

## Misuse of RTI, Reasons and solutions

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In private or public functions, my relatives, old colleagues, friends and others mostly speak in express or suppressed words that they are tired in giving information under RTI Act. According to them, this Act is more an instrument of harassment and blackmail than a mode of getting genuine information. I generally ask three questions from such persons which are not answered properly by such persons. The questions are as follows-

1. Whether records and files in their office is properly indexed and catalogued and whether they are regularly weeded out as per rules?
2. Whether, after receipt of information application, availability of information is verified with counting of pages and copying charges are demanded from applicants promptly within time?
3. Whether the informations required to be voluntarily disclosed u/s 4(1)(b) of RTI Act have been placed in public domain and are updated regularly?

Misuse of legal provisions has become routine phenomenon in our country and some times, we are forced to think that repeal of an enactment will do more benefit to society than to continue with it. Penal provisions of cheque bouncing (138 NI Act), dowry harassment (498A IPC), SC & ST Act, provisions of divorce and maintenance etc are also alleged to be mostly misused. RTI Act is not an exception. However we cannot blame the sections for our own inactions. The inactions and reluctance of the officers and employees of public authority in doing their part of duty under the Act, mostly give opportunity of misuse of rights given by this benevolent legislation. It is unfortunate that after about 17 years of enactment of RTI Act, the govt. officers and employees have mostly ignorance and misconceptions about its provisions.

**Scheme of the Act-** The scheme of the Act is plain and simple. Only such information need to be given which is already available. Information need not be created for providing under the Act. The information need not be collected and collated for providing under the Act. If information or its part is with any other public authority, the RTI application is to be transferred to such authority for providing information with that authority. Information available in public domain, need not be given. Information exempted u/s 8 or 9 of the Act need not be given. For providing, the PIO may demand charges as per rates mentioned in schedule of the Act and if such demand has been made within time, he is obliged to provide information only on deposit of charges.

**Normal understanding and approach of PIO-** Revealing information is the normal rule under the Act and denial is exception. While dealing with RTI application, the larger public interest is paramount consideration. However, experience show that most of the PIO, on receipt of RTI application, firstly look into it to pick out some

defect on the basis of which, the demand of information may be denied. The objective of the Act is to promote transparency and accountability in the working of every public authority. The Act itself provide various measures to check misuse of the rights given in the Act. Before discussing these provisions, let us identify the modes of misuse of right to get information, as complained by Public information officers:-

- i. Demanding voluminous informations
- ii. Repeatedly demanding same information
- iii. Demanding information, for which there is inbuilt procedure of issuance of certified copy
- iv. Demanding informations relating to third persons
- v. Demanding informations already available in public domain

**RTI, balancing of conflicting interest-** Before discussing these modes of misuse, it would be proper to understand the objective and scope of the RTI Act. It is no more res integra that right to get information is also a fundamental right implicit in right of freedom of speech and expression guaranteed under Article 19(1)(a) of Indian Constitution. The right is not absolute and it is subject to conditions/exceptions mentioned in Indian Constitution vis a vis section 8 and 9 of the Right to Information Act. Preamble of the Act provides that revelation of information in actual practice may conflict with other public interests including efficient operation of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive informations and hence it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal.

**First Check on misuse -** "Other public interests including efficient operation of the Government" have been provided in section 8 and 9 of RTI ACT. Section 8 provides ten categories of information and states that notwithstanding anything contained in this Act, there shall be no obligation to give any citizen the information mentioned in the section. Section 9 provides that the PIO may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State. Thus demand of information may be denied on any of the grounds mentioned in section 8 or 9 of RTI Act. This is the first Check on misuse of rights under the Act. It may be added here that that competent authority [as defined u/s 2(e) of the Act] may direct disclosure of informations mentioned in section 8(1)(d) and (e) of the Act in larger public interest. Likewise, the PIO or appellate authority, after giving opportunity to third person (in the manner provided u/s 11 of the Act) may reveal information mentioned in section 8(1)(j) of the Act in larger public interest. Section 8(3) of the Act provide that exemption of information mentioned u/s 8(1) [except information mentioned in clause a,c,i) is lifted after 20 years and it shall be provided.

It must be kept in mind that Right to information in a benevolent statute and in spite of exemptions u/s 8(1) of the Act or the provisions of Official Secret Act, the information may be revealed on satisfaction that public interest in disclosure outweighs the harm to the protected interests [Section 8(2) of the Act]. Section 22

of the Act provides that in cases of inconsistency, the provisions of RTI Act shall prevail over such provision of other law.

**Second check on misuse** - The PIO has also to harmonise between optimum use of limited fiscal resources and revelation of information. Section 7(9) of the Act takes care of it and provides that if revealing information in the form (certified photo copy or soft copy or inspection) desired by information seeker is likely to divert the resources of public authority or is detrimental to the safety of record in question, the PIO may provide information by changing the form. Since RTI Act gives right to PIO to demand charges from applicant for preparing copy of information, paucity of fund for copying cannot alone be an excuse in this section to plead diversion of resources. If the PIO has failed to demand charges in time, he cannot take benefit of his own fault. However, if preparation of copies of information is likely to consume much time and there is paucity of staff or if papers are to be carried to remote place and there is paucity of fund for paying carriage charges, then the information may be provided in other form. This is second check on misuse of rights under the Act.

**Third check on misuse** - For preservation of confidentiality of sensitive informations, section 24 of the Act gives power to central government and state government to exempt intelligence and security agencies established by it, from revealing information except informations relating violation of human rights or corruption. Apart from it, section 8 and 9 has also reference of sensitive information which are exempted. This is third check on misuse of RTI Act.

**Fourth check on misuse** - According to section 3 of RTI Act, all citizens have right to get information under the Act. Thus providing information to non-citizen or legal person (firms, companies etc) is not obligatory. This is fourth check on misuse of RTI Act. It may be mentioned that a citizen may use the address of a firm or company for demanding information.

**Fifth check on misuse** - Information held by or under the control of public authority are only to be provided. If required information is available in public domain, the PIO has only to inform the applicant about such public domain. It must be remembered that section 4(1)(b) provide 17 categories of information to voluntarily disclosed and kept in public domain. Maximum disclosure under this provision may minimize number of RTI application and its misuse. The information available in public domain and accessible to citizens free of charge or on payment of fee, need not be provided under RTI Act. This is fifth check on misuse of rights under RTI Act.

**Sixth checkon misuse** - Hon'ble Supreme Court has held that if there is inbuilt mechanism of providing certified copy of an information, RTI application for getting such information is not maintainable.[**Chief Information Commissioner Vs High Court of Gujrat 2020(5)SCALE263**] It is sixth check on misuse of rights under RTI Act.

As stated earlier, the Act has adopted simple and practical approach for providing information. The information shall be provided to an applicant in the manner and in the format, it is available in the establishment. **If the desired information is not in existence, it cannot be created for providing information to an applicant.** The PIO is also not obliged to prepare any explanation/answer in respect of demand of information. Information demanded in question form can be supplied only if the answer is already available in any form with public authority. The

charges for photo-copying the papers or preparing its soft copy are payable by applicant. However the charges must be demanded within 30 days from the date of receipt of information application failing which, the information seeker will be entitled to get information free of cost. If desired information or any part of it is available with some other public authority, the PIO has to transfer RTI application to such other public authority within 5 days, for providing information relating to such other public authority. If desired information or its portion is not available with public authority and the PIO, inspite of reasonable inquiry could not find as to with whom, such information is available, he will inform the applicant accordingly.

In view of such scheme and procedure as well as the inbuilt mechanism in the Act itself, to check misuse of the rights, let us examine the reasons and solutions of misuse of the provisions, identified above.

**Demanding voluminous informations** - Rule 3A of Bihar RTI Rules, provide that the written request of information should be about one subject. If demand has been made for providing information relating to more than one subject, then PIO is obliged to provide information relating to first subject only. In respect of judicial administration, Rule 8(3) of Patna High Court Rules further provide that "a separate application shall be made in respect to each subject and in respect to each year to which the information relates"

Bihar RTI Rules further provides that the written request for information should **normally be of 150 words**. Central Govt. has amended its rules and has substituted 500 words at the place of 150 words. Patna High Court has also amended its RTI Rule in 2018 and now amended Rule 3(a) provides that request for information from judicial administration should normally be within 500 words.

RTI Act or Rules, however, no where provides that the demanded information should be limited to few pages only. So long as the applicant is ready to pay the charges demanded by PIO(within 30 days from the date of receipt of RTI application) for providing information, the PIO is obliged to provide him complete information irrespective of number of pages and subject to exceptions. However, the experience gathered during hearing of RTI appeals show that in about 90% cases, the PIO failed to demand charges in accordance with Rules within 30 days and when the commission issue show cause notice, such PIO takes plea that the demand of information is voluminous. Failure to demand charges in time give encouragement to applicants to again demand more voluminous information and thereby misuse his right. Thus demand of charge in time may minimize misuse of this nature. Some reasons of delay in demanding charges or not demanding charges are as follows:-

- a. **Appointment of inefficient persons as PIO.** Although RTI Act or Rules does not provide any qualification or status for appointment of PIO, yet it is expected that person/persons having capability to balance the conflicting interests including efficient operation of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive informations, will be appointed PIO by public authority. An efficient PIO mostly fails in demanding charges within time or providing information in time

b. **Lake of proper training of PIO and other employees/officers of public authority.** It must be remembered that providing information is collective responsibility of the officers/employees of Public Authority. Every officer/employee of public authority is obliged to assist the PIO in giving information in time on his demand and in case of failure to give proper assistance, such officer/employee may be punished by commission as deemed PIO u/s 5(5) of the Act. Thus, in addition to PIO, the other officers/employees must be given training about the provisions of RTI Act.

c. **Incomplete Records.** Information seekers mostly allege that the public work has been done firstly and paper work relating to it was completed later-on as per convenience and hence the PIO was unable to count number of pages for demanding charges. Such practice, if exists in any public authority, must be discontinued immediately. However, it may be remembered that demanding unreasonable charges in actionable u/s 18 of RTI Act.

**Repeatedly demanding same information-** If an applicant demands same information repeatedly and if information has already been provided earlier, the PIO is not obliged to provide him the information. Such applicant may only be informed that the required information has already been provided through such and such letter. If in repeated demand, there is few additions to show that it is different than the earlier demand, the PIO has to give information about such additional demand only by mentioning that remaining information has earlier been given. Some times, same demand of information are made in different names. In such case, fee should be demanded from each applicant within 30 days and information be provided to such applicant, who deposits fee. Another mode to deal with the mischief of such repeated demands is to disseminate the information in public domain. If same information is demanded from different PIOs and one of the PIO has earlier given information, the other PIO may either demand fee and provide information on deposit of fee or he may inform the applicant about letter no. and date through which, he was earlier provided information.

**Demanding information, for which there is inbuilt procedure of issuance of certified copy** – Delhi High Court, vide its judgment dated 1.6.2012 delivered in Registrar Of Companies & Ors vs Dharmendra Kumar Garg & Anr has observed that “39. Therefore if another statutory provision, created under any law, vests the right to seek information and provides the mechanism for invoking the said right (which is also statutory, as in this case) that mechanism should be preserved and operated, and not destroyed merely because another general law created to empower the citizens to access information has subsequently been framed.”

The issue was again decided by Delhi High Court in The Registrar Supreme Court of India v. R S Misra (2017) 244 DLT 179. The Delhi High Court observed as follows:-

*“54. This Court is further of the opinion that if any information can be accessed through the mechanism provided under another statute, then the provisions of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of RTI Act, namely, lack of transparency. In other words, the provisions of*

*RTI Act are not to be resorted to if the same are not actuated to achieve transparency.”*

Above observation was usefully referred and approved by Hon’ble Supreme Court with approval in its judgment dated 4.03.2020 passed in Chief Information Commissioner Vs High Court of Gujrat and Anr.

Thus if in-spite of another efficacious mechanism of taking certified copy of information, an applicant files application under the provisions of RTI Act for getting the same, the PIO may, instead of providing it, inform the applicant about the mechanism available for getting certified copy. I may hasten to add that before giving such information, the PIO must satisfy himself that desired record is available for issuing certified copy. If the record is missing, the PIO must report about it to competent administrative authority so that steps may be taken to search the missing record as well as to fix accountability of its missing. Information of such factual position shall be given to applicant forthwith. The PIO must also give so much information to applicant which may enable him to apply for certified copy.

**Demanding informations relating to third persons** – Definition of “right to information” u/s 2(j) of RTI Act suggest that “informations accessible under the Act” are only to be given. Thus an information exempted u/s 8(1) of RTI Act is not accessible under the Act and it can’t be demanded in exercise of right to information. Section 8(1)(j) of the Act provides that there is no obligation to provide 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 unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

What is personal information is always a vexed question to be answered. However in **Girish Ramchandra Deshpande vs Cen.Information Commr.[2013 (1) SCC 212]**, it was held that the details disclosed by a person in his income tax returns are “personal information” which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless the Central Public Information Officer or the State Public Information Officer or the appellate authority is satisfied that the larger public interest justifies the disclosure of such information. In **Canara Bank Rep. By its Deputy Gen. Manager Vs C.S. Shyam & Anr 2018 (11)SCC 426** Hon’ble Supreme Court held that Details of employees of bank, such as the date of his/her joining, designation, details of promotion earned, date of his/her joining to the Branch where he/she is posted, transfers and the authorities who issued the transfer orders etc. are personal information of such employees protected u/s 8(1)(j) of RTI Act. The medical reports of a person, information relating to his date and place of birth, family details, details of bank account, aadhar card no. PAN No. etc are thus personal information of such person.

It must be remembered that exemption u/s 8(1)(j) RTI Act operates only when the disclosure of personal information has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual. The PIO has to maintain balance between public interest and privacy of an

individual. However, before providing such information under RTI Act, the PIO is obliged to give an opportunity to such person in accordance with section 11 of RTI Act to file objection, if any. I may hasten to add that information may be provided irrespective of objection of third party, if in opinion of PIO, public interests in disclosure outweighs the harm to protected interests. However, the third party, in such case, has right to appeal before information commission u/s 19(4) of RTI Act.

**Demanding informations already available in public domain-** It is no more res-Integra that there is no obligation to provide information available in public domain. Only such information are accessible under the Act which are held by or under the control of any public authority. The words "held by" and "under the control" has been interpreted by Courts to mean exclusively held by or exclusively under the control of public authority. In **The Registrar Supreme Court of India v. R S Misra**(2017) 244 DLT 179, the Delhi High Court held that *"55. Section 2(j) of the RTI Act reveals that the said Act is concerned only with that information, which is under the exclusive control of the 'public authority'."*

Such finding of Delhi High Court was approved by Hon'ble Supreme Court in its judgment in Chief Information Commissioner Vs High Court of Gujrat and Anr. In **Karnataka Information Commissioner Vs State Public Information Officer & Anr**, the applicant, in addition to other informations also demanded guidelines and rules pertaining to scrutiny and classification of writ petitions. The PIO intimated him that the information sought by him is available in the Karnataka High Court Act and the Rules. The matter went to High Court which observed that *"The information as sought for by the respondent in respect of Item Nos. 1, 3 and 4 mentioned above are available in Karnataka High Court Act and Rules made there under. The said Act and Rules are available in market. If not available, the respondent has to obtain copies of the same from the publishers. It is not open for the respondent to ask for copies of the same from the petitioner."* Hon'ble Supreme Court dismissed the SLP filed against said order.

Thus the **most effective way the avoid misuse of rights under RTI Act is to place maximum informations (which are not exempted u/s 8 or 9 of the Act) in public domain.** I may repeat that u/s section 4(1)(b) of RTI Act, every public authority is obliged to voluntarily disseminate in public domain 17 types of information mentioned in the section itself and to update such information at regular interval. Experience show that the said provision has not been complied by most of the public authorities and where it was complied, the information have not been updated. If this provision is complied, the number of RTI applications may be substantially reduced and misuse the Act may be minimized.

**Record Retention Schedule-** In order to provide information within time limit, it is necessary that records and registers are properly arranged in the offices. Section 4(1)(a) of RTI Act also provides that "Every public authority shall maintain all its records duly catalogued and indexed in a manner and the 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". However, experience

show that in most of the public authorities, this provision has not been complied. One of the main reason surfaced during hearing of appeals and complaints is paucity of proper space. It appears that in most of the public authorities, there is no record retention schedule and where there is such schedule, it has become outdated. The officers and staff are mostly unaware about it and consequently the records are not weeded out in time. Thus the offices are crowded with unnecessary, irrelevant papers giving opportunity to mischievous persons to demand the papers as information which are missing under the bundles of files. **Framing of record retention schedule and weeding out unnecessary papers in time will not only provide proper and healthy space in offices but it will also minimise demand of unnecessary informations under RTI Act.**

**Conclusion** – From above facts, it may be safely concluded that the rights under RTI Act are misused because we ourselves have given space for such misuse. Nomination of efficient persons as PIO, proper training of PIO and other officers and staff, voluntary disclosure of maximum information (except which are exempted u/s 8 or 9 of the Act), preparation of effective record retention schedule and its proper compliance are the solutions to minimize misuse of the provisions of RTI Act.

At last I conclude this article with following observation of Hon'ble Supreme Court in its judgment delivered in CBSE and Anr Vs Aditya Bandopadhyaya and Anr [2011 (8) SCC 497]:

"35. At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Act. But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such nonavailable information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act."

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