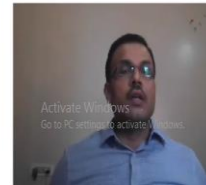


**Right to Information and Good Governance**  
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**Lecture No. 20**  
**Salient Features of the RTI Act - II**

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**Definitions: Competent Authority**

- The competent authority in relation to these institutions has more or less the same meaning as that of the appropriate Government in relation to Public Authorities defined under Section 2(a) of the RTI Act, 2005.
- ***The competent authority has also been empowered with the power of delegated legislation to frame rules to carry out the provisions of this Act under section 28 of the Act.***



After understanding the Preamble of the Right to Information Act and also understanding the importance of Preamble in statutory reading, let us look at Section 2 of the Right to Information Act, and look at some of the definitions that have been provided under this legislation. It would be important to start off with the definition of appropriate government in Section 2(a). And the Act says that an appropriate Government means in relation to Public Authority which is established, constituted, owned, controlled or substantially financed by the funds provided directly or indirectly by either the Central Government or by the State Government.

So, 'appropriate government' definition is very relevant and important under the Right to Information Act. You will notice that an appropriate government under Section 27, may by notification in the official gazette make rules to carry out the provisions of the Act. So, the definition of an appropriate government is relevant and important. Because an appropriate government can make rules for the RTI Act. And you would notice that under Section 27 of the Right to Information Act, the appropriate government may in its rules provide for the following matters. First in the rules, the appropriate government may lay down the cost of the medium or print cost price of the material to be disseminated under sub section 4 of Section 4.

So, Section 4 is about the obligations of public authority and hence the cost of providing the information or printing the materials under the rules the appropriate government is entitled to do the same. Second, an appropriate government may also prescribe the fee payable under Section 6. And appropriate government may also determine the salaries and the allowances that are to be paid for the officers and employees of the Commission. An appropriate government may also lay down the procedure to be adopted by either the central information commission or the state information commission as the case may be in deciding appeals or any other matter which is required to be or maybe prescribed under this Act.

And hence, the first definition under the Right to Information Act which defines an appropriate government is relevant. An important fact of determining the competent agencies that can frame rules under the Right to Information Act. And their power to make rules is provided under Section 27. If you have to read again Section 2(a) says an appropriate government means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by the funds provided directly or indirectly by the Central or the State Government.

After this definition, the second most important definition that comes in Section 2 of the Right to Information act 2005 is the definition of the 'competent authority'. Section 2(e) defines the competent authority. It states something like this. It means the Speaker in the case of the house of the people or the legislative assembly of a state or union territory having such assembly and the chair person in the case of the council of states or the legislative council of that state. A competent authority also means the chief justice of India in the case of the Supreme Court.

The chief justice of the high court in the case of a high court. Four, the President or the governor as the case may be in the case of authorities established and constituted by or under the constitution. And finally the administrator appointed under article 239 of the Constitution of India. Why is the definition of the competent authority relevant? We will slightly come to that when we talk about the aspect of the power that a competent authority has under Section 28.

However, to look at the competent authority, one would notice that the term here means the authority heading an autonomous and independent institution functioning under the various provisions of the constitution of India. The Constitution of India talks about the power of legislature, the executive and the judiciary. And hence, you will notice that in terms of the legislative power that is defined in the constitution, a competent authority under the RTI Act is the

speaker of the Lok Sabha or the chairman of Rajya Sabha or it could be the same when it comes to state assemblies.

In terms of judiciary it is the chief justice of the Supreme Court and the high courts. And in terms of executive power, it is the president and the governor of the state who are determined as the constitutional authorities and the competent authority's vis-à-vis the Right to Information Act. So, constitutional bodies have been given the position of a competent authority apart from the definition that we have earlier understood as an appropriate government. The competent authority has more or less the same meaning as an appropriate government. So, you will notice that when we talk about government or an appropriate government and competent authority they are more or less almost the same.

However, you will notice a distinction in terms of the chief justice of the Supreme Court or the High Court or the President or the governor as the case maybe would have those authorities or powers that are necessary under the Right to Information Act. The competent authority has also been empowered with the power of delegated legislation to frame rules, to carry out the provision of this Act under Section 28. The ultimate responsibility for the enforcement of the Act in such institutions that is the Supreme Court, the High Court, the Lok Sabha, the Rajya Sabha, the State Assemblies or the Union territories as the case maybe would be on such authority.

In this regard, competent authority may take all necessary steps to ensure the enforcement of the rights of information in such organization. If one reads Section 28, one will come to this conclusion the competent authority may by notification in official gazette make rules to carry out the provision of this Act. And hence what are the provisions for the rules that can be made by the competent authority. They are very similar to those that can be made under Section 27 in which the appropriate government may frame rules for the implementation of the Right to Information Act.

First and foremost, the competent authority may prescribe the cost of the medium and the print cost price of the material disseminated under Section 4. It may also determine the fee payable under Section 6 and Section 7 or any other matter which may be prescribed or required under the Act. And hence you will notice that there are two agencies under the RTI Act who are being empowered to make rules for the implementation of RTI Act 2005.

As we know the Act is the substantive law and the rules decide the framework for the implementation or the practical enforcement of the legislation. And hence, you will notice that

under the RTI Act there are two rules. One that are made by appropriate government; that is state or central government as we have seen so far. And second those that are made by competent authorities. And hence we have seen certain rules that are being made by different High Courts in the country which regulate the implementation of Right to Information Act vis-à-vis information that is being sought from those institutions that is this case, the respective High Court.

So, that is an interesting way in which you look at the Right to Information Act and hence in one module subsequent to these we will be discussing the role of the judiciary in implementation of Right to Information Act. There we will make an evaluation of those rules made by High Courts under the power given to them under Section 28. It may be clarified that notwithstanding their autonomous and independence status such institutions and organizations are equally covered under the Act and hence you will notice that there is nobody who is exempted from the application of this legislation.

Including those that are part of the schedule one of the Right to Information Act, schedule 2 of the Right to Information Act where there are agencies that have been exempted from the general application of the RTI Act. So, all organizations and institutions are equally covered and the constitution of non compliance and the provision of that would be the same in case of each and every public authority working within the definition of the government.

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## Information defined

- Information include the following forms:
  - Records
  - Document
  - Memos
  - E-mails
  - Opinions
  - Advices
  - Press Releases
  - Circulars
  - Orders



Next, let us look at the third most important definition in Section 2 and that definition is provided under Section 2(f) where you find that the term 'information' is defined. Now, we know that this is the law that provides information. This is the law that facilitates information, this is the law that

empowers citizens to seek information. And hence in the name of information what is available and how do we define the term information is very, very important for us to understand.

Interestingly here, the drafters of this legislation have not used an inclusive definition. They have rather used an exclusive definition. They have said in Section 2(f) that information means, it is any material in any form. That is how it starts off with. Which would mean any material concerning the affairs of the government. What is material? Material in the form of decisions, action, plan or schedule. I think the concept of information under the Act has been given quite a wide scope. Any kind of tangible material that is available within a government organization, within public authority is defined under the term information.

And hence, information as decisions, actions, plan or schedule if that is tangible in any material form it would cover within the definition of information under the Right to Information Act. Information apart from any material in any form includes the following. First, it includes records. Record is generally the written detail of anything or any act or decision pertaining to a public authority. Interestingly, there is a legislation called Public Records Act that is tuned or aligned to the Right to Information Act. Record as such, maybe anything that is in writing that the public authority determines as important for its functioning and may include maps, drawings or any other form and hence you will notice that records form a very integral part of definition of information. And records can be sought under the Right to Information Act. A record is a record when a public authority designates it as so. And hence from there or once a document has been designated as a record there is a stipulated time for the preservation of the records under the Public Records Act. It becomes record in terms of any kind of evidentiary value that it may have when it is submitted to court of law for any purpose.

It is recorded when the public authority or the government determines that the document concerned is an important document for which there must be adequate attention in terms of record keeping or record management. And hence, there is an element of seriousness attached to those documents that are part of the record process. Second, a document is also a part of a record and you will notice that if you insist on the Right to Information Act you may insist for any document. You will notice that each document may have an independent entity and may be read and treated individually and independent.

Probably you will notice that the collection of these documents amount to a record. A record maybe something pertaining to a right of a citizen or maybe pertaining to an order passed by the

government as well. However, all those papers that go on with record may be designated as a document. A document could be a piece of information within a government organization. It could be a piece of information that is generated by a government organization. And hence, documents are also something that can be accessed under the Right to Information act. The definition of information includes memos.

Generally, under office procedure a memo may be a kind of correspondence or a note on a particular subject. It may be a note of an action to be taken against a concerned individual or a concerned thing. It is an internal document that is generated within an organization for the efficient functioning of the organization and within the actions of the employees of that organization. And therefore, the subject of such memo would be the subject of information. And hence, any order or document that is titled as a memo can be accessed under the Right to Information Act. And hence, memos are generally correspondence letters, or a note that defines a particular subject within a public authority.

Section 2(f) also includes within its ambit emails. We know that today in the digital space most of the communication is sent via emails. There are a lot of digital applications that are exchanged for correspondence within offices of a given organization. These correspondence, these communications are also relevant and important in ensuring transparency and accountability of any given system. And hence, today letters have been replaced by emails that are actually sent within offices, within an organization. And hence, under the Right to Information Act either you can take the physical information or you can take the electronic form of that information as well.

And hence, while we say emails are an integral part of the Right to Information Act, it should pertain to that subject matter of the public authority. It should pertain to any government function or government action. And those emails are definitely something that can be accessed under the Right to Information Act. Interestingly, under the Right to Information Act, opinions can also be sought. Opinions are generally sought from individuals, opinions are sought from experts, opinions can be generated internally or externally. And hence, opinions are also part of documentation, record process in an organization. And hence you will notice this is also part of the Right to Information process.

Please note, opinions that are conveyed in official dealing become part of the official record and if it is accepted, then it is shared. Even if it is not accepted it must be shared under the Right to Information Act. So, opinions that are sought on a given matter, on a given subject are also part of

the Right to Information Act. Apart from opinion if the matter is designated as advice on any official matter which are often frequently sought.

For example, the President may seek the advice of the Supreme Court of the chief law officer known as the attorney general of India. Such kind of advice that is sought on official matters is quite frequent and they become part of the official communication between various organs of the government. And hence, those advice are also covered under the definition of information. Press releases, the matter that are part of a press note which has resulted, released in official capacity in terms of briefing or in terms of note that is issued by the government from time to time on various matters is also a document within an organization.

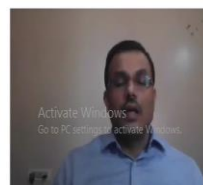
And press notes can also be shared as information and are covered in the definition as well. Circulars, circulars are part of delegated legislation that can be made by government organizations. You will notice that under article 13 of the constitution includes the circular. And hence, circular being delegated legislation generally used to notify a particular decision or a particular policy of the government or a public authority. Generally, circular is a piece of information and when it is made it has to be shared under the Right to Information Act.

Order issued by any authority in an official capacity is part of the official proceeding and record. Orders that are passed by offices in an organization from time to time they may be orders on right, orders on a scheme. They may be orders on any other matter. So, whenever, an order is passed by an officer who has the authority to pass such an order, such orders also are covered under the definition of information.

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## Information: contd

- Logbooks
- Contracts
- Reports
- Papers
- Samples
- Models
- Data material held in electronic form



The definition of information interestingly continues. Information also includes a logbook. And hence you will notice that such fine details that are given under the definition of information obviously covers every other aspect that is designated in a government office. So, anything that has any of these titles, anything that has these classifications, all of these are covered within the definition of information.

Logbooks are primarily the documents containing measurements, data, details of the particular work or a project of a public authority. Such logbooks are official records and are a very, very valid piece of information and very important piece of information. A logbook may be kept on say kilometers covered by an official car or a government car. That is also a logbook that is generally maintained. All these books that are kept to track a particular event or a particular distance or a particular work. Such kind of logbooks are also amenable to be received under the Right to Information Act.

Very importantly, to check corruption, to check what other contents of public procurement or the way and the manner in which privileges and grants are given by the government, I think contracts are also covered within the definition of information. A contract is an agreement that is entered by the government and a private businessman for actually purchase of goods or for selling of any kind of privileges that the government is entitled to do,, Including sale of commodities and services from the government. All kind of purchase orders, work orders that are generated in government contracts are part of the definition of information under Right to Information Act.

Various reports regarding official matters are generated. They could be enquiry reports, they could be test reports, they could be expert committee reports on a particular subject. It maybe a commission report. All these reports that are made and submitted to a government organization are



subject of information. So, any kind of report that is accepted, submitted, constituted, finalized are covered under the definition of information. Interestingly, after all of these words that have been put in section 2(f) there is a word that is used as papers. Which clearly depicts the fact that in case the said information does not fit within any of the above words then under the word of paper you will be responsible to share that information.

And hence, papers are just general sheets of official record. And if they are designated as report, contract, logbook, document, circular or anything else because it is just coming within the definition of paper. It may have to be shared under the Right to Information Act. So, paper probably includes anything and everything that is generated on a sheet of paper that is covered under a public authority. The definition of information becomes very, very interesting after the term paper. Till this point of time one gets an idea and a view that all physical papers in government organization are available and shall be shared as information under the Right to Information Act.

However, the word sample after the word paper under section 2(f) actually expands the Right to Information, expands the ambit of information that can be sought under the RTI act. What is a sample? Sample is definitely not a document. Sample is not something on paper. Sample is normally a material. Yes it is tangible but it is a material in connection with government affairs or government function. There can be samples such as a water sample, it could be a fluid sample, it could be a material sample. All of these samples as you know can be obtained as information under the Right to Information Act.

So, it is not papers that alone can be sought. It can be samples that also can be sought in the name of information. And hence, if suppose a citizen wants to get an effluent sample from an industry, he can apply it to the pollution control board. And if they have samples they can actually share the same under the Right to Information Act. There being instances where citizens have sought a sample of the concrete mixture that has been used in road building. Citizens have asked for a material sample which has been supplied by the contractor as well. So, all of these come within the definition of information and nevertheless they can be sought as well.

Models can also be part of information. A model is generally made as a structure for the bigger project is generally in terms of model of building project or construction project. It could be a model of a missionary and models can also be sought if there are multiple copies obviously if there is only one that cannot be shared. But such models can also be subject matter of information. Which means they cannot be denied by the public information officer and he would have a duty to share

the same.

Finally, Section 2(f) concludes by saying that data material held in electronic form. So, apart from emails please note, any material that is held in electronic form shall be the subject matter of information. So, anything that is stored as information in a computer in any electronic form it could be laptop, server, or anywhere else shall be material that can be accessed under the Right to Information Act. And hence, you will perceive the fact that any soft copy of the material that is held in the computer or generated in a system are those that can be accessed under the definition of Right to Information.

So, by looking at section 2(f) we probably conclude and say something like this first information includes what is known in the physical form that is hard copy. Information also includes in the computer form or the electronic form as a soft copy. Both the sets of information are covered under the definition and can be accessed as Right to Information.