

Right To Information and Good Governance

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Lecture 22

Salient Features of the RTI Act - 4

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Definition of Record sec. 2(i) and Right to Information



- **Record** – The word record is a collective denomination for written details of a subject which may include the maps, drawing and other related matters also. It may have different forms:
- a) **Document:** The term here may mean a piece of paper or a set of such papers which may contain the details of a particular thing or subject. It may be in the form of a handwritten, printed or typed paper, map or drawing, etc.
 - **Manuscript:** It may denote the original form of a handwritten document or a map or a drawing.
 - **File:** It stands for collection of papers pertaining to the details of a subject. One file may contain many documents interconnected to each other on the same subject or with reference to that subject. Normally one file contains interconnected documents and other details including the handwritten or typed notes on the same subject.
- b) It indicates the electronic form of documents in the form of a microfilm, microfiche and facsimile copy. The record regarding a particular subject may be reduced to an electronic form, but since even in electronic form it contains the content of the original document, therefore, in this shape also these are part of the record. Notwithstanding its form, the original information continues to be part of the record.
- c) When these electronic documents are reproduced in the form of images, these remain still the part of the record. Whether the images are reproduced in original shape or in reduced or enlarged shape or form, the same remain part of the same record because they contain an image of the original.
- d) Any other material produced or generated through the computer or any other device pertaining to the original contents of documents, manuscript or file, it remains part of the record. Even original documents generated through computer and other device relating to the subject may become part of the record of that subject.



Let us look at the definition of record as provided under section 2(i) of the Act and you will notice that record has been specifically defined over here and the word record is a collective denomination of written details of a subject which may include the maps, drawings and other related matters. A record may have different forms, it is important for us to understand that it may be in the form of a document.

The term here may mean a piece of paper or set of such papers which may contain the details from a particular thing or a subject. It may be in the form of handwritten, printed, typed paper, map or drawing. Second you will also notice that a record can be a manuscript. What is a manuscript? It may denote the original form of a handwritten document or map or a drawing. It may also include issues like, what is there in a file? File, it stands for a collection of paper or papers pertaining to the details of a subject.

One file may contain many documents interconnected to each other on the same subject or with reference to that subject. Normally one file contains interconnected documents and other details including handwritten or typed notes on the same subject. Second, you will notice that record indicates also electronic form of a document in the form of a microfilm, microfiche and facsimile copy.

The record regarding a particular subject may be reduced to an electronic form, very important. But since even in electronic form it contains the content of the original document therefore in the shape also these are part of the record, notwithstanding its form the original information continues to be a part of the record.

Next, when these electronic documents are reproduced in the form of images, this remain still the part of the record. So either an electronic record can be asked or at the physical copy. Whether the images are reproduced in original shape or in a reduced or enlarged shape of form, the same shall remain the part of the record. Also when we talk about record it is important to look at any other material produced or generated through the computer or any other device pertaining to the original content of the documents, manuscript or file shall remain part of the record. So, even original documents generated through the computer and other devices relating to the subject may become part of the record.

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Record: continued

- Thus it may be said that record basically denotes the details or description of a subject which may consist various documents in various forms, shapes and sizes. All these things taken together may be called record and individually also such documents are part of that record. ***The definition of record takes care of the latest technology available in the maintenance of record.*** It takes the right provided under the Act to the remotest possibility of availability of information in any form. It broadens its horizon from the precincts of written documents to the endless limits of modern technology.



Record thus it may be said basically denotes the details or descriptions of a subject which may consist of various documents in various forms, shapes and size. All these things taken together may be called as a record and individually also such documents are part of that record. The definition of record under the Right to Information Act takes care of the latest technology available in the maintenance of the record, especially digital or electronic. It takes the right provided under the Act to the remotest possibility of availability of information in any form. It broadens the horizon from written documents to anything that is there in modern technology.

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Right to Information - Section 2(j) of the RTI Act, 2005

- "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:
 - 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;



Next, let us go to the definition of what is provided as a right to information under section 2(j).

Friends, till now we have looked at the definition of information and we have looked at the definition of a record. Now we will try and understand what does the right to information contain? What is this right about? What is the scope of this right? How is this right defined under the RTI Act?

What we would notice is that right to information means right to access information under this law which is held by or under the control of a public authority. It is either held by the public authority or is within the control of the public authority and includes the following. Interestingly section 2(j) says that right to information is not limited to accessing document and record which is definitely a part of the right.

You can access documents and records either in hard copy or soft copy but it also includes the right to inspection of work. That inspection of work is a very important component of ensuring transparency and accountability of public authorities and hence it is not only accessing information in material form, in a record form, it is also checking the kind of work that public authorities are engaging in.

The word in inspection here very clearly means monitoring and supervision and a physical assessment of the material work that is being executed by the public authorities and hence when any public work is being executed, the citizen can seek inspection of the same. This is part of the right to information. So what the RTI Act, 2005 has done is that probably it has expanded the scope of the right to know constitutionally as we see under article 19(1)(a). The right to know entitled only the right to access information here under the Right to Information Act there is an additional component of inspection of work which probably was never accepted or enumerated under the right to know constitutional jurisprudence.

Second, while inspecting work, while inspecting document and record please note inspection of work, documented record is something that you can definitely do without applying to get the copies of the sought information. You are also entitled to take notes, extracts of the same. So taking notes on inspection is some kind of a right that is given to you and very importantly the third component here is the certified copies of the documents and records.

It would be the obligation of the public information officer to certify the documents and records as true copies when provided under the Right to Information Act. So obtaining certified copies of the document and the record is also a matter of right that is provided under this legislation. I repeat, taking notes on inspection of documents, records and work, taking extracts if necessary, or applying for the same and third, applying for certified copies of the documents and records is a matter of right to information. Very important is samples are definitely included within the definition of information, however taking certified samples under the right to information. Which means again the public information officer can not only supply the sample but he has to certify that the sample is a true sample and has been certified accordingly.

So that the citizen is satisfied that there is no fabrication of the sample as the case may be. Last but not the least, under the right to information, obtaining information in the form of a diskettes or floppies, tapes, video cassettes or in any other electronic mode or through a printout where such information is stored in a computer or in any other devices. So information in soft copies information in floppies, tapes and video cassettes if any information is stored in this form or in any other electronic mode or has been taken as printout from a computer system they can also be accessed under the right to information Act.

And hence the scope of the right here is far more greater in its application as against probably pre 2005. Which probably was something that the judges interpreted under the article 19(1)(a) and then the only mechanism was to approach through a writ in a court to access that kind of right to know and the limitation of why this information is being sought.

The right to information definition is an all encompassing mark, it is an all empowering mark and it empowers citizens with various aspects of exercising the different nature of responsibilities that is required to act as a watchdog on government functions and government functionaries to actually look at some kind of a monitoring system, to check corruption and to ensure transparency, accountability of the system as well.

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Explanation

- 'Inspection' here means to see a work, document or record closely, carefully and purposefully. Here no document is obtained in any form, but the information is simply seen and scrutinized with a particular angle with due care and with a specific purpose.
- This may include the inspection of a work where the quantity, quality and ingredients of the work are scrutinized. **For example**, any work whether it pertains to an office or a construction activity may be inspected in its various dimensions. Any document or record available in any form may be inspected. Thus the inspection of work, document or record does not involve taking the physical copy of the documents or possession of the material, but it is more or less a mental exercise to have a view of the matter.



Now, if we look at the word inspection, it is important for us to understand it means inspection of work, document and record which means that this can be closely monitored and followed carefully by the citizens. Here you would notice that no document is obtained in any form but the information is simply seen and scrutinized in a particular angle with due care and with a specific purpose.

So seeking documents, records are one, inspection has a different purpose altogether and in inspection you do not have to pay for the information fee per page. You will just go and see the information you probably scrutinized the information as the case may be and that is what the inspection is all about.

So, the right of inspection very clearly is right that citizens have in a democratic system and I think it is a very important component of the right that is being provided for and I think inspection very clearly means on spot the citizen has the right to check whether work is satisfactory or not or whether any kind of dispute of grievance has to be escalated as the case may be for unsatisfactory work.

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Explanation

- 'Inspection' here means to see a work, document or record closely, carefully and purposefully. Here no document is obtained in any form, but the information is simply seen and scrutinized with a particular angle with due care and with a specific purpose.
- This may include the inspection of a work where the quantity, quality and ingredients of the work are scrutinized. **For example**, any work whether it pertains to an office or a construction activity may be inspected in its various dimensions. Any document or record available in any form may be inspected. Thus the inspection of work, document or record does not involve taking the physical copy of the documents or possession of the material, but it is more or less a mental exercise to have a view of the matter.
- Taking notes may mean noting down certain information from the documents inspected. In this process, the copy of documents is not obtained but the required information is noted from the document perused. It may include the original extracts from the main document. Similarly, the right to information also allows the photocopies of the relevant document or record. The photocopies of the documents contain the entire information of the document as such. Apart from the documents, the details of a physical activity or a work in progress may also be noted down in this process.



You may also know that inspection of work is about the quality, quantity and ingredients used in the work and the same can be scrutinized by the citizen. For example, any whether it is pertain to an office or construction activity may be inspected in its various dimensions. Any document or record that has granted that work that is available in any form is also been inspected that means a contract may be inspected, the works schedules can be inspected, thus the inspection of work, document and record does not involve taking the physical copy of the document, or the possession of the material but is more or less a mental exercise to have a view of the matter.

Extracting notes or taking notes is also the part of the right to information. So taking note may mean noting down certain information from the documents inspected. In this process, the copy of the document is not obtained but the required information is noted from the documents perused, it may include the original extracts on a mail document. Similarly, the right to information also allows the photocopy of the relevant document and record.

So after inspection I am entitled to seek this document and record as well. The photocopy of the document contains the entire information of the document as such. Apart from the document, the details of a physical activity or a work in progress may also be noted down in this process. In a case before the central information condition it was suggested that during inspection the citizen can apply for a video camera or a video recording if he or she wishes to do the same.

And if the place and the inspection is such that video camera can be entertained, the public information officer may not only provide for the inspection but also provide for the videography of the inspection as well. So, these are possibilities, based on the citizens' requests and public information applying a mind of whether videographing or video recording of the inspection can be allowed and can be permitted or not.

So these are certain aspects under the right to information law. Interestingly, in exercising the right to information one will have to look at rules because when we say that the right to information is a right, it is not a free right. The fees that are applicable for the exercise of this right for example the documents are taken per page. The rules, the central RTI information rules prescribe a fees of 2 rupees per page.

This is the information fee that we will have to pay for exercising the right to information and obtain copies of the set of documents or records as the case may be. Similarly, there are rules that prescribe a fee for inspection. The central rules say that the first one hour of inspection is free and this clearly entitles you to follow the fee part of the rules again trying to prescribe what fee is applicable for what exercise of the said information.

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Right to information: contd.

- The right to information also includes the certified samples of material. Since it is to ensure transparency and to contain corruption, it authorizes the citizens to take samples from the material being purchased or used by the Public Authorities. Therefore, it is an effective way to check the quality of work being executed by various public authorities.
- It indicates and denotes the electronic mode of right to information. Apart from inspection and photocopies, the information may be obtained in the various electronic forms like diskettes, floppies, video cassettes, or any other electronic mode or computer printout stores in a computer or in any other device. This mode of information is very effective and quick. The quantum of information and the quickness attached are remarkable. Within minutes such large information may be obtained which may take much time if it is taken in written or printed form. Thus, the right to information has been given the latest touch to make it compatible with the advanced technology.



The right to information also includes taking certified samples of a material as we know the purpose of transparency and accountability is to contain corruption and it authorizes citizens to take the samples from the material being purchased or used by the public authorities. Therefore, it is an effective way to check the quality of work is being executed by various public authorities.

It also indicates and denotes that the electronic mode of right to information, apart from inspection and the photocopies the information may be obtained in various forms which are probably the forms that when we currently required for example as we speak today and including discs and floppies are being used in our computer systems and networks then video cassettes for that matter out of technology and out of date.

Today probably what we will be speaking about is pen drives. We will be speaking about the

DVDs or any other form I think that is enough scope for modern technology to be infused in the right to information law. The quantum of information and the thickness attached are something that are very important and you will notice that when soft copy of information is sought large information can be gathered in a very small space and this can be accessed by a application of latest technology include hard disks and others that are compatible with public authorities and its functioning and that are also compatible with ensuring that the right to information is protected and is provided for under this law.

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Section 3 - Right to Information
Subject to the provisions of this Act, all citizens shall have the right to information



- Right to information refers to an individual's right or freedom to seek public information where information means any material relating to the affairs of administration or decision of a public authority.
- It is indisputable that in a democratic polity, to ensure and facilitate the continued participation of people in the effective functioning of the democratic process, people must be kept informed of the vital decisions taken by the Government and the basis thereof. Thus, right to seek and receive public information becomes a pillar of democratic set-up.
- In this regard, every citizen is eligible to make an application to obtain information from a public authority and includes the right to inspection of documents, records, work carried out or being carried out, taking notes, extracts or certified copies of the documents or records, taking certified samples of material, obtaining information in the form of latest technology means like diskettes, floppies, tapes, video cassettes or in any other electronic modes or through printouts, which is held or controlled by such authority.



The next aspect for discussion after we have discussed all the important definitions that are provided in section 2 is to move to section 3. Section 3, is about who can seek information under the right to information act.

Section 3 very clearly says that “subject to the provisions of this law all citizens shall have right to information”. Now, the interesting part of section 3 is it says that all citizens shall have right to information, however this is subject to the various provisions of this law of whether the information can be provided or not provided. And what are the obligations and what are liabilities are something that the citizens have to do in terms of exercising the right to information.

Now if one looks at section 3 you will notice that right to information is an individual right, it is a freedom to seek public information where the information means a material relating to the affairs of administration or a decision of a public authority. However, please note when this is set as a right it is an individual right, it is an individual freedom, it is not something that is a collective right or a collective freedom that is to be exercised neither it is a group right, neither it is that is to be enshrined through incorporation of entities.

It is indisputable that in a democratic polity, to ensure and facilitate the continued participation

of the people in the effective functioning of the democratic process, people must be kept informed of the vital decisions taken by government and the basis thereof. Thus, the right to seek and receive public information becomes a pillar of a democratic setup.

In this regard, every citizen is eligible to make an application to obtain information from a public authority and includes the right of inspection, so the right which is given to citizens is a right he can be entitled to or exercise in terms of taking soft copy, hard copy inspection certified copies certified samples as well.

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Person [sec. 6] and Citizen [sec.3]



- Person' defined in Section 3(42) of the General Clauses Act, 1897, include natural person and juristic person. Every citizen is a person, but the vice versa is not true. Artificial or juristic person cannot be a citizen. The juristic person cannot enforce fundamental rights, but the individual citizens forming such legal entity / juristic persons can invoke the fundamental rights.
- In a case of Inder Grover v Ministry of Railways CIC 2006, it was held that "Persons applying for information under this Act should apply as natural and individual persons (citizens). Corporate bodies and juristic persons can not apply for information under this act. If a person applies as a representative of a corporate body then he is not entitled for the information required under this act.



So this is something that citizen can exercise all together under this law. Interesting, the main issue for a discussion over here under section 3 is, who is a citizen? Interestingly, the definition of citizen is not provided under the Right to Information Act. Now, if you see the definition of citizen under the Citizenship Act of 1955, citizenship is often granted to a natural person and it is not granted to a juristic person. However, the difference between a person and a citizen is to be taken into account.

For example, if one reads section 6 of Right to Information Act you will notice that the word in section 6 that is used 'any person' can make a application to seek information. The word is used in section 6 is a person whereas the word that is used in section 3 to give the right is citizen.

Now, person includes both the natural person that is me and you and juristic person that is an incorporated entity like a company or a partnership, a University or a registered non governmental organization.

So, the definition of person is far wider than the definition of citizen. The application of rights to a person are far wider than the application of rights to a citizen. If one goes to section 3 subclause 42 of the general clauses act 1897, then you will notice that the person includes both a natural individual and a registered individual or a juristic personality or an artificial person as we would call it.

Every citizen is a person but the vice versa is not true, that means artificial or juristic persons cannot be citizens so company does not have a citizenship or a university does not have a citizenship or a partnership does not have a citizenship and association of individuals may not have citizenship if they are registered as a non governmental organization.

The juristic person cannot generally enforce fundamental rights, especially when you talk about certain fundamental rights that are applicable. But the individual citizens forming legal entities can invoke fundamental rights. So, a juristic person on its own cannot invoke fundamental right, it has to be invoked through the individual as the case may. And hence, in the case of Inder Grover versus Ministry of Railways, a case decided by the central information commission in 2006, it was held that a person applying for information under the RTI should apply as a natural and individual person only.

Because the right is given to citizens, only natural and individual persons can make an application. Corporate bodies and juristic persons cannot apply for information under this act, that is a very clear proposition here. If a person applies as a representative of the corporate body then he is not entitled to the information required under this act.

So, the Right to Information Act is available to citizens in its individual capacity not in its official capacity. Right to Information Act is applicable to individuals and not to body corporates. This is very clear in terms of the interpretation and the application of section 3 of the

right to information act. So, I think section 3 is an important proposition while going ahead and trying to address the fact who can seek information under the Right to Information Act.

That is about the citizens including NRIs, I presume yes. Non resident Indians who are not staying in India continue to hold the Indian citizenship. They may be working abroad, they may be residing abroad but they continue to hold the Indian passport and the Indian citizenship, that is why they are called as non resident Indians.

And hence, NRIs are also entitled to apply under the RTI Act, they continue to hold the citizenship and they can access the right to information act as well.

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Citizen: contd.

- A "Citizen", under the Constitution Part II, that deals with "citizenship" can only be a natural born person and it does not even by implication include a legal or a juristic person like the corporation, banks.(Prabhakar S. Yende v PIO, Mapusa, Municipal Council, Goa.).
- Section 2(1)(f) of the Citizenship Act defines that a "person" does not include a company, an association or a body of individuals whether incorporated or not. "Person" has been defined in Section 3(42) of the General Clauses Act, 1897, to include any company or association or body of individuals, whether incorporated or not.



A citizen under the constitution part 2 that deals with citizenship can only be of natural born person and it does not even by implication include a legal or a juristic person like the cooperation or the banks as the case may. So, this Prabhakar versus PIO case Mapusa, Municipal Council, Goa is again reiterating what was held in previous years as well.

Now, if one looks at section 2(1)(f) of the Citizenship Act of 1955, it defines that a person does not include any company or association or a body of individuals whether incorporated or not for the purpose of the application of citizenship. So, this is something that one we have to take under

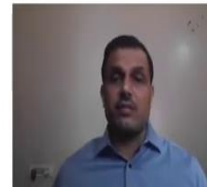
consideration about the Right to Information Act.

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Fundamental freedom to citizens only?



- This issue has come up before the Apex Court in the case of *State Trading Corporation of India Limited Vs. Commercial Tax Officer, Visakhapatnam* and the Hon'ble Apex Court held that the State Trading Corporation is not a citizen which necessarily means that the Fundamental Rights guaranteed by Article 19 which can be claimed only by citizens cannot be claimed by such a corporation.



Generally, fundamental freedoms are to citizens only. The issue came before the Apex court in the *State Trading Corporation of India limited versus Commercial Tax Officer*, the honorable Apex court, the supreme court had clarify that state trading corporation is not a citizen, so these corporations even public sector corporations or banks are not citizens and necessarily they would not have a fundamental rights as enshrined in article 19 which are supposed to be given only to individuals and not to body corporations or body corporates.

So, I think this is now very clear that only natural individual persons in their personal, individual capacity can apply under the Right to Information Act.