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# UNIT 1

## DEFINITION AND PURPOSE 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

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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.
- 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.

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

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

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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;

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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.

❖ ***‘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

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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

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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

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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.
- 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.

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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

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- 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.



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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