number. This has caused much inconvenience to citizens while submitting information requests.

The National Informatics Centre (NIC) has developed an RTI Portal to enable citizens to search for information published online by various departments in the Central and State Government.

AGNI (Action for Good Governance and Networking in India) have developed a simple and comprehensive Citizen's Guide on Using the Right to Information Act, 2005.

The Government of India amended the Central Civil Service (Conduct) Rules, 1964 to bring them in line with the provisions of the RTI Act. The amendment, which was made by a notification issued on 18 October 2005, states, "Officers will now communicate information in accordance with the RTI Act and its attendant Rules."

States such as Delhi, Andhra Pradesh and Maharashtra appear to be significantly ahead of others in implementing the Act.

ISSUES AND CONSTRAINTS IN IMPLEMENTATION

Unlike many other countries (for e.g. UK) which took several years to operationalize the Act post the enactment, India took only a few months to bring it into force. This time was inadequate to change the mindset of the people in Government, create infrastructure, develop new processes and build capacity to deliver information under this Act. This has led to implementation issues which need to be identified and addressed.

Low Public Awareness

Surveys have revealed that the awareness about the RTI Act is still very low among the underprivileged compared to their counterparts. For example,

Low awareness in women compared to men,
Low awareness in rural compared to urban dwellers, and
Low awareness in OBC/SC/ST/STRESS compared to general population.

Moreover, the quality of awareness is also poor across the spectrum of people.



Difficulty in filing RTI application

Under Section 6 of the RTI Act, PIOs are required to provide reasonable assistance to the applicant in drafting and submission of the application. But some issues demand attention.

Non-availability of user guide: Lack of user guides results in substantial efforts on the part of the information seeker to gather knowledge about the process for submitting a RTI request. It was found in a survey that over 50% of the people surveyed requested availability of a user guide/ manual at all the Public Authorities.

Standard forms for RTI application: There have been numerous debates on standardizing the RTI application form. While the Act does not necessitate having a standard application form, some States have provided a standard form. There are significant advantages of using a standard form for a RTI application. The standard form helps in getting basic information such as address/ contact numbers, form in which information is requested etc., which helps the PIOs in providing the requisite information and contacting the applicant for communication required under section 7(3) etc.

Inconvenience of application submission: Majority of applications are written on paper and submitted through post or directly at the PIO office. Submission through electronic media – email or website – still needs adequate efforts across board.

Inconvenient options for payment of application fee: Not all forms of payment are acceptable everywhere. For example, postal order payment option is not accepted in Maharashtra, Orissa, and AP.

Poor quality of information provided

Alarming high percentages of RI applicants receive incomplete or irrelevant information. This is a major lacuna that defeats the very purpose of the Act. Other major complaints of information seekers are:

Non receipt of response within 30 days
Rejection of Application
Unable to submit the RTI application

RECOMMENDATIONS FOR BETTER RTI

1. Creation of RTI Implementation Cell by appropriate Governments

This cell can act as a facilitator between the government and the information commissioner (IC). It can undertake any duty that would promote better implementation of the RTI Act. For example,

1. Undertake mass campaign among underprivileged and weaker section of society to raise level of awareness about RTI.
2. Device ways to solve problems faced by the public, PIOs and information commissioner

3. Train public information officers and produce training material for Public Authorities
4. Suggest better ways for record keeping to the Public Authorities so that information dissemination is faster and better
5. Facilitate use of electronic media – email and websites.

2. Strengthen RTI “readiness” of Public Authorities

1. Creation of A Public Authority RTI cell (PARTI cell) to proactively address RTI related issues
2. Implement quality e-record management
3. Identify areas for proactively disclosure
4. Create standardized format for reporting to IC

3. Undertake Massive Awareness Campaign

The awareness program must especially target the vulnerable categories of citizens such as: (i) women; (ii) farmers and rural families; (iii) tribal population, and (iv) middle and working class, for whom most of the social benefit schemes of the Government are targeted. For this purpose, RTI awareness and education needs to be aggressively pursued using the appropriate medium of communication.

Learn from Mexico

In Mexico, IFAI has engaged in a broad public relations campaign involving pamphlets, posters, radio and television spots, academic publications and a massive and successful Internet drive, spearheaded by an extensive and user friendly website.

4. Department of Posts to assist in drafting and forwarding RTI applications

The Department of Posts of India has been officially designated to Act as APIO to all the Central Ministries. The APIO is responsible for receiving the RTI applications/appeals and forwarding the same immediately to the concerned PIO/Appellate Authority of the respective Ministry. Five days are added in the time period for applications submitted this way.

Department of Posts should also introduce RTI envelopes which will have inbuilt cost of RTI application fee.

5. Improve the convenience of filling RTI request

Create a standard RTI application form: Better still if this form format is popularized through mass media.

Uniform payment options: Allow 4-5 common modes of application fee payment in all states.

Set up RTI Call Centers: simulating example of Bihar's "Jankari". All the benefits of a Call Center can be added to benefit the public. Jankari is an IVRS enabled RTI call centre to assist applicant in filing of application. For filing an application under RTI Act, the applicant has to dial 155311 (even from a PCO) and can then seek information from the public information officer of any Government office.

Set up TRI Portal: Encourage electronic RTI application submission through user friendly websites. This should be the ideal approach for the future. It will offer a lot of other benefits.

6. Appointment of Information Commissioners

This is an issue that requires immediate attention. A mechanism must be devised so that professionals and bureaucrats of only high integrity get appointed.

7. Initiate immediate actions to reduce the backlog of pending RTI case

This directly points to the deficiencies in the practical implementation of the RTI Act. If not handled immediately, it can defeat the very purpose of the RTI Act.

BIBLIOGRAPHY

Read RTI Act 2005

<http://www.rti.gov.in/rti-act.pdf>

RTI Awareness Quiz

<http://www.rti.gov.in/raq.asp>

RTI Guide for Information Seekers

http://persmin.gov.in/WritereadData/RTI/1_8_2007_IR.pdf

Department of Posts (List of Central Assistant PIOs)

<http://www.indiapost.gov.in/rtimanual16a.html>

RTI Handbooks

http://www.rti.org.in/Knowledgebank_Handbooks.do

Important Websites for Information

<http://www.righttoinformation.org/>

<http://right2information.wordpress.com/>

<http://www.rtiindia.org/forum/content/>

<http://rti.gov.in/>

Examples of Pending RTI Cases

http://www.dnaindia.com/india/report_5k-rti-cases-pending-before-gic_1263311

<http://www.indianexpress.com/news/rti-cases-piling-up-commission-seeks-state-govts-help/632422/0>

RTI in Other Countries

http://www.ifex.org/international/2010/09/28/right_to_know/

<http://www.article19.org/pdfs/press/five-billion-now-have-right-to-information.pdf>

A Recent Research Paper

<http://rtiworkshop.pbworks.com/f/2010-04-IN-Good-Practices-Relating-to-RTI-Implementation-in-India-IIPA.pdf>

<http://socialissuesindia.wordpress.com/>