

RIGHT TO INFORMATION ACT AND COOPERATIVES

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‘Information’ plays an important role in shaping the life of every individual. We need one or the other information in every aspect of our life. In a democratic set-up it assumes greater importance as elected representatives govern the country and citizens who elect them and also pay taxes have every right to know how they are governed and how their money is spent. Information, therefore, is the life-blood that sustains political, social and business decisions.

Earlier, the Government and public authorities use to control the information and it was not shared with people. But today with globalization, achievements in information technology and the important role played by media and social activists people have become more enlightened and want transparency in the functioning of public authorities.

Article 19(a) of the Indian Constitution includes the right to freedom of speech and expression which indirectly increases the participation of Indian citizens in the functioning of the Government and simultaneously allows them to seek information from the Government and the concerned public authorities.

Similarly, it is stated that in the introduction of the Right to Information Act, 2005 (RTA) that democracy requires an informed citizenry and there shall be transparency of functioning so as to withhold corruption and to hold the Government and their instrumentalities accountable to the governed.

Definition of ‘information’

Information is derived from a Latin word ‘formation’ and ‘forma’ which means giving shape to something.

The Encyclopedia ‘Britannica’ defines information as “facts and opinion provided and received during the course of daily life; one obtains information directly from other living beings; from mass media, from electronic data banks, and from all sorts of observable phenomena in the surrounding environment”. It further states that information organized according to some logical relationships is referred to as a body of knowledge, to be acquired by systematic exposure or study.

As per RTA-2005 ‘information’ means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

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The Assam Right to Information Act, 2001 states that 'information' 'means and includes information relating to any matter in respect of the affairs of the administration or decisions of the State Government or a Public Authority but does not include any such information the publication of which has been prohibited by any law for the time being in force or by any notification issued by the State Government from time to time under this Act.

The Goa Right to Information Act, 1997 states that 'information' means any material or information relating to affairs of the State or any local or other authorities constituted under any enactment passed by the Legislative Assembly or a Company, Corporation, Trust, firm, Society or a Cooperative Society, or any organization funded or controlled by the Government or executing any public work or service on behalf of or as authorized by the Government.

The J&K Right to Information Act, 2004 defines it as any document or information relating to the affairs of the State or a public body.

The Karnataka Right to Information Act, 2000 defines it as information relating to any matter in respect of the affairs of the administration or decisions of a public authority.

The Rajasthan Right to Information Act, 2000 defines 'information' as any material or information relating to the affairs of the State or a public body.

In simple words 'information' means the knowledge about the affairs relating to the State or its authorities.

Right to Information means:

Right to information means to have access to knowledge or facts which is held by or is under the control of any public authority and includes the right to:

- (i) inspect works, documents and records,
- (ii) Take notes, extracts or certified copies of documents or records,
- (iii) Take certified samples of material
- (iv) Obtain information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.

Importance of RTA

The right to information is a fundamental right flowing from freedom of speech and expression guaranteed under Article 19(a) of the Constitution.

The RTA has, therefore, set-out a practical regime to right to information for citizens to have access to information under the control of public authorities. This has

been done to promote transparency and accountability in the working of every public authority.

The Right to Information Act is, therefore, very important for strengthening democracy ensuring transparency and accountability in the actions of public authorities and it enhances the quality of life of people and their participation in governance.

Enactment of RTA-2005

In order to promote openness, transparency and accountability in the administration of the public authorities and enhance the quality of life of citizens and their participation in the governance and strengthened their involvement in the decision making, the Government of India enacted the Freedom of Information Act, 2002. The Act could not be brought into force because of various reasons. The National Common Minimum Programme of the present Government committed to make the Information Act more progressive, participatory and meaningful repealed the Freedom of Information Act, 2002 and replaced it by a new legislation 'Right to Information Act, 2005' by including various suggestions of the National Advisory Council. The emphasis on enacting the new legislation was to provide an effective framework for effectuating the right to information recognized and implied under Article 19 of the Constitution of India.

The Right to Information Bill, 2005 was passed by the Lok Sabha on 11th May, 2005 and by the Rajya Sabha on 12th May, 2005 and it received the Presidential assent on 15th June, 2005 following which it came on the statute Book as Right to Information Act, 2005 (22 of 2005).

The main aim of the Act is to introduce discipline in various functionaries in the Government administration. The Act provides practical regime to right to information to citizens to secure and access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

Before Central Right to Information Act, some of the States like Assam (2002), Delhi (2001), Goa (1997), J&K (2004), Karnataka (2002), Madhya Pradesh (2003), Maharashtra (2002), Rajasthan (2002), Tamil Nadu (1997) and U.P. (Code of Practice on Access to Information, Government of U.P. 2002) had enacted their own right to information Act.

The Right to Information Act, 2005 at a Glance

Section	Provision	Subject matter
2	Definitions	Central/State Information Commission, Information, right to information, third party and competent authority etc. defined.
3	Right to Information	All citizens shall have such right
4	Obligation of public	Strict provisions for providing information, maintenance

	authorities	of records etc. and publication of particulars and functions of organizations.
5	Public Information Officers	Designation of Central Public Information Officers or State Public Information Officers etc.
6	Request for obtaining information	Written request or through electronic mode with fee.
7	Disposal of request	Within 30 days from date of request in normal cases but if the information matters the life or liberty of a person it can be obtained within 48 hours from time of request.
8	Exempted information	Information affecting sovereignty of India, security, strategic, scientific and economic interest of State, forbidden information, secret information and cabinet information etc. cannot be obtained
9	Grounds for rejection	Information not to be provided if it involves the infringement of copyright of an individual
10	Part information	If some part of record is exempted from disclosure, then information of other part can be obtained
11	Third Party Information	Submission of third party to be considered
12	Constitution of Central Information Commission	Power conferred on Central Government
15	Constitution of State Information Commission	Power conferred on State Government
19	Appeal	Within 30 days after expiry of specified time for decision or within 30 days from date of decision the appeal can be made to Senior Information Officer
20	Penalties	Rs.250 per day till application is received or information is furnished in the Central Information Commission or State Information Commission as the case may be, subject to maximum limit of Rs. 25,000. Disciplinary action can also be taken under the service rules
23	Jurisdiction of Court	Court has no jurisdiction to deal with complaint, appeal etc.
24	Act not to apply to certain Government organizations	Information in relation to certain organizations cannot be obtained.

There is no doubt that the Right to Information Act, 2005 showers the public with opportunities to acquire information through competent sources, however at the same time the Act seldom touches to the question that whether information furnished is adequate or not and the same is justifiable or not.

Right to Information Act and Cooperatives

In India, cooperation is a State subject and cooperatives are registered under their respective State Cooperative Societies Acts except the multi-state cooperative societies and national cooperative federations which are registered under the Multi-State Cooperative Societies Act, 2002. The question that arises is whether the cooperatives are covered under the RTA of the concerned State in which they are registered or not. This is important and pertinent to know as it will substantially affect the working of cooperatives.

Only the Madhya Pradesh Jankari Ki Swatantrata Adhiniyam 2002 (No. 3 of 2003) defines “public body” means all officers of the State Government (ii) all local authorities and statutory authorities constituted under any Act of the State Legislature for the time being in force and all companies, corporations and cooperative societies in which not less than fifty one percent of the paid-up share capital is held by the State Government.....” 2(b)

This means only the cooperative societies which have 51% of the share capital contributed by the State Government are covered under the above Act. Let us see what Information Acts of different States say in this regard. The Assam Right to Information Act says that a cooperative society or any other society or a trust or any other organization or institution established under any law for the time being in force by the State Government and directly controlled or funded by it. The Goa Right to Information Act, 1997 says information means any material or information relating to affairs of the state or any local or other authorities constituted under any enactment passed by the Legislative Assembly of Goa for the time being in force or a Statutory Authority or a Company, Corporation, Trust, Firm, Society or **a cooperative society**, or any other organization **funded or controlled by the Government** or executing any public work or service on behalf of or as authorized by the Government.

The J&K Right to Information Act says a ‘public body’ shall include “a society or a cooperative society or any other organization established under any law for the time being in force, by the Government and directly controlled or funded by it;” 2(f)(iv). The Karnataka Right to Information Act, 2000 defines “public authority” as “all local authorities, all authorities constituted by or under any Act of the State Legislature for the time being in force, a company, Corporation, trust, society, any statutory or other authority, **Cooperative Society** or any other organization or body **funded, owned or controlled by the State Government**” 2(c)(iii). The Maharashtra Right to Information Act, 2000 says “information” includes a copy of any document relating to the affairs of the State or any local or other authorities constituted under any Act for the time being in force or a statutory authority or a company, corporation or **a cooperative society** or any organization, **owned, or controlled by the Government**. 2(3). The Rajasthan Right to Information Act, 2000 says public body shall include “a society or **a cooperative society** or any other organization established under any law for the time being in force, **by the State Government and directly controlled or funded by it**”. 2(v)(d). The Tamil Nadu Right to Information Act, 1997 says “information” includes copy of any document relating to the affairs of the State or any local or other authorities constituted under any Act for the time being in force or a statutory authority or a company, corporation or **a cooperative society** or any organization **owned or controlled by the Government**”. 2(3).

The Central RTA, 2005 defines public authority as any authority of body or institution of self-government established or constituted-

- (a) by or under the Constitution
- (b) by any other law made by Parliament
- (c) by any other law made by State Legislature
- (d) by notification issued or order made by the appropriate Government, and includes any

- (i) body owned, controlled or substantially financed;
- (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government; 2(h)

As cooperatives are democratic, self-help organizations controlled by their members, members contribute equally to the society and democratically control the capital and actively participate in setting the policies and decision making in the cooperative, there is an in-built mechanism under the provisions of Cooperative Laws to protect the rights of its members. Therefore, the cooperatives in which there is less than 51% equity participation of the Government or which are not receiving substantial Government grant should not come under the purview of Right to Information Act of State or Centre. Shri Suresh Pachouri, Hon'ble Minister of State for Personnel, Public Grievances and Pension, Government of India in moving the motion for consideration of the Bill said ".....the scope of this Bill extends to all the authorities and bodies under the constitution or any other law and inter alia includes all authorities under the Central Government, State Governments and local bodies. The non-Governmental **organizations substantially funded** directly or indirectly, by the public funds also come within the ambit of this Bill."

Secondly, the 5th Principle of Cooperation which says cooperatives provide education, training and information for their members, elected representatives, managers, and employees so that they contribute effectively to the development of their cooperatives. They inform the general public – particularly young people and opinion leaders – about the nature and benefits of cooperation. Each and every cooperative follows cooperative principles in its true spirits and shares the information about its functioning to their members.

The Government of India is also considering constitutional amendments to ensure democratic, autonomous and professional functioning of the cooperatives.

Thirdly, most of the Cooperative Societies Acts cover right to information where members or creditors can seek any information from their cooperatives by depositing a small amount fixed under the Act. For example, according to the Section 32 and Rule 30 of Maharashtra Cooperative Societies Act 1960 and Rules 1961 some rights have been given to members of cooperative societies to get some information. They are as follows:- every member of a society shall be entitled to inspect free of cost at the Society's office during office hours, or any time fixed for the purpose by the society, a copy of the Act, the Rules and bye-laws, the last audited annual balance sheet, the profit and loss account, a list of the members of the Committee, a register of members, the minutes of general meetings, minutes of committee meetings and those portions of the books and records in which his transactions with the society have been recorded. A society can furnish to a member on request in writing and on payment of such fees as may be prescribed therefore, a copy of any of the documents mentioned in the foregoing sub-section within one month from the date of payment of such fees. Similarly under the newly enacted Delhi Cooperative Societies Act, 2003 members or creditors can seek any information from the societies.

However, it is being observed that some elements are coming forward to seek information from the Cooperative Department regarding cooperative societies without establishing any cause of action by depositing small amount fixed under the Act. As an example, a member seeks information i.e. copies of all resolutions of General Body and Managing Committee for the last 10 years or audit report since the society is registered. He has no cause of action for seeking this information but only to harass the management of the societies. Defeated members in the election or their supporters adopt this technique and thus misuse the Information Act. Under the provisions of the Income Tax Rules, 1962 as well as the Companies Act, 1956, Books of Account are required to be maintained/preserved for a period of 6 years and 8 years respectively.

Suggestions for Consideration

- (i) In the above background, there is a need to modify the present States and Central Information Acts in order to regulate the public as well as Government Departments and public institutions by making provisions that person seeking information must establish cause of action before Public Grievances Commission only after which the information would be supplied to such person.
- (ii) Moreover, information for not more than three years old should be supplied under the Act. Cooperative societies are managed by honorary elected persons and they are short of staff due to financial restraints. Hence it is necessary to protect cooperative institutions from the vested interest of some individuals.
- (iii) Cooperatives being member controlled democratic organizations have laws protecting the rights of its members. The cooperatives in which there is less than 51% equity participation of the Government or which are not receiving substantial Government grant should not come under the purview of Right to Information Act.
- (iv) The National Cooperative Union of India should convene a National Seminar on the subject to discuss various provisions of different States and Federal Acts which adversely affects the working of cooperatives.

The success of the RTA movement depends on the will of the politicians, positive attitude of bureaucrats and enlightened masses to use it only for good governance and not to mould the Act and misuse it for their vested interests or to harass somebody.

There are certain grey areas which need to be looked for, especially regarding cooperatives and rights and duties of their members.

