

# **UNIT 3**

## **STATE AND CENTRAL ACTS ON RTI**

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## **3.1 INTRODUCTION**

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

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## **3.2 OBJECTIVES**

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After reading this Unit you will be able to:

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

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

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

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

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

### 3.3.2 THE RIGHT TO INFORMATION ACT, 2005

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

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

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

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

The important sections are as follows:

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<sup>1</sup>(1974) 4 SCC 428

- (a) Section 4 (1)- Obligations of Public Authorities,
- (b) Section 5 (2) - Designating PIOs,
- (c) Section 12 & 13- Constitution of central Information Commissions.
- (d) Section 15 & 16- Constitution of State Information Commissions,
- (e) Section 24- Exclude Several Intelligence and Security Organizations,
- (f) Section 27 & 28- Power to form rules and regulations by the Central and State Governments.

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

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

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

and the various penalties that need to be invoked if the public authorities fail to deliver the information desired by the petitioner.

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

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

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

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

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

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

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

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

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

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

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

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

The Goa Right to Information Act 1997 was the second right to information law enacted in India, after Tamil Nadu. It was passed on 31 July 1997 and received Governor's assent on 29 October 1997. It is notable that the development of the law was the result of Government initiative and not a civil society campaign. However, while the Government was responsible for initiating the Bill, civil society, led by the Goa Union of Journalists, was active in responding to the shortcomings in the Act as initially passed. Journalists protested in the Assembly against penal provisions they feared could be used against the Press. Consequently, the objectionable provisions were amended by the Government soon after the initial enactment of the law. In May 2005, the national Right to Information Act 2005 was passed by Parliament. The RTI Act 2005 received Presidential assent on 15 June and came fully into force on 12

October 2005. The Act contains 14 sections and a schedule annexed with it. The RTI Act 2005 covers all Central, State and local government bodies and will apply to public authorities in Goa. It is not clear at this time whether the Goa Right to Information Act 2002 will be repealed. Notably though, the Goa Government has started implementing the RTI Act 2005.

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

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

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## **3.4 SUMMARY**

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

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## **3.5 GLOSSARY**

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

- (ii) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.
- 4. Central Public Information Officer:** Sec. 2(c) of the Right to Information Act, 2005 provides that “Central Public Information Officer” means the Central Public Information Officer designated under sub section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5.
- 5. State Public Information Officer:** Sec. 2(m) of the Right to Information Act, 2005 provides that “State Public Information Officer” means the State Public Information Officer designated under sub section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of Sec. 5.
- 6. Public Information Officer:** Any Officer designated by the Public Authority to provide information to persons requesting for the information under the Right to Information Act 2005.
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### 3.6 SAQS

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#### 1. Short Answer Questions-

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

#### 2. Fill in the blanks-

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

#### 3. True and False type questions

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

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- a) The Right to Information Act, 2005.
- b) <http://cic.gov.in/>
- c) <http://rtionline.gov.in>
- d) <http://www.humanrightsinitiative.org>
- e) The RTI Acts of the various states.

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### **3.8 SUGGESTED READINGS**

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

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

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

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### **3.10 ANSWERS**

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#### **SAQS**

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

#### **TERMINAL QUESTIONS AND ANSWERS**

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