

Chapter-3

Right to Information Act 2005: Historical Background and Main Provisions

Indian constitution does not provide directly the right to information to the citizens but Article 19(1)(a) of the Constitution guarantees the fundamental rights to free speech and expression. The prerequisite for enjoying this right is knowledge and information. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizens perform their fundamental duties as set out in Article 51A of the Constitution. Enactment of the right to information act was the most revolutionary step by the ruling class in India to hand over the reins of its governance to the real master of democracy. One could realize its significance only in the backdrop of the dark days of official secret act 1923. This Act had been used by the corrupt bureaucracy in India to cover up their anti-people activities.¹The Official Secrets Act, 1923, a legacy of British rule in India, contains several provisions prohibiting the flow of information from the Government to ordinary people. It was enacted to protect against spying, but its provisions are far-reaching. Sections 123 and 124 of the Indian Evidence Act, 1872 also impose unnecessary restrictions on making available official information as evidence. Section 9 of the *All India Services (Conduct Rules) 1968* and *The Central Civil Services (Conduct Rules) 1964* also lay down restrictions on free flow of information.²

3.1 Journey of the Act

After a very long struggle, people of India got the Right to Information. The most important feature that distinguishes the movement of the people's right to information in India from the other countries is that it is deeply rooted in the struggle and concern for survival and justice of most disadvantaged rural people. Objection on Official Secret Act 1923 have been raised ever since 1948 when the Press Laws Enquiry Committee said that "the application of the Act must be confined as the recent Geneva Conference of Freedom of Information has recommended, only to matters

¹<http://edwinpm.blogspot.com/2010/05/right-to-information-act-and-indian.html>, visited on June 8, 2011

²<http://www.thesouthasian.org/archives/2006/post.html> visited on 8 June 2011

which must remain secret in the interest of national security.”³ There have been many proposals for an access to information law. The first proposal was made by the Janata Party in 1977, in reaction to the preceding Emergency, and promised an “open government” by looking at the existing access to information laws. The step was not towards enacting an access to information law, but only to modify the Official Secrets Act, 1923.⁴

Working Group of 1977

A working group was formed by the government of India in 1977 to look into required amendments to the Official Secret Act 1923 to enable greater dissemination of information to the public. The group recommended that no change was required in the act as it pertained only to protect national safety.⁵

This issue gained importance again in 1989 as the National Front Government headed by V. P. Singh announced its commitment towards an open government, borrowing from the election manifesto of the Janata Party.⁶

Working Group of 1989⁷

In 1989 another committee was set up, which recommended restrictions of the area where governmental information could be hidden, and opening up of all other spheres of information. But no legislation followed these recommendations.

In 1991, there were reports in the press to the effect that a task force had recommended amendment of the Official Secret Act, but again no legislative action followed.⁸ After that citizen groups have started demanding to the outright repeal of the official secret act and its replacement by a legislation making a duty to disclose the norms of secrecy the exception.

³<http://www.rtigemway.org.in/Documents/References/English/Reports/12.%20An%20article%20on%20RTI%20by%20Harsh%20Mander.pdf> visited on 13 June 2011

⁴<http://shrutiraj.com/wp-content/uploads/2010/08/Sunlight-is-the-Best-Disinfectant-Final-Delhi-Law-Review.pdf> visited on 8 June 2011.

⁵<http://www.rtigemway.org.in/Documents/References/English/Reports/12.%20An%20article%20on%20RTI%20by%20Harsh%20Mander.pdf> visited on 13 June 2011

⁶<http://shrutiraj.com/wp-content/uploads/2010/08/Sunlight-is-the-Best-Disinfectant-Final-Delhi-Law-Review.pdf> visited on 8 June 2011

⁷<http://www.rtigemway.org.in/Documents/References/English/Reports/12.%20An%20article%20on%20RTI%20by%20Harsh%20Mander.pdf> visited on 13 June 2011

⁸ Sharma, Sarbjit and Krishna Goyal, Right to Information implementing information regime, Authors Press, Delhi, 2006, p.110.

Consumer Education Research Council 1993⁹

Consumer groups have taken up the right to information, as it is clearly of some importance to consumer rights. In 1980 *The Consumer Education and Research Center* (CERC) in Ahmadabad conducted research on freedom of information law in the other parts of the world, in particular the U.S.A. and Canada. CERC drafted a legislation which was introduced into the parliament as a private Bill in 1993. This was the most detailed proposed legislation in India. This draft gave the right to information to anyone except “*alien enemies*” whether or not they are a citizen. The draft also provides for the outright repeal of the OAS but do not provide specific protection for whistleblowers. But this draft was not taken into consideration in the parliament.

Mazdoor Kisan Shakti Sangathan (MKSS)

The right to information campaign in India began with Mazdoor Kisan Shakti Sangathan (MKSS) movement to bring transparency in village accounts via the demand for minimum wages in rural India. In 1987 three founding activists of MKSS chose to live in a hut in a village (Devdungri) in Rajasthan. These three activists were, *Aruna Roy*, who had resigned from the elite Indian administrative services over a decade earlier, *Shankar Singh* a resident of a village not far from Devdungri, *Nikhil Dey*, a young man who abandoned his studies in the U.S.A. in search for meaningful rural social activism.¹⁰ MKSS started its activities in 1987 but from 1990 onwards one can see somewhat structured initiatives at the grass root level.¹¹ In 1994 MKSS hit upon a new empowering strategy based on the idea of *Jan Sunwai*. Under this strategy MKSS brought people together and spread the movement for RTI on national level.¹² Jan Sunwai was a powerful tool to expose corruption in local administration. To organize a Jan Sunwai MKSS activists required some information from local administration but they went on strike, saying that they would ‘not release document to the people because they were not accountable to them, but only to their seniors’.¹³ Early in 1999, government of Rajasthan constituted a committee to draft a

⁹*Ibid*, p.109.

¹⁰<http://www.rti-gateway.org.in/Documents/References/English/Reports/12.%20An%20article%20on%20RTI%20by%20Harsh%20Mander.pdf> visited on 13 June 2011

¹¹<http://www.rti-gateway.org.in/Documents/Articles/RTIMovementinIndia-DrEVenkatesuNIRD.pdf> visited on 13 June 2011

¹²<http://www.10iacc.org/download/workshops/cs54b.pdf> visited on 13 June 2011

¹³ Sharma, Sarbjit and Krishna Goyal, *op-cit.*, p.106

right to information law. The MKSS distributed postcards. The postcards were an innovative way to get people personally involved: “Buy a postcard, address it, post it. Put in your vote for a Right to Information Act.”¹⁴ Although it was a struggle for the rural poor but it caught the attention and got the support of a cross-section of the country’s media, lawyers and jurists, academics and even bureaucrats and legislators. Many of whom came together to form the National Campaign on the People’s Right to Information (NCPRI).

National Campaign for People’s Right to Information (1996)

National campaign for people’s right to information was founded in 1996. Its founding members included social activists, journalists, lawyers, professionals, retired civil servants and academics. One of its primary objectives was to campaign for a national law facilitating the exercise of the fundamental right to information.¹⁵ Whereas the MKSS has spearheaded the Right to Information (RTI) in Rajasthan, the NCPRI took up a task to formulating and having passed a national law on right to information. Its major contribution as a group has been firstly to assist in preparing the press council draft, various versions of the proposed legislation for the right to information and the detailed blueprint for its operationalisation. Senior press persons played a major role in building public opinion in the media around the issue and the local movement.¹⁶ The NCPRI aims to provide support to grassroots struggle for the right to information and lobby government to enact and implement effective access to information legislation.

The Press Council Draft 1996

The first major draft legislation on the right to information was circulated in 1996 by the press council of India. This draft was derived from an earlier one which had been prepared in October 1995 at a meeting of social activists, civil servants and lawyers at the Lal Bahadur Shastri National Academy of Administration, Mussoorie. The press council draft affirmed in its preamble that the RTI is already protected under the constitution of India in Fundamental Rights in Article 19 (1)(a).¹⁷ In 1996 Press Council of India headed by Justice P.B. Sawant presented a draft model law on the

¹⁴*Ibid*, p.106

¹⁵Jain, R.B., *Indian journal of Public Administration*, Vol. LII, NO.3, July-September 2006, p.556.

¹⁶Sharma, Sarbjit and Krishna Goya, *op-cit.*, p.108.

¹⁷<http://www.rti.gateway.org.in/Documents/References/English/Reports/12.%20An%20article%20on%20RTI%20by%20Harsh%20Mander.pdf> visited on 13 June 2011

right to information to the government of India. The draft model was updated and renamed the PCI-NIRD Freedom of Information Bill 1997. Unfortunately, none of the draft law was seriously considered by the government.¹⁸

H.D. Shourie Committee 1997

The election manifestos of most of the major political parties in 1990s have promised transparency and administrative reforms. On 24 May, 1997 government formed a working group on right to Information and promotion of open and transparent government chaired by consumer activist late H.D. Shourie and gave the mandate to prepare draft legislation on freedom of information. The Shourie Committee report and draft was published in 1997 but the draft was criticized for not adopting the high enough standard of disclosure. The Shourie Committee draft law passed through two successive governments but it was never introduced in parliament.¹⁹

Jethmalani's order 1999

In 1999, it was dynamic Advocate and Union Minister Ram Jethmalani who passed an administrative order in his ministry that any citizen would be entitled to inspect and take photocopies of any file in his ministry. He has shown that the cabinet papers and top level decision making processes need not be kept secret. In his order, Jethmalani pointed out that the Supreme Court had in at least two Constitutionbench decisions held that the citizens have the right to get information about all aspects of government functioning. First is Indira Gandhi's election case and second is S.P. Gupta v/s Union of India.²⁰ Disappointingly the Cabinet Secretary did not permit this to come into effect.

Freedom of Information Bill 2002²¹

Eventually, the Shourie Committee draft law was reworked into the Freedom of Information Bill 2000, an even less satisfactory Bill than proposed by the Shourie Committee's. The 2000 Bill was sent to the Parliamentary Standing Committee on Home Affairs, which consulted civil society groups before submitting its Report in July 2001. The Committee recommended that the Government should address the

¹⁸<http://www.thesouthasian.org/archives/2006/post.html>

¹⁹Sharma, Sarbjit and Krishna Goyal, *op-cit.*, p. 114

²⁰<http://www.nyayabhoomi.org/treatise/history/history11.htm> visited on 8 June 2011

²¹<http://www.thesouthasian.org/archives/2006/post.html>

flaws in the draft Bill pointed out by civil society. Unfortunately, the Government did not implement that recommendation, while determining the final contents of the Bill.

The national Freedom of Information Bill 2000 was introduced in Parliament in 2002. It was passed in December 2002 and received Presidential assent on January 2003, as the Freedom of Information Act 2002. Unfortunately, a date for the Bill coming into force was never notified, such that it never actually came into operation.

3.2 Right to Information Act, 2005

As the freedom of information act was never implemented, to replace it, government of India introduced the Right to Information Bill 2004 in Lok Sabha on 23 December 2004. The RTI Bill 2004 was based largely on recommendations submitted to the Government by the NAC (which were based on the NCPRI's original draft Bill. NCPRI produced a comparative analysis of the RTI Bill 2004 against the FOI Act 2002 and the original NAC Recommendations. CHRI's summary of the Bill was also produced.²² The Bill was passed very quickly. It was approved by the Lok Sabha on 11 May 2005 and by the Rajya Sabha on 12 May. On 15 June 2005, President APJ Abdul Kalam gave his assent to the national Right to Information Act 2005. With presidential assent, the Central Government and State Governments had 120 days to implement the provisions of the Bill in its entirety. The Act formally came into force on 12 October 2005.

After a long struggle by NGOs and different organizations Parliament passed an Act named Right to Information Act 2005 on 15th June 2005. The Act came into force on 13th October 2005. The main objective of the Act is to provide information to all citizens of India. The main provisions of the Act are as below:

The jurisdiction of the Act

The Act applies to the whole of India except Jammu & Kashmir²³. It covers all governmental and non-governmental organization and panchayati raj institutions which are established, constituted, owned, controlled and substantially financed by funds provided directly or indirectly by centre government or state

²²<http://www.thesouthasian.org/archives/2006/post.html> visited on 13 June 2011

²³Section 1, Right to Information Act 2005.

government²⁴. This Act says that all citizens can demand *information*^{*1} under this Act²⁵.

Saumoto Disclosure

All *public authorities*^{*2} are required maintaining all their records and reports in such a form which facilitates the Right to Information under the Act within a reasonable time period. They have to publish all important information about the department within in one hundred and twenty days *from the enactment of this Act*^{*3}. They have to publish all relevant facts and reasons for their decisions which affect public. Every public authority has to publish as much information as possible at regular intervals through various means of communications²⁶.

Designation of public information officer

Every public authority is required to designate as many officers as may be necessary in all administrative units and at each sub-divisional level or other sub-divisional level to provide information to the citizens within one hundred days of the enactment of the Act. Public information officer can take assistance of any other officer if it is necessary for the proper discharge of information and such other officer shall be treated as a central information officer or state information officer as the case may be²⁷.

Making a request under this Act

A request can be made in writing or through electronic means in Hindi, English or in the official language of the area in which the application is being made and if the request cannot be made in writing it can be made orally. An applicant is not

²⁴Section 2, Right to Information Act. 2005.

^{*1}According to this Act information means "Any material in any form, including records, documents, memos, e-mails, opinion, advise, press releases, circulars, orders, logbook, contacts, records, 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 public law for the time being in force."

²⁵Section 3, Right to Information Act 2005.

^{*2}Public Authority means which is defined under this act "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 made by state legislature, by notification issued or order made by appropriate government and includes anybody owned, controlled or substantially financed, non-government organization substantially financed directly or indirectly by funds provided by appropriate government."

^{*3}The Right to Information Act came into force on 12 October 2005.

²⁶Section 4, Right to Information Act 2005.

²⁷Section 5, Right to Information Act 2005.

required to give any reason for seeking information under this Act²⁸. If the application is more closely related with the function of another public authority, then the public authority to which such application is made will transfer the application to the appropriate department and will inform the applicant immediately. Such transfer should not be made later than five days from the date of the receipt of the request²⁹.

Disposal of the request

Each public authority is required to give information within in thirty days from the receipt of the request in normal case³⁰. A period of five days can be added in computing in the period of thirty days³¹. If the application is related to life and liberty of a person then the information should be provide within forty eight hours from the receipt of the request³². If the information is related to *third party*^{*4} then the limitation period would be forty days³³. If the application has been received from the way of transfer then the limitation period would be thirty five days³⁴. If an application contains the obligation of corruption and human right violation then the limitation period of such request will be forty five days after the approval of central information commission³⁵.

Ground of rejection of an application

An application can be rejected if it involves the information which affects the sovereignty, integrity, the security, strategic, scientific and economic interest and relation with foreign states of India, the information which is forbidden to be published by any court, information which is privilege of Parliament, the information including commercial confidence, trade secrets, the information which harm the competitive position of a third party, information received in confidence from governments and the information which is related to such an event which has not taken place twenty years before³⁶.

²⁸Section 16 (2), Right to Information Act 2005

²⁹Section 16 (3), Right to Information Act 2005

³⁰Section 7(1), Right to Information Act 2005.

³¹Section 5 (2), Right to Information Act 2005.

³²Section 7(1), Right to Information Act 2005

^{*4}According to the Act Third Party means "A person other than the citizen making a request for information and includes a public authority."

³³Section 11 (3), Right to Information Act 2005

³⁴Section 6 (3), Right to Information Act 2005

³⁵Section 24 (1), Right to Information Act 2005

³⁶Section 8, Right to Information Act 2005.

Central public information or state public information officer as the case may be can reject such a request for information which involves an infringement of copyright sustaining in a person other than the state³⁷.

Where the information pertains to an organization notified and it does not involve information pertaining to corruption or human right violation the information may be rejected³⁸.

Such request for information can be rejected which belongs to the third party and the disclosure of such information does not involve public interest³⁹.

Payment of fee

An applicant is required to pay fee along with the application under sub-section 91) of section 6 and sub-section 91) and (5) of section 7. The amount of the fee will be determined by the *appropriate government*^{*5}, the amount should be reasonable and no such amount will be charged from the persons who are of below poverty line as determined by appropriate government⁴⁰. If the information is not given within the specified period under the act then no fee will be charged and information will be provided free of cost if fee is already paid then it will have to be refunded.⁴¹

Appeal

If an applicant does not receive decision within specified time under the Act then he/she can make first appeal to such officer senior in the rank to the central public information officer of state public information officer as the case may be, in each public authority.⁴²

Such officer admits the appeal after the expiry of the thirty days. The decision on the first appeal should be made within in thirty days from the date of the admission of the appeal.⁴³ A second appeal can be made against the decision of the first appeal,

³⁷Section 9, Right to Information Act 2005

³⁸Section 24, Right to Information Act 2005.

³⁹Section 11, Right to Information Act 2005

*5According to the Act Appropriate Government means " In relation to public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the central government or the union territory administration, the central government or by the state government, the state government."

⁴⁰Section 7 (5), Right to Information Act 2005

⁴¹Section 7 (6), Right to Information Act 2005

⁴²Section 19 (1), Right to Information Act 2005

⁴³Section 19 (2), Right to Information Act 2005

to the central information commission or state information commission as the case may be. The decision on the second appeal should be given within the ninety days from the date on which the decision was made for the first appeal.⁴⁴

In any appeal it is required to prove that the rejection of the request was justified, central information commission or state information commission as the case may be who denied the request.⁴⁵ The first appeal should be disposed within thirty days of the receipt of the appeal but for the reason to be recorded in writing but this time period of thirty days should not exceeded forty five days from the date of the admission of the first appeal.⁴⁶

Penalties

If central information officer or state information officer as the case may be, without any reasonable cause rejects or refuse to receive an application for information within the specified time under the act of knowingly gives incorrect, incomplete information the he/she has to pay a penalty of two hundred rupees each day till application is received of information is furnished, the total amount of such penalty shall not exceed twenty five thousand rupees. Central public information commission or state public information officer as the case may be will be given a reasonable opportunity of being heard before any penalty is imposed on him/her.⁴⁷

If central public information officer or state public information officer refuse any complaint or appeal without any reasonable cause or failed to furnish information within the specified time under the Act or knowingly gives incorrect or incomplete information or destroy the information which is the subject of the request, then there will be disciplinary action against the central public information or state public information officer as the case may be, under the services rules application to him/her.⁴⁸

Third Party Interest

When an application is filed under Right to Information then the applicant is first party and the public authority from the information is sought is second party but

⁴⁴Section 19 (3), Right to Information Act 2005

⁴⁵Section 19 (5), Right to Information Act 2005

⁴⁶Section 19 (6), Right to Information Act 2005

⁴⁷Section 20 (1), Right to Information Act 2005

⁴⁸Section 20 (2), Right to Information Act 2005

if the information belongs to the third party other than these two it creates third party interest in that matter have to follow a definite procedure given in section 11 of the Act to protect the interest of the third party the same procedure has to be followed before imparting information belonging to the third party.⁴⁹

Monitoring and Reporting

It is required to prepare a report by central public information commission or state public information commission as the case may be, as soon as practicable on the implementation of the provision of this act during that year and also required to forward a copy of this report to the appropriate government.⁵⁰

Each ministry or department in relation to public authority within their jurisdiction is required to collect information and prepare a report containing information such as number of request made to each public authority, number of appeal referred to central information commission or state information commission as the case may be, nature of appeals and outcome of appeals, particulars of disciplinary action taken against any officer, the amount of charges collected by each public authority under this Act and recommendations for reforms. Each ministry is required to provide all these information to central information commission or state information commission as the case may be.⁵¹

Central government or state government as the case may be is required to present a copy of the report of central information commission or state information commission as the case may be after the end of the year before each house of parliament or as the case may be, before each house of the state legislature where there are two houses and where there are one house of state legislature before that house.⁵²

Programmes to Enhance Understanding about Right to Information Act

If there is availability of financial and other resources then the appropriate government can organise educational programmes to enhance the knowledge of public particularly disadvantaged communities as how to exercise Right to

⁴⁹Section 11, Right to Information Act 2005

⁵⁰Section 25 (1), Right to Information Act 2005

⁵¹Section 25 (2) (3), Right to Information Act 2005

⁵²Section 25 (4), Right to Information Act 2005

Information.⁵³ There is also a provision in this act to train central public information officers or state public information officers, how to impart information under this act.⁵⁴

Every public authority is required to publish a guide in its official language, within eighteen months from the commencement of this Act and compile such information which is understandable to those persons who are wish to exercise any right under this Act.⁵⁵

If necessary appropriate government can publish the guideline at regular intervals containing information such as the objects of the Act, postal and street address and phone numbers of central public information officers and state public information officer, the manner mad the form in which the request for access to information is to be made, the assistance available from central public information officers and state public information officers, the assistance available from central information commission or state information commission, notices regarding fees which is to be paid for the application of information and any additional regulation issued in relation to obtaining access to an information.⁵⁶

Authority of Appropriate Government to Make Rule

Appropriate government has the power to decide the cost of the medium or the print cost price of material under sub-section (4) of section 4, to decide fee payable under sub-section (1) of section 6 and sub-section (1) and (5) of section 7 and also has the power to decide the salaries and allowances and term and conditions of services of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16. The appropriate government can also decide the procedure adopted by central information commission or state information commission as the case may be in deciding the appeals under sub-section (10) of section 19 and any other matter which is required to be *prescribed**⁶.⁵⁷

Authority of Competent Authority to Make Rule

⁵³Section 26 (1)(a), Right to Information Act 2005

⁵⁴Section 26 (1)(d), Right to Information Act 2005

⁵⁵Section 26 (2), Right to Information Act 2005

⁵⁶Section 26 (3)(d), Right to Information Act 2005

*⁶ According to the Act Prescribed mean "prescribed by rules made under this Act by the appropriate government or the competent authority, as the case may be."

⁵⁷Section 27, Right to Information Act 2005

The *competent authority*^{*7} has the power to decide the cost of the medium or print cost price of the material under sub-section (4) of section 4 to decide fee payable under sub-section (1) of section 6 and sub-section (1) of section 7 and any other matter which is required to be prescribed.⁵⁸

Power to Remove Difficulties

The act gives authority to central government that if there arise any difficulty in giving effect to the provision of the Act then central government can make rule to remove such difficulties.⁵⁹

Central Information Commission

There is provision in this act that central government will constitute a body which will be known as central information commission, to perform the duties assigned to it. In this body there will be a chief information commissioner and some information commissioner but information commissioner should not be more than ten. The chief information commissioner and the information commissioner will be appointed by the president of India on the recommendation of a committee. Prime minister will be the chairperson of the committee and other member of the committee will be the leader of opposition in the Lok-Sabha and a union cabinet minister, nominated by prime minister.⁶⁰

The chief information commissioner and information commissioner should not be a member of parliament, legislature of any state or union territory. They should have wide knowledge and experience in law, science and technology, social services, mass media, journalism or administration and governance.⁶¹ The head-quarter of central information commission will be at Delhi and can also be at any other place with the previous approval of the central government.⁶²

^{*7}According to Right to Information Act Competent Authority means "the speaker in the case of house of the people or the legislative assembly of the state or a union territory having such assembly and the chairman in the case of the council of the state or legislative council of a state, the Chief Justice of India in the case of Supreme Court, the Chief Justice of High Court in the case of High Court, the president or the governor as the case may be in the case of other authorities established or constituted by or under the constitution, the administrator appointed under article 239 of the constitution."

⁵⁸Section 28, Right to Information Act 2005

⁵⁹Section 30, Right to Information Act 2005

⁶⁰Sub-section (1), (2) and (5) of Section 12, Right to Information Act 2005.

⁶¹Sub-section (5) and (6) of Section 12, Right to Information Act 2005

⁶²Sub-section (7) of Section 12, Right to Information Act 2005

Term of Office and Conditions of Services for Central Chief Information Commissioner and Central Information Commissioners

The time period of service for chief information commissioner and information commissioner is five years or sixty five years, whichever is earlier. Chief information commissioner or information commissioner cannot be reappointed. An information commissioner can be appointed as chief information commissioner, but his term of office cannot be more than five years in aggregate as information commissioner or chief information commissioner.⁶³

The chief information commissioner or information commissioner can resign from his office at any time in his writing. In such case he/she will address the president of India. The salary of chief information commissioner will be same as chief election commissioner and the salaries of information commissioners will be same as an election commissioner.⁶⁴ The central government will provide some officers and employees to chief information commissioner or information commissioners which are necessary for the efficient performance of their functionaries under this Act.⁶⁵

Removal of Central Chief Information Commissioner and Central information Commissioners

The chief information commissioner or information commissioner can be removed from his/her office only by order of president on the ground of misbehaviour and incapacity after the inquiry done by Supreme Court.⁶⁶ The president can also suspend the chief information commissioner or information commissioners during the enquiry until the president gets the report of the Supreme Court on such reference.⁶⁷

Beside all this the president can remove the chief information commissioner or an information commissioner from his/her office if he/she has been convicted of an offence which, in the opinion of the president, involves moral turpitude holds any other employment outside the duties of his/her office, in the opinion of president unfit to continue in office by reason of his/her mental or physical infirmity or has acquired

⁶³Sub-section (1) and (2) of Section 13, Right to Information Act 2005

⁶⁴Sub-section (4) and (5) of Section 13, Right to Information Act 2005

⁶⁵Sub-section (6) of Section 13, Right to Information Act 2005

⁶⁶Sub-section (1) of Section 14, Right to Information Act 2005

⁶⁷Sub-section (2) of Section 14, Right to Information Act 2005

such financial or other interest which effect his functions as chief information commissioner or information commissioners.⁶⁸

State Information Commission

There is provision for state information commission in this Act. Every state government will constitute a state information commission to perform the duties assign to it. In the body of state information commission there will be a state chief information commissioner and some state information commissioner, but the number of state information commissioner should not be more than ten.⁶⁹

Chief state information commissioner and the information commissioner will be appointed by the governor on the recommendation of a committee. Chief Minister will be the chairperson of the committee and other member of the committee will be leader of opposition in legislative assembly and a cabinet minister nominated by chief minister.⁷⁰

The state information commissioner or information commissioner should have wide knowledge and experience in law, science and technology, social services, management, mass media, administration and governance. The state chief information commissioner or state information commissioners should not be a member of parliament, legislature of any state or union territory and also should not hold any other offices or profit or connected with any political party. The headquarter of state information commission will be at such place in state as state government specifies and can also be at any other place in state with the previous approval of state government.⁷¹

Term of Office and Conditions of Services for State Chief Information Commissioner and State Information Commissioners

The term of office of state chief information commissioner and state information commissioner will be five years or till sixty five years from the date on which he/she enters upon his/her office whichever is earlier. State chief information commissioner or state information commissioner cannot be reappointed. If a state information commissioner will be appoints as state chief information commissioner

⁶⁸Sub-section (3) of Section 14, Right to Information Act 2005.

⁶⁹Sub-section (1) and (2) of Section 15 , Right to Information Act 2005

⁷⁰Sub-section (3) of Section 15, Right to Information Act 2005

⁷¹Sub-section (5) and (6) of Section 15, Right to Information Act 2005

then his/her term of office should not be more than five years in aggregate as the state information commissioner or state chief information commissioner.⁷²

The state chief information commissioner or state information commissioner can resign from his/her office at any time in his/her writing. In such case he/she will address the governor of the state. The salary of state chief information commissioner will be same as an election commissioner and the salaries of state information commissioners will be same as the chief secretary of the state government.⁷³ The state government will provide officers and employees to state chief information commissioner and information commissioners for efficient performance of their functions under this Act.⁷⁴

Removal of State Chief Information Commissioner and Information Commissioners

The state chief information commissioner or state information commissioners can be removed from his/her office by president on the ground of misbehaviour and incapacity after the enquiry done by Supreme Court.⁷⁵ Governor can also suspend the state chief information commissioner or state information commissioners during the enquiry until the governor gets the report from Supreme Court on such reference.⁷⁶

Beside this governor can also remove state chief information commissioner or state information commissioner if he/she has been convicted of an offence which involves moral turpitude in the opinion of governor, holds some paid employment outside the duties of his/her office, unfit to hold office by reason of his/her mental or physical infirmity or other interest which effect his/her function as state chief information commissioner or state information commissioner.⁷⁷

Powers and Functions of Information Commissioners

The act assigns some duties and gives some powers to information commissions. It is the duty of central information commission or state information

⁷²Sub-section (1) and (2) of Section 16, Right to Information Act 2005

⁷³Sub-section (4) and (5) of Section 16, Right to Information Act 2005

⁷⁴Sub-section (6) of Section 16, Right to Information Act 2005

⁷⁵Sub-section (1) of Section 17, Right to Information Act 2005

⁷⁶Sub-section (2) of Section 17, Right to Information Act 2005

⁷⁷Sub-section (3) of Section 17, Right to Information Act 2005

commission to receive and enquire into a complaint from any person who has been refused to give information under the Act, who has not been given response on a request within the time limit specified under the Act, who has been asked to pay such amount of fee which is unreasonable and who believes that the information given to him/her is false, incomplete and incorrect.⁷⁸

If central information commission thinks that there is reasonable ground for inquiry then it can initiate an inquiry in that case.⁷⁹ Central information commission or state information commission has the same power as are vested in a civil court while inquire into any matter in respect of some matters such as summoning and enforcing the attendance of persons, requiring the discovery and inspections of documents, receiving evidence on affidavit, requisitioning any public record or copies from any court or office, issuing summons for examination of witnesses or documents and any other matter which may be prescribed.⁸⁰

Beside all this central information commission or state information commission, during the enquiry of any complaint under this Act can examine any record to which this Act applies and which is under the control of any public authority. No public authority can deny giving such records to on any ground.⁸¹

⁷⁸Sub-section (1) of Section 18, Right to Information Act 2005

⁷⁹Sub-section (2) of Section 18, Right to Information Act 2005

⁸⁰Sub-section (3) of Section 18, Right to Information Act 2005

⁸¹Sub-section (4) of Section 18, Right to Information Act 2005