

## Right To Information Act – A Step Forward

The Right to Information Act (The Act), is the first major step in the direction of making the working of the Government more transparent, and accountable to the real power: The common man.

the FOI Act was provided. As a result the provisions of the FOI Act were never implemented and it remained a non-starter. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the FOI

In view of significant changes proposed in the FOI Act, the Government decided to repeal the Freedom of Information Act, 2002. The new Act comes into force 120 days after its enactment, which is quite an achievement, considering the fact that the FOI Act did not specify any date for its own commencement, and thus, never saw the light of the day.

The Act declares unequivocally that subject to the provisions of this Act, all citizens shall have the right to information. (Section 3). One far reaching effect of the Act is to reduce the force of the Official Secrets Act, an Act, which has existed since 1923, and which should have been scrapped at the time India became independent of the British rule and established a democratic system of government.

The Act declares that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Moreover, no court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question other than by way of an appeal under this Act.



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The Right to Information Act is a milestone in India's progress. The law recognises the fact that the right to access the information collected by the Government and lying in the records of the Government, is a fundamental right of the citizens of India. Such information is collected by public servants for public good, using public money and the new law recognises the fact that the public has every right to know what lies buried within the red tape. This right is no less than the citizens' fundamental right.

### The object

The purpose of the Act, as stated in the preamble is, "to provide for setting out the practical regime of Right to Information for people 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 for matters connected therewith or incidental thereto".

### Freedom of Information Act, 2002 repealed

The Act replaces the Freedom of Information Act (FOI Act), but unfortunately the FOI Act did not have enough teeth. Moreover, no date of commencement of

Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law.

The important changes proposed to be incorporated, *inter alia*, include establishment of an appellate machinery with investigating powers to review decisions of the Public Information Officers, penal provisions for failure to provide information as per law, provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities, etc.

### Right to Information defined

The Act defines 'right to information' to mean the right to information accessible under this Act, which is held by or under the control of any public authority and includes the right to:

- (i) Inspection of work, documents, records.
- (ii) Taking notes, extracts, or certified copies of documents or records.
- (iii) Taking certified samples of material.
- (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

The definition is vast enough to cover inspecting the work, obtaining the certified copies, samples, and also the digital copies. The terms, 'information' and 'record' have also been suitably defined.

The Act casts an obligation on Public Authorities to maintain all its records duly catalogued and indexed in a manner and form, which facilitates the Right to Information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated. (S. 4(1)(a))

### Spadework before commencement of Act

The government machinery shall have to work overtime to gear up for the responsibilities the Act places on it in respect of providing

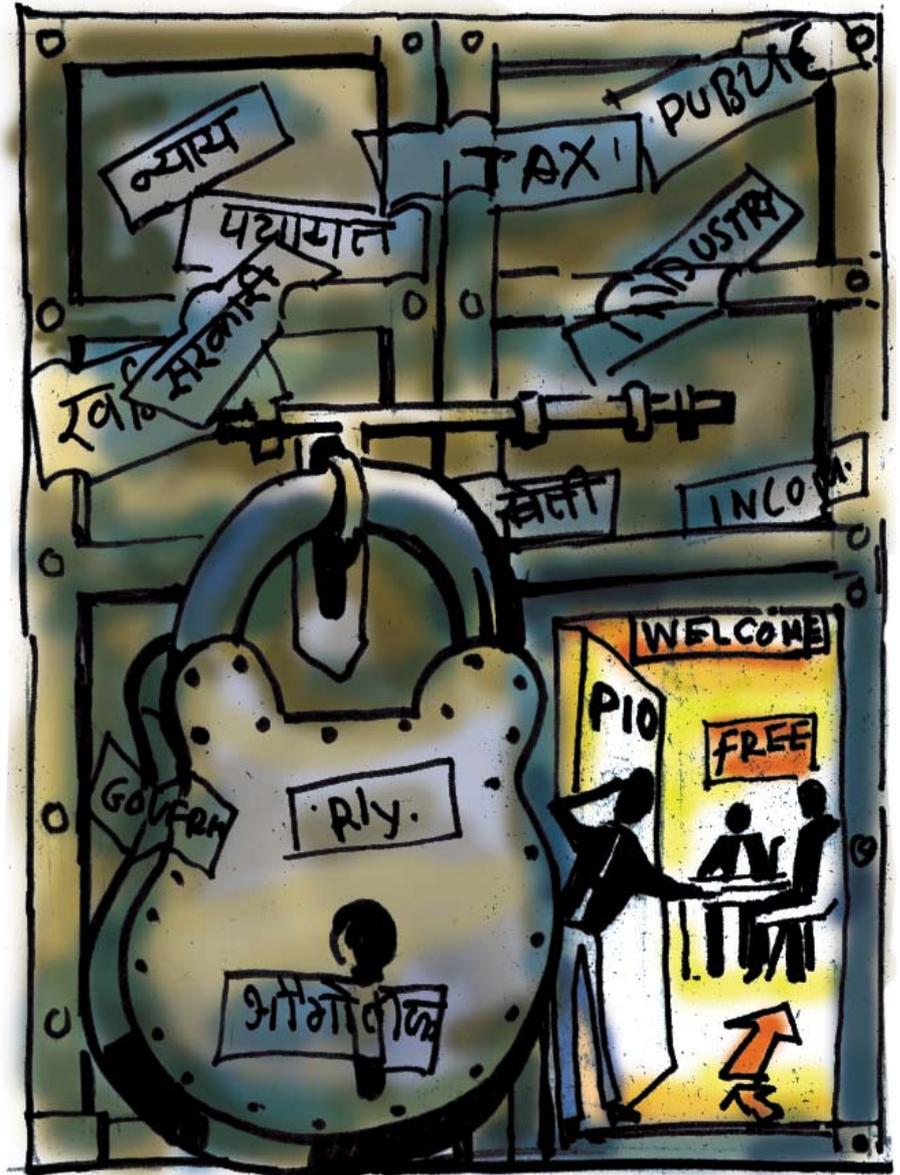
the Right to Information to citizens. It casts an obligation on public authorities u/s 4(1)(b) to publish before the commencement of this Act:

- (i) The particulars of its organisation, functions and duties.
- (ii) The powers and duties of its officers and employees.

(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



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

are held by it or under its control.

(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 advise, 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) A directory of its officers and employees.
- (x) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations.
- (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 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.
  - (xvii) Such other information as may be prescribed. And thereafter update these publications within such intervals in each year as may be prescribed.
- (a) Publish all relevant facts while formulating important

policies or announcing the decisions, which affect public.

- (b) Provide reasons for its administrative or quasi-judicial decisions to affected persons.
- (c) Before initiating any project, or formulating any policy, scheme, programme or law, publish or communicate to the public in general or to the persons likely to be affected thereby in particular, the facts available to it or to which it has reasonable access, which in its opinion should be known to them in the best interest of natural justice and promotion of democratic principles.

The Act does not stop at that, and exhorts the public authorities that it shall be a constant endeavour of every public authority to take steps to provide as much information *suo motu* to the public at regular intervals through various means of communication so that the public have minimum resort to the use of



this Act to obtain information, and every such information shall be disseminated widely and in such form and manner, which is easily accessible and comprehensible to the public.

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

### Appointment of Public Information Officers (PIOs)

The Act provides that every public authority shall, within 180 days of the enactment of this Act, designate as many Public Information Officers as may be necessary to provide information. Such officers are also required to be designated at every sub-divisional or sub-district level. (S.5)

### Procedure for obtaining the information

**Request for obtaining information (S.6):** A person who desires to obtain any information shall make a written or electronic request in English or in the official language of the area, to the PIO or the Assistant PIO. The Act even provides that the PIO shall render the assistance for reducing the request in writing the person making the request, where such person is not able to make the request. The person making the request is not required to give the reason

for making the request, nor his personal particulars, except the contact information. If the application is made to one public authority and the matter falls more clearly within the jurisdiction of another authority, within five days such application shall be transferred to the proper authority.

**Disposal of request (S.7):** The PIO shall, on receipt of request for information, provide the requested information as expeditiously as possible, but in any case, within 30 days, on payment of the prescribed fees or if he cannot so provide, reject the request for reasons specified in the following paragraph. Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request. Failing to provide the information within the time specified shall amount to the refusal to provide the information. Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question

### Exemption from disclosure of information

**The following information is exempt from disclosure:**

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

an offence.

(b) Information, which has been expressly forbidden to be disclosed by any court of law or tribunal or the disclosure of which may constitute contempt of court.

(c) Information, the disclosure of which may result in a breach of privileges of Parliament or the legislature of a State.

(d) Information, including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party. Provided that such information may be disclosed, if the Public Information Officer is satisfied that a larger public interest warrants the disclosure of such information.

(e) Information available to a person in his fiduciary relationship provided that such information may be disclosed, if the Public Information Officer is satisfied that a larger public interest warrants the disclosure of such information.

(f) Information received in confidence from a foreign government.

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

(h) Information, the disclosure of which would impede the process of investigation or apprehension or prosecution of offenders.

(i) The Cabinet papers, including records of deliberations of the council of ministers, secretaries and other officers. Provided that the

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decisions of the council of ministers, the reasons thereof, and the material on the basis of which the decisions were taken, shall be made public after the decision has been taken, and the matter is complete.

(j) Information, which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual.

The guiding rule is that information, which cannot be denied to Parliament or legislature of a state shall not be denied to any person. A public authority may, notwithstanding the exemptions specified above, allow access to information if public interest in disclosure of the information outweighs the harm to the public authority.

### Limitations

The Act provides for a limitation of 20 years. Thus, information relating to any occurrence, event or matter, which has taken place or occurred 10 years before the date on which any request is made shall be provided to the person making the request under that section.

### Appeal

Any person who, does not receive a decision within time or is aggrieved by a decision of the PIO, may within 30 days prefer an appeal to such officer who is senior in rank to the PIO. The second appeal lies to the Information Commission. In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the public authority, which denied

the request. An appeal shall be disposed of within 30 days or within such extended period not exceeding a total of 45 days from the date of filing thereof, for reasons to be recorded in writing. An appeal against the decision of the Central Information Commission shall lie in the High Court on any point of fact and law.

### Penalties provisions watered down

The original draft proposed that any Public Information Officer who is in default shall be liable on conviction to fine which may extend to Rs 25,000 or a term of imprisonment which may extend to five years, or with both. However, the provision of imprisonment has been removed and instead the Act now provides for a departmental proceeding against the erring officer.

### Intelligence and security organisations excluded

The Act shall not apply to the intelligence and security organisations specified in the Second Schedule. Provided that, the information pertaining to the allegations of corruption, and human rights violations shall not be excluded under this provision.

### Only citizens have the right to information

The Act declares that 'all citizens shall have the right to information'. This means incorporated bodies, such as limited companies, trusts and other institutions shall not have any right to information under the Act. Moreover, non-citizens, which would also include foreign nation-



als living in India, would also not be entitled to information under the Act.

### State authorities also covered

The original draft of the bill applied it only to the public authorities belonging to the central government. Perhaps they thought it more expedient to leave the state governments make their own respective laws in respect of the right of information of the citizens in respect of the public authorities belonging to the states. However, the law as passed has been extended to state authorities also. The non-governmental organisations substantially funded, directly or indirectly, by the public funds also fall within the ambit of this bill. It means that states, such as Maharashtra, Tamil Nadu, Karnataka, Goa, Jammu & Kashmir, which have already enacted similar laws in respect of Right of Information from state authorities shall now have to scrap such laws. □