

PRIYA RATHI

CAMPUS LAW CENTRE, FACULTY OF LAW

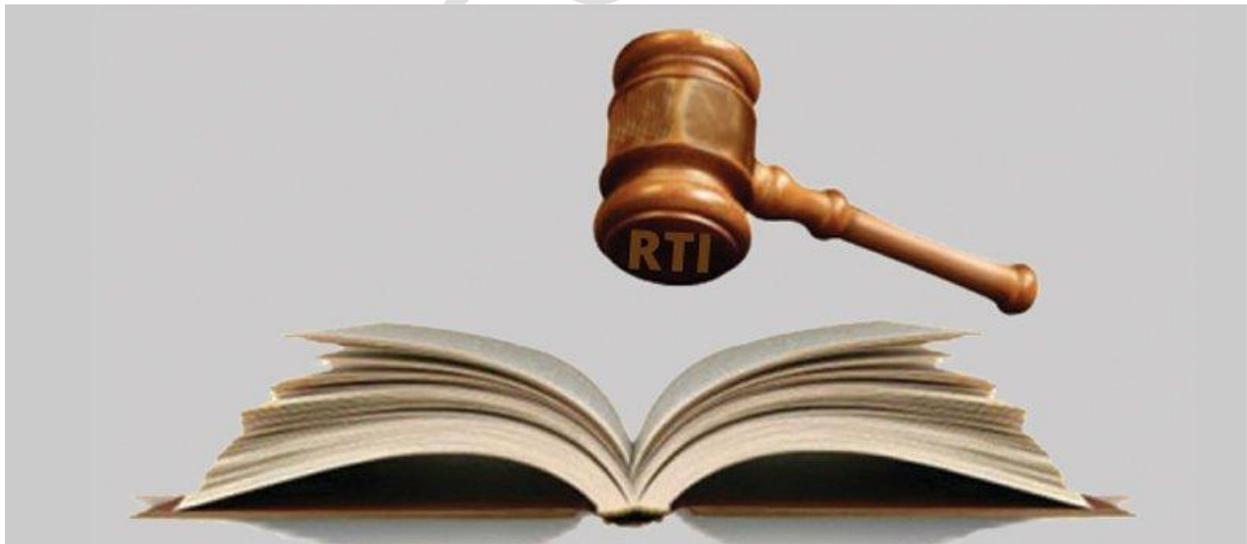
UNIVERSITY OF DELHI (Batch: 2015-18)

LEGAL INTERN @ CIC: Period of Internship: 1st June- 31st July 2018

Misuse of RTI Act, 2005

ACKNOWLEDGMENT

It is a pleasure to thank those who made this research possible; and for that I would like to express my gratitude to Shri. Divya Prakash Sinha (Hon'ble Information Commissioner) for giving me the opportunity to conduct this research and Shri. H P Sen (Dy. Registrar), Mrs. Sharupriya and others for their regular guidance, assistance and for providing various facilities like access to Manupatra, witnessing live hearing, preparing briefs and a few orders, etc. along with sharing their personal experience in dealing with RTI related matters and helping me with this research.



Misuse of RTI Act, 2005

CONTENTS

<u>S.NO.</u>	<u>NAME</u>	<u>PAGE NO.</u>
1.	List of Abbreviations	4-5
2.	List of Referred Case Laws	6-7
3.	Introduction	8-9
4.	Purpose/Objectives	10-11
5.	Misuse of Right to Information Act, 2005	12
6.	Referred Case Laws	13-21
7.	Research Analysis	22-23
8.	Sharing Personal Experience	24-26
9.	Bibliography	27-28

Misuse of RTI Act, 2005

List of Abbreviations

<u>ABBREVIATIONS</u>	<u>FULL FORMS</u>
AA	Appellate Authorities
Anr.	Another
CAPIO	Central Assistant Public Information Officer
CBEC	Central Board of Excise and Customs
CBI	Central Bureau of Investigation
CIC	Central Information Commission
CPIO	Central Public Information Officer
DoPT	Department of Personnel and Training
DTC	Delhi Transport Corporation
DNA	Deoxyribonucleic Acid
FAA	First Appellate Authority
GOI	Government of India
GNCTD	Government of National Capital Territory of Delhi
IAF	Indian Air Force
IC	Information Commissioner
ICAI	Institute of Chartered Accountants of India
IOCL	Indian Oil Corporation Ltd.
MCD	Municipal Corporation of Delhi

<u>ABBREVIATIONS</u>	<u>FULL FORMS</u>
MHRD	Ministry of Human Resource Development
NGO	Non-Governmental Organization
NIC	National Informatics Centre
Ors.	Others
PA	Public Authority
PIO	Public Information Officer
RTI	Right to Information
SIC	State Information Commissionerate
UOI	Union of India
UT	Union Territory
v.	Versus

Misuse of RTI Act, 2005

List of Referred Case Laws

<u>SC/HC Cases</u>	
1.	Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Anr ⁶
2.	Phairembam Sudesh Singh v. The State of Manipur and Ors. ¹
3.	Hardev Arya v Chief Manager (Public Information Officers) & others ¹¹
4.	Paardarshita Public Welfare Foundation v. Union of India (UOI) and Ors. ¹³
5.	Chandrakant Vrajlal Fichadiya v. State of Gujarat & ors. ⁴
6.	Shail Sahni v. Sanjeev Kumar ¹⁶
7.	Rajni Maindiratta v. Directorate of Education (North West - B) ¹⁸
8.	Shail Sahni v. Valsa Sara Mathew and Ors. ²⁰
9.	ICAI vs. Shaunak H. Satya ²³
<u>CIC Cases</u>	
1.	Mr. Narayan Singh v. Delhi Transport Corporation ⁵
2.	Neha Srivastava v. Trade Marks Registry ⁷
3.	Uma Kanti & Ramesh Chandra v. Navodaya Vidyalaya Samiti ⁸
4.	Shri Faqir Chand v North Western Railway, Bikaner ⁹
5.	Satish Tiwari v. I.O.C.L(CIC Digest) ¹⁰
6.	Deshmukh Suresh Bhagwanrao v. C.B.E.C., Department of Revenue, New Delhi ¹²
7.	Sanjeev Sharma v.CPIO ¹⁵

8.	Amar Kumar Jha v. Indian Army ¹⁷
9.	C Sunil vs. CPIO, Water Works Department, Secunderabad Cantonment Board ¹⁹
10.	Shri Ramesh Chand Jain v. DTC ²¹
11.	Jagdish Kumar Koli v. Department of School Education & Literacy, MHRD, GOI ²²
12.	Mr. Kuldeep Singh Yadav v. Consumer Affairs, Food And Supply Department GNCTD ²⁴
13.	Acharya Arvind Mishra v. National Commission for Minority Educational Institutions, GOI, New Delhi ²⁵
14.	A.B. Avadhanulu v. South Central Railway, Vijayawada & Secunderabad ³⁴
15.	Manohar Singh Pangtey v. North Eastern handloom & handicrafts Dev. Corporation ³⁵
16.	J.I. Buck v. State Bank of Saurashtra ³⁶

Misuse

Misuse of RTI Act, 2005



Introduction

In modern democracies, citizens have a right to know about the affairs of the Government and its policies aimed at their welfare. In a democratic government of the people, by the people and for the people, the foundation of a healthy democracy lies in well-informed citizens. Enlightened and informed citizens definitely enhance the democratic values of a country. The right to information in a democratic set up is recognized all over the world and it is a natural right flowing from the very concept of democracy. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of their Government.

Now that India has a law for RTI, it can be made more beneficial by its effective implementation leading to improved public administration for the betterment of the people.²⁸

As every coin has two sides, one is useful and other is flipside which is not useful but misused by the people. Same is the case with the RTI Act too. As the law doesn't enquire about the purpose of the information which is shared with people, which way it is used and what are the purpose of using this information? These are the basic question which one always thinks but beyond this there is something which nobody knows. The purpose behind acquiring the information is not always to dispense the things inform of the administrative machinery to give it speed but sometime it is malaise the department, person of very high stature in the government organization.²

There are numerous instances of Right to Information Act, 2005, being misused. Even the State Information Commission was aware of the fact, but currently, there is no provision to keep a tab on it. According to State Information commissioner in Nagpur Bhaskar Patil, who has vast experience in dealing with the cases under RTI Act, the information sought was sometimes misused for alleged blackmailing. "However, providing information can't be stopped as there is no provision of asking for a motive or reason to be asked to the RTI applicants,"²⁹ He added that many a time the information sought infringed the right of privacy of individuals; still there are many loopholes in the procedure which need to be plugged so that there shouldn't be any misuse or abuse of the Act by vested interests. There

are instances where RTI information was sought on the same subject pertaining to particular ration card shop as many as 10 times. It clearly indicates that something is fishy. Even information of hotel owners was demanded. There is definitely third party interest involved in such applications. But providing information can't be denied as activists are smart enough to turn it into a public cause. In hotel owners' case, they may say that they want to check any violations in obtaining hotel licenses.³⁰

The RTI requests, at times, are not simply to satisfy one's doubt but also to derive vicarious pleasures. Public interest which the Act intends to secure is missing in many RTI applications. There have been instances where applicants seek policy related information and many a times the applicants have vested interests. At times the Act is used by people to harass their colleagues or blackmail the authorities. Moreover, there are numerous instances of applicants demanding irrelevant or frivolous information. Such a selfish and unintelligent use of the Act will defeat the high objectives of the Act. It has also been observed that the Act is frequently being used by government servants, mostly disgruntled, under disciplinary proceedings to settle their service matters. It is also being misused by people interested in gathering evidence in their litigation cases.³¹

There is likelihood that the requestor may not turn up to pay the additional fees once the information is ready. It is also unfortunate that the language being used by requestors is at times, intemperate and impolite; to say the least.³²

The RTI Act is being used by business competitors of public authorities. In certain cases, some NGOs are indulging in getting projects sanctioned from international agencies which they complete by simply filing a RTI application in the Central Ministry concerned, which in turn has to procure the data from various states and districts. The Commission has now started looking at some alternative remedies while dealing with information requests. It now insists that if a normal internal mechanism for assessing information is good enough, recourse to RTI Act may not be permissible.³³

Misuse of RTI Act, 2005



Purpose/Objectives

The Act is legislated to provide to set up the machinery to implement the right to information for citizens which held under the control of public authorities, by which, transparency and accountability be promoted in the working of every public authority, constituted by Central Information Commission and State Information Commissions. The transparency and accountability may assist in eliminating the corruption by making such governments and their instrumentalities accountable for the acts while rendering their services to the public; however, the Act also ensures that the preservation of confidentiality of sensitive information. The Act also set up the machinery to provide the information expeditiously requested by the public.

Following are the objectives of RTI:-

- a. To setup practical regime ,
- b. For citizens,
- c. To secure access to information under the control of public authorities,
- d. To promote transparency and accountability in the working of every public authority,
- e. The constitution of a Central Information Commission and State Information Commissions,
- f. Matters connected to Public Authority or incidental thereto.

Phairembam Sudesh Singh v. The State of Manipur and Ors.¹

The RTI Act, 2005 is enacted with the avowed objective of conferring a statutory right on the citizens in India to have access to Government-controlled information or to seek information from Central Government/State Governments, local bodies and other competent authorities as a matter of right. The idea is that it would prove to be instrumental in bringing in transparency and accountability in Government and Public Institutions which would help in bringing the growth of corruption in check. The scope of the Act is wide enough to cover all the Constitutional Institutions and subject to exemptions, universally applies to all Public Authorities. Section 3 gives statutory recognition to the right to information subject to the

other provisions of the Act. *Section 8* sets out limitations on the right of access as exemptions from disclosure of information. Similarly, *Section 24(4)* confers power on the State Government to exempt any intelligence and security organization established by it from the purview of the provisions. It may be noted that the right to information is a facet of "freedom of speech and expression", as contained in *Article 19(1)(a)* of the Constitution, which are the foundation of all democratic organizations. Fundamental rights should not be cut down by too restricted an approach. Even prior to the enactment of RTI Act, 2005, the expression "freedom of speech and expression" has been construed by the Hon'ble Supreme Court, in a catena of decisions, to include not only liberty to propagate one's views, ideas, opinions and thoughts but also the right to acquire information. In other words, the right to information can be said to be a fundamental right subject to the exemptions as contained in *Section 8 and 24* of the RTI Act.

As has been held by the Hon'ble Punjab & Haryana High Court, the expression "information pertaining to allegations of corruption and human rights violence" is not defined in the Act but it has a wide connotation in view of the objective sought to be achieved in the Act. The relevance of transparency and accountability in the administration has arisen because of the corruption being rampant and power allegedly being misused by the Public Authorities in the country. *Article 19* of the Universal Declaration of Human Rights, 1948 provides that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. To comprehend the intent of the Legislature while enacting the RTI Act specially as regards the said expression, the provisions of the Act, as a whole, are to be read keeping in mind the purpose for which the RTI Act is enacted and it may further be noted that the exemptions cannot be construed so as to defeat the very objective sought to be achieved in the RTI Act, 2005.

MISU

Misuse of RTI Act, 2005



Misuse of Right to Information Act, 2005

In the provisions of RTI Act, as is indicative from the Statement of Objects and Reasons, the said Act is for securing access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. This Court finds that such pious object of the Act is on the contrary misused by the petitioner that there is no public interest in disclosure. In studying cases of RTI law it has brought before that it is being misused by casual or habitual information-seekers for two obvious reasons. Firstly non-applicability of *locus-standi* rule to RTI case and secondly, non-requirement of giving reasons for seeking information leave ample scope for non-serious information seekers to misuse it for their personal interest.³

The 11th annual report of the State Information Commissionerate (SIC) draws attention to possible “misuse” of the RTI Act by certain users. While the Public Information Officers (PIOs) and Appellate Authorities (AAs) have been speaking about the issue, this perhaps would be the first annual report when the Commissionerate has admitted to such a “misuse”. “The various benches of the SIC have come across cases of a single person filing multiple appeals. Similarly, there have been cases of misuse of the financial leeway given to below the poverty line applicants. Misuse of the RTI Act has been noticed in some instances and it is the duty of social organizations and activists to take cognition of the same and devise measures to stop it,” according to the report.²⁶

Right to Information good law, but being misused: CJI S H Kapadia: “In RTI matters, since I took over as CJI, I have given answers to all questions except very few things. But the kind of questions and their number is also exceeding limit.” He gave samples of the irrelevant questions that were being put to the Judges taking away their precious time which could have been utilized in studying petitions and case materials. “Why did you attend Nani Palkhivala Lecture? What time did you leave? Did you eat lunch or had tea? Which lawyer invited you for the function? We are working hard but we are not being able to concentrate many a times because of these kinds of questions.” the CJI said.²⁷

Misuse of RTI Act, 2005



Referred Case Laws

*Chandrakant Vrajlal Fichadiya v. State of Gujarat & ors.*⁴

The petitioner filed an application for obtaining a copy of the map under RTI Act which was a third party information that can only reveal after giving the notice to third party with his consent or disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

*Mr. Narayan Singh vs Delhi Transport Corporation*⁵

The Commission observed him in dozens of the cases and found him misrepresenting the matters very cleverly, hiding information, contradicting himself etc. He takes every matter to first and second appeal, deliberately so that such attendance itself would harass the officers. He drafts such RTI questions that at least half dozen officers to attend the first and second appeals. It appears he has a property dispute with his brother Hoshiar Singh or some other private vengeance. The Commission has seen many cases of misuse of RTI but, this appellant is the worst among all and his vengeance against his brother has no bounds at all. It is surprising that the DTC has not taken any steps to stop his blatant misuse of RTI. His multiple, repetitive and vexatious questions about trivial things of his brother resulting in the choking the system in DTC is the most serious misuse of RTI Act. Because of this, the Public Authority is being engaged continuously to answer his meaningless questions. Dozens of RTI applications and hundreds of questions were filed against Mr. Hoshiar Singh are either his personal information or third party information. Appellant relentlessly pursues as if he does not have any other work, causing criminal waste of time of PIOs, FAAs and the Commission.

*Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Anr.*⁶

Supreme Court has rightly held that Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and

accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information.

Neha Srivastava v. Trade Marks Registry⁷

In this case it was submitted that there are no provisions in the Act for redressal of grievances in the garb of seeking information. The Rules are to be read with the Act and in no case can actually override the Act.

Uma Kanti & Ramesh Chandra v. Navodaya Vidyalaya Samiti⁸

This is perhaps the worst case to have come to this bench showing the worst misuse of the RTI Act. The Commission feels that this case together with some others like **Shri Faqir Chand v North Western Railway, Bikaner**⁹ show the necessity of some provision in the RTI Act for taking punitive action against the Appellants who seek to misuse the RTI Act in such a blatant fashion.

Satish Tiwari v. I.O.C.I¹⁰

CIC in this case observed that it is indeed very unfortunate that a large number of persons who themselves are not so clean in so far as their conduct and behavior, including economic integrity is concerned and it is they who have been misusing the provisions of the RTI Act for promotion of personal interest at the heavy cost of public expenditure which are incurred in processing the RTI applications.

Hardev Arya v Chief Manager (Public Information Officers) & others¹¹

In this case, the petitioner sought information regarding details with regard to opening of bank account of an institution named Arya Kanya Gurukul Chhawani, Sheoganj (District Sirohi) which was a registered society running educational schools etc. The petitioner having doubt about the legality of the said institution sought information allegedly for safeguarding public interest at large. The Bank refused to disclose information claiming exemption under *Section 8(j)* of the RTI Act and *Section 13* of the Banking Companies Act, 1970, and informed the petitioner that it being a third party information, cannot be imparted to him because it was not in public interest. Disposing of the writ petition, the High Court of Rajasthan held that the petitioner was neither the member of Arya Kanya Gurukul, Chhawani nor he had disclosed in his petition how he is interested with the functioning of the said institution and there appeared no relationship of the information sought with any public activity or interest. Therefore, it was evident that the purpose of obtaining information was to misuse or threaten the institution and it is for this reason that the petition deserves to be dismissed. The Court warned that RTI has been enacted to bring transparency in administration and strengthen the faith and trust of the people in the governance of the country. Therefore, the RTI law is a vital weapon in the hands of the citizens but at the same time, it cannot be allowed to be

wielded unlawfully so as to be abused or misused by unscrupulous information-seekers. The conduct of the petitioner in this case was far from fair and therefore, the writ was dismissed with a cost of Rs 10,000/- which the petitioner was directed to deposit with the Free Legal Aid Board of the High Court, Jodhpur within one month.

Deshmukh Suresh Bhagwanrao v. C.B.E.C., Department of Revenue, New Delhi¹²

In this case, the Commission has received petitions from employees of public authorities on such matters as implementation of Court and Tribunal orders, by the public authority; action taken on the petitions in service matters filed by the employee demand for explanation about why an employee was transferred from one post to another; reasons why a public authority started any disciplinary proceeding against the employee; why was an employee not empanelled for promotion; and so on. Irrespective of the merit of such RTI applications and irrespective of whether these are admissible under the RTI Act, the important point that emerges is that employees of the public authority are using the RTI Act to pressurize, brow-beat or harass the public authority in order to force them to take decisions or rescind a decision in respect of a certain employee. Such employees may or may not succeed in their endeavors, but the fact that they use the RTI Act in a given way shows that they are treating the Act as a means to the disciplinary control of their superiors in the public authority. The Right to Information Act was not meant to sub-serve such ends. It shall be a sad day if the provisions of this Act become a plaything in the hands of employees of public authorities.

Paardarshita Public Welfare Foundation vs. Union of India (UOI) and Ors.¹³

In this case, Delhi High Court slapped a fine of Rs 75,000 on an NGO, which used the Act to abuse two MCD engineers and seek distasteful personal details about them. Though the plea in the court was for probing the corruption indulged in by the two engineers, the court found NGO Paardarshita Welfare Foundation had questioned the parentage of the engineers through an RTI application. Observing it amounted to abuse of law, judges chief justice Dipak Misra and justice Manmohan said, "Seeking information on parentage of a person and his medical history is unwarranted and uncalled for. RTI law was not enacted for abusing people and seeking personal details." According to the NGO, several letters were written to MCD officials but no action was taken against the engineers. "We cannot give any type of clean chit to the MCD engineers but the information sought exposes vindictive attitude," said the bench. The RTI also asked whether they suffered from sexual disorders, if they had carried out a DNA test for their mother, whether their mother was a surrogate or stepmother and also sought the name of their biological father and step mother. The NGO defended itself saying the engineers were blackmailing it and also used "unparliamentary" language and that was the reason such questions were raised.

Shail Sahni v Sanjeev Kumar¹⁶

In this case, the Hon'ble High Court of Delhi has held that:

"...In the opinion of this Court, the primary duty of the officials of Ministry of Defence is to protect the sovereignty and integrity of India. If the limited manpower and resources of the Directorate General, Defence Estates as well as the Cantonment Board are devoted to address such meaningless queries, this Court is of the opinion that the entire office of the Directorate General, Defence Estates Cantonment Board would come to stand still."

"This Court is also of the view that misuse of the RTI Act has to be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act". A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law."

Sanjeev Sharma v.CPIO¹⁵

In this case, the Commission ordered in its judgment:

"Commission sparingly acknowledges that this is an attempt on the Appellant's part to fight corruption within the IAF, and based on the facts on record, the Respondent's submissions also find equal consideration. On the hindsight, **however noble the end of this vociferous attempt of bringing about probity in the functioning of IAF would have been, fact remains that the means adopted by the Appellant regrettably speaks volumes of his ignorance of the spirit of the RTI Act.**"

"RTI Act is a powerful tool in the hands of the informed citizenry, and it has to be utilised while keeping in mind the balance between the applicability of different provisions therein. These provisions while allowing maximum disclosure, have also limited the access to information under Sections like 8 & 9 of the RTI Act and other Sections like 2(f), 2(h), 7(9) for such interpretation, which does not obliterate the primary purpose of the Act."

"As much as the CPIO has a statutory responsibility of complying with the provisions of the RTI Act, it is also expected of the RTI Applicants to not transgress the spirit of the RTI Act and resort to clogging the functioning of the public authority by filing mundane RTI Applications merely claiming that it is intrinsic to fighting corruption. Appellant is a learned advocate apart from being an ex-serviceman, such recourse to RTI Act is perhaps more of an abuse of the process of law. "

"It would have been cogent for the Appellant to have filed RTI Applications systematically in a structured manner i.e. with specific requests bringing them clearly within the definition of Section 2(f) of the RTI Act, which would have avoided the apparent relentless prejudice done to valuable resources of time, money and paper."

"It appears that the Appellant has grossly misconceived the idea of exercising his Right to Information as being absolute and unconditional."

Amar Kumar Jha vs. Indian Army¹⁷

After taking into consideration the response of both the Appellant and the Respondent in this case, “the commission has observed that appropriate reply has been provided on the RTI Application by the concerned CPIO’s leaving no scope for intervention of the Commission.”

“There has been consistent record of adverse remarks made by this bench for the Appellant’s apparent misuse of the RTI Act to garner some sort of relief in his service related grievances. It is also imperative to note that Appellant also has a number of RTI Applications and Appeals filed on behalf of him through his wife Munni Jha seeking the same kind of information as him.”

Commission strongly denounces the approach of the Appellant of seeking information on repetitive matters resulting in misusing the channel of RTI Act. “The Appellant appears to be doing so despite the express knowledge of the fact that he is pursuing a matter of no larger public interest, rather concerning only his perceived personal grievance. It is appalling to note that the public authority is being unabashedly harassed by filing umpteen vexatious RTI Applications. It is also not clear as to what kind of information will satisfy the Appellant as it appears he is merely intending to compel the public authorities into addressing his grievances. This being the ulterior motive is manifest from the bare perusal of the queries of these RTI Applications.”

The larger issue then here is the repetitive nature of these RTI Applications and the motivated attempt at putting the public authority as well as the Commission to test. To highlight this larger issue, it is imperative to refer to certain observations of the Commission in this regard. Some of these being:

- **File No.CIC/MA/A/2006/00374 & 375 decided on 28.08.2006**

“...the nature of queries and the information sought are such that the information seeker would never be satisfied because the promotion of self interest, rather than public interest, was dominant, as the appellant had sought redressal of grievances.”

- **FileNo.s.:CIC/SG/C/2011/000760,CIC/SM/A/2011/000926/SG,CIC/SM/A/2011/001111/SG ,CIC/SG/A/201 1/002909 decided on 17.10.2012**

“...though the right to information is a fundamental right of the citizens, it cannot be used indiscriminately to fulfil the demands of one individual...The Commission is also conscious of the fact that it is financed by the poorest man in this country who may be starving to death. The complainant by repeatedly filing similar RTI applications and appeals with the respondent public authority and the Commission, is wasting public resources”

Rajni Maindiratta v Directorate of Education (North West - B)¹⁸

The Hon'ble High Court of Delhi has held that:

“Though undoubtedly, the reason for seeking the information is not required to be disclosed but when it is found that the process of the law is being abused, the same become relevant. Neither the authorities created under the RTI Act nor the Courts are helpless if witness the provisions of law being abused and owe a duty to immediately put a stop thereto.”

C Sunil vs. CPIO, Water Works Department, Secunderabad Cantonment Board¹⁹

“Commission in this case heard a number of Appeals of the same Appellant and concedes with the contention of the FAA that most of the RTI Applications are frivolous in nature.”

“It appears that the Appellant has grossly misconceived the idea of exercising his Right to Information as being absolute and unconditional. Appellant is hereby cautioned to take note of the aforesaid dicta and is advised to exercise his right to information judiciously in future.”

Shail Sahni vs. Valsa Sara Mathew and Ors.²⁰

In this case the petitioner states that he is a financier who gives advances to various contractors working with Director General, Defence Estates. *“Keeping in view the width and amplitude of the information sought by the petitioner, it is apparent that the prayers in the writ petition are nothing short of an abuse of process of law and motivated if not an attempt to intimidate the respondent. In fact, even two days ago, this Court had dealt with a writ petition filed by the present petitioner being W.P.(C) 784/2014 wherein equally wide information had been asked for under the RTI Act.”*

In this case it was observed that *“Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising “information furnishing”, at the cost of their normal and regular duties.”*

“this Court deems it appropriate to refuse to exercise its writ jurisdiction. Accordingly, present petition is dismissed. This Court is also of the view that misuse of the RTI Act has to

be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act". A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law. A copy of this order is directed to be sent by the Registry to Defence and Law Ministry, so that they may examine the aspect of misuse of this Act, which confers very important and valuable rights upon a citizen."

Since, despite the aforesaid judgment, the petitioner is still filing general, irrelevant and vague queries, this Court dismisses the present writ petition with costs of Rs.25,000/- to be paid by the petitioner to the Lok Nayak Hospital, New Delhi within a period of three weeks.

Shri Ramesh Chand Jain v. DTC²¹

The said CIC-verdict observed as under:

Even a single repetition of RTI application would demand the valuable time of the public authority, first appellate authority and if it also reaches second appeal, that of the Commission, which time could have been spent to hear another appeal or answer another application or perform other public duty. Every repetition of RTI application which was earlier responded will be an obstruction to flow of information and defeats the purpose of the RTI Act.

Jagdish Kumar Koli v. Department of School Education & Literacy, MHRD, GO²²

The appellant in this case filed the RTI application seeking information about daily progress report on some letters with respect to his promotion to which the CPIO replied that the available information was provided to him and that he has filed a number of representations on the same issue to the Bal Bhawan.

The appellant has sufficiently used the RTI Act for his personal interest, without any public interest for his personal vengeance against the public authority for denying him promotion/enhanced pay. Therefore, the Commission admonishes the appellant for this misuse of the RTI Act just for the sake of vengeance forcing them to devote all their valuable time, energy, etc.

The Commission disposes off all the appeals and directs the appellant that he shall not repeat such RTI requests, and directs the respondent authority not to cause wastage of public resources in responding to a repeated, frivolous and harassing RTI application from the appellant and publish this order on their official website under the heading "Repeated, harassing RTI applications cannot be entertained."

ICAI v. Shaunak H. Satya²³

In this case, the SC held that *"This Court is also of the view that misuse of the RTI Act has to be appropriately dealt with otherwise the public would lose faith and confidence in this*

"sunshine Act". A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law".

Mr. Kuldeep Singh Yadav v. Consumer Affairs, Food And Supply Department GNCTD²⁴

The Commission, exercising its power under 19(8)(a) requires the Public Authority to initiate inquiry against Mr. Vijay Kumar Garg and Mr. Kuldeep Singh Yadav for their alleged misuse/repetitive use of RTI motivated by private interest or intention to harass so that appropriate action is initiated as per law.

The Commission directs the respondent authority to prepare a list of the RTI application filed by the appellants and the reply of the department on this regard and place the reply in their official website. This would help the citizens to have information without resorting to RTI applications besides curbing the misuse.

Acharya Arvind Mishra v. National Commission for Minority Educational Institutions, GOI, New Delhi²⁵

In this case, the respondent submitted that they have provided all available information on record to the appellant/Mr. Sandeep Pahal, but he was never satisfied with the information provided and regularly files first and second appeals before the FAA and the CIC respectively. In this connection they referred to the Hon'ble High Court order dated 24-7-2015, wherein the Hon'ble Court held that the writ petitions filed by the Dr. D.K. Garg, (who is associate of Shri Sandeep Pahal) are highly misconceived and have been filed with ulterior motives and fined them for Rs.50,000/-. They have also referred to the Commission's orders dated 7-9-2015 wherein the Commission has observed that Mr. Sandeep Pahal deserved to be disqualified and black-listed for misusing the RTI.

The Commission having heard the submissions and perused the record considers that the appellant is misusing the RTI and the second appeals are filed for no reason, even though the respondent authority had furnished him sufficient information. Hence the Commission dismisses all the four appeals.

A.B. Avadhanulu v. South Central Railway, Vijayawada & Secunderabad³⁴

It is a case of *harassing the officials because of some adverse action* wherein the Appellant obviously is seeking to put the Public Authority under undue pressure and harass the officials because of some adverse action which the Department had taken against him. During the hearing, the Commission made it clear to the Appellant that the RTI Act cannot be made a tool of vendetta against the Department in which a Person has served and has invited some adverse action during the course of service. It is in such cases that the Commission feels the need of some provision for punitive action against such Appellants.

Manohar Singh Pangtey v. North Eastern Handloom & Handicrafts Dev. Corporation³⁵

It is a case of *putting pressure on the respondent* wherein the complainant has grievance relating to payment of arrear of pay, which is withheld by the respondent. The complainant is aware that there have been irregular payments to him on account of official housing facilities availed of by him and his family. The CAG has already asked for recovery of excess amount incurred in this regard. In such a circumstance, the arrear pay, if any, is to be adjusted with the outstanding dues and the remaining amount is to be recovered with interest, for which necessary steps have been initiated by the respondent. The complainant is aware of this position, yet he has attempted to put pressure on the respondent under RTI Act and, unfortunately, he has misled the Commission also, for promoting his personal interest by way of hiding facts.

J.I. Buck v. State Bank of Saurashtra³⁶

It is a case of *putting pressure on the respondent* wherein the appellant had sought a large number of information which covered not only all branches and offices of the bank but also pertained to several years in time. The CIC upheld the view of the CPIO that collection and collation of such voluminous information would indeed divert resources of the Public Authority disproportionately from its normal public duty. In the instant case, the appellant agreed to revise his request for information and file a revised request before the CPIO concerned to enable the CPIO to provide him the information.

Misuse of RTI Act, 2005

Research Analysis¹⁴

➤ COMPLAINT CASES:

The ingenuity of the Indian public is at its best while innovatively using the RTI Act. Though the Act is mainly about seeking information, and given the fact that it is often far more effective than other available remedies for inaction or delay, the people of India have perfected methods by which they not only register complaints but actually get them acted upon, all in the guise of seeking information.

➤ IRRELEVANT CASES:

Though most RTI applications are very serious and deal with matters of great import, it is refreshing to note that even among the universal despair, frustration, and helplessness that characterizes a large number of the applicants, there are some who seem to have retained their sense of humor and makes us wonder what these applicants were thinking and how serious were they.

E.g.: In one case, the applicant informs the addressee that the village he resides in, is not being developed under any village development programme or scheme. He wants to know what step he shall take to get the work done. He has listed 3 options - dharna (protest by squatting), or hunger strike, or self-immolation. He also wants a copy of the 'suggestion' given by the official in this regard. [BIH/HQ/RD /2013/HINDI].

➤ FALSE CASES

Problematic applications from time to time there is negative propaganda against the RTI Act and accusations that it is being misused to file frivolous, vexatious, or voluminous applications. It is alleged that such applications waste the time of the public authority without serving any public purpose. Our analysis suggests that less than 1% of the applications were vexatious or frivolous¹⁵ (*the term "frivolous" was also undefined and was not easy to define in the context of the RTI Act. We finally decided to classify those applications as frivolous where it seemed that the applicant was not seriously seeking information but either being silly, trying to be funny, or using the RTI not to access useful information but to clearly serve some other purpose. But, strictly speaking, it was almost impossible for us to be certain whether the applicant was seriously trying to seek information or was just trying to be funny*) and a little over 1% were voluminous, in terms of requiring a lot of information (*see Table below*). Though there is no legal bar against seeking voluminous information, nevertheless it could divert time of public servants and adversely affect their work. However, we found that a very large majority of the voluminous applications were asking for information that should have been disclosed proactively. Therefore, clearly it is neither the RTI Act nor the applicant who is to blame. Sadly complaints, grievances, and cries for help continued to be submitted in the guise of RTI applications, and 7% of the applications could

be collectively classified under these heads. Technically these were liable to be dismissed as not being legitimate RTI applications. However, the fact that people continue to file these under the RTI Act, added to the fact that many of the illegitimate RTI applications are also disguised complaints, grievances, and requests for help, seems to suggest that other avenues of public interface with the government do not seem to be working very effectively. It also seems to suggest that people still have faith in the RTI Act and its ability to make the government listen when all else has failed.

Table 5.6: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA

Problematic Applications

2011-13

	AP	ASS	DEL	RAJ	CEN	Average	BIH
	Percentage						
Vexatious	0%	0%	1%	0%	0%	0%	0%
Frivolous	1%	0%	0%	0%	0%	0%	0%
Unclear	0%	0%	0%	1%	0%	0%	3%
Voluminous	1%	2%	3%	1%	0%	1%	1%
Infringement of privacy	0%	1%	0%	1%	1%	1%	0%
Long time span	1%	1%	2%	1%	2%	1%	4%
Complaint - not RTI	4%	0%	2%	1%	2%	2%	0%
Grievance - not RTI	2%	0%	3%	3%	2%	2%	1%
Asking for help - not RTI	2%	4%	2%	6%	3%	3%	4%
Others	0%	0%	0%	0%	1%	0%	1%



Misuse of RTI Act, 2005



Sharing Personal Experience

As a part of the Internship process, the Registry with which I was attached gave me various opportunities right from making briefs of the RTI Applications to attending live hearings in the court room. While making briefs, I found that RTI is being misused not only because of *malafide* intentions of the RTI Applicants but also because of lack of awareness of this Fundamental Right (not only on the part of the RTI Applicants but Public Authorities as well) as to what information can be sought from the Public Authorities and what all information can /should be provided that ultimately leads to wastage of precious time and money of the Public Authorities which can otherwise be used for doing their job effectively and efficiently for which they are hired.

In the hearings, one of the interesting things was the simple and clear approach which the Hon'ble Information Commissioner follows, he along with passing orders in accordance with the RTI Act, 2005 for false and frivolous RTIs, also guides the appellants in numerous cases where they are going wrong as to what information they can seek and why they are not given any relief in accordance with RTI Act, 2005 and to the Public Authorities in cases where they reject the RTI Applications by just giving vague reasons/quoting irrelevant exemptions/delay proceedings.

Though I decided on this topic a lot before the start of the hearing sessions, but when I started attending the hearings, I personally witnessed a lot of cases, where the RTI Act was actually being misused by seeing how people use this act for satisfying their personal grudges in service related matters/otherwise, for getting the orders passed with respect to inquiries, for seeking clarifications and interpretations, filing multiple RTIs for seeking same information, etc. and thereby harassing the Public Authorities and how at times, the Public Authorities easily deny information claiming irrelevant exemptions just to delay the proceedings and even returning the RTI applications which is not even allowed under the RTI Act, 2005.

After witnessing all the issues faced by the applicants, the public authorities, the commission, I feel a few amendments in the RTI Act, 2005 is the need of the hour and would in some

manner help in curtailing the obvious loopholes. My personal thought with regard to amendment would include a discussion on the following:

1. Amount of Application Fee under RTI Rules, 2012: According to the current position, an individual can file an RTI by paying a meager sum of Rs. 10 and the same is exempt for people below the poverty line. What I have witnessed in the last couple of weeks is that any hike in the Application Fee would not matter to majority of the applicants unless the same is increased manifold (and even that would restrict them only in filing hundreds of RTIs but the purpose of curbing the misuse of RTI would still remain unsolved), and in case it is increased, it would only be the lower class that will get affected and hence defeating the ultimate purpose of this Act.
2. Penalties under Section 20 of the RTI Act, 2005: It is one of the most important Sections in the RTI Act 2005 as this makes the CPIOs or SPIOs liable for not acting in accordance with the Act and hence penalty is imposed to a maximum amount of Rs.25, 000 as stated in Section 20 of the RTI Act, 2005.

According to me, this could be made more stringent as in a lot of the cases that I have witnessed, the CPIO either denies the information quoting “unavailability” initially and then submits a fresh reply at later stages of the proceedings or provides wrong or misleading reply which not only affects the applicants but adds to the stages of proceedings and ultimately leading to the wastage of time and efforts not only of the applicant, but the public authority and the commission as well which could have otherwise been utilized had correct information at the initial stage been provided.

For example, in one of the cases I witnessed, due to the wrong/misleading information, the CPIO was held liable to be punished but by the time the case came up before the CIC (after the direction of the High Court), the CPIO was retired and hence the Commission could not do anything as only the CPIO can be penalized under *Section 20* of the RTI Act, 2005.

To this I personally feel that the CPIO once appointed is given the responsibility of providing correct, relevant and available information, hence he/she should always be made answerable for the acts he/she has done in the course of performing his/her duties while in service irrespective of the fact that he has retired from the post or not, since he is connected to the department even after his retirement by way of pension and hence penalty can be imposed on the CPIO.

Also, not only the CPIO, but some senior authority should also be made liable along with the CPIO when duties assigned are not performed by the public authorities and this act is not in its true sense for which the same has been brought into existence.

3. Restriction on the number of RTIs:

This has connection to the first point, wherein I found that increasing in the amount of Application Fee would in no way going to help and hence the solution according to me is some sort of restriction on the number of RTIs an applicant can file as I have seen highly educated persons filing multiple RTIs (hundreds in a few cases) just to harass the public authorities in order to satisfy their personal grudge.

The above are my personal thoughts and suggestions and in no way I intend to offend to whatever the legislature has drafted in the Act, as RTI is one of the strongest Acts we have in today's time for ensuring efficient functioning of the Public Authorities and furnishing certain information to citizens who desire to have it.

In all I would say, it was a pleasure working under IC's guidance and witnessing the manner in which he rightly treats such false and frivolous RTIs by taking actions against the habitual offenders in order to curb this major issue of Misuse of RTI Act, 2005 and at the same time guiding them about the purpose for which the Act has come into force.

Misuse of RTI Act, 2005

Bibliography

1. Phairembam Sudesh Singh v. The State of Manipur and Ors. (02.02.2016 -HC of Manipur)
2. Elited Kumar, Use and Misuse of right to Information Act, 2005 available at <https://elitedkumar.worldpress.com>
3. N V Paranjape, Right to information law in India, p.170 (Lexis Nexis, 2014)
4. Chandrakant Vrajlal Fichadiya v. State Of Gujarat & ors.6 on 13 January, 2017 (C/SCA/20547/2016)(in HC of Gujrat at Ahmedabad)
5. Mr. Narayan Singh v Delhi Transport Corporation on 6 May, 2015
6. Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Anr.(2011 STPL (Web) 685)
7. Neha Srivastava v. Trade Marks Registry(CIC Digest (Vol IV) 3666 (2833))
8. Uma Kanti & Ramesh Chandra v. Navodaya Vidyalaya Samiti(dated 5.1.2008, CIC Digest (Vol. II) 1977(943))
9. Shri Faqir Chand v North Western Railway, Bikaner(No.CIC/OK/A/2007/00951)
10. Satish Tiwari v. I.O.C.L(CIC Digest (Vol IV) 3685 (2849))
11. Hardev Arya v Chief Manager (Public Information Officers) & others(AIR 2013 Raj 97)
12. Deshmukh Suresh Bhagwanrao v. C.B.E.C., Department of Revenue, New Delhi(dt. 31.05.2007, CIC Digest (Vol. 11)1516(280))
13. Paardarshita Public Welfare Foundation v. Union of India (UOI) and Ors. (20.10.2010 - DELHC): MANU/DE/2937/2010.
14. Peoples' Monitoring of the RTI Regime in India (2011-13).
15. Wg. Cdr. Sanjeev Sharma Vs. CPIOs, Indian Air Force
16. Shail Sahni vs Sanjeev Kumar [W.P.(C) 845/2014]
17. Amar Kumar Jha vs. Indian Army[CIC]
18. Rajni Maindiratta v Directorate of Education (North West - B) [W.P.(C) No. 7911/2015]
19. C Sunil vs. CPIO, Water Works Department, Secunderabad Cantonment Board
20. Shail Sahni v. Valsa Sara Mathew and Ors. (05.07.2013 - DELHC) MANU/DE/1897/2013
21. Shri Ramesh Chand Jain v. DTC
22. Jagdish Kumar Koli v. Department of School Education & Literacy, MHRD, GOI
23. ICAI vs. Shaunak H. Satya (2011) 8 SCC 781
24. Mr. Kuldeep Singh Yadav v. Consumer Affairs, Food And SupplyDepartment GNCTD
25. Acharya Arvind Mishra v. National Commission for Minority Educational Institutions, GO I, New Delhi
26. <https://indianexpress.com/article/cities/pune/sic-report-highlights-misuse-of-rti-law/>
27. http://timesofindia.indiatimes.com/articleshow/12642471.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst
28. Lovekesh Jain, The Information Gleaner, p. 03(New Century publication ,2010)

29. <http://timesofindia.indiatimes.com/india/Misuse-of-RTI-Act-riles-PM/articleshow/16789428.cms>
30. <http://timesofindia.indiatimes.com/india/Misuse-of-RTI-Act-riles-PM/articleshow/16789428.cms>
31. Abhishek Jain and Aarushi Jain, "Promoting Right to Information Through E-Governance-A Case of ESoochna and other Initiatives in H.P." The Indian journal of Public Administration, Vol.55, No.1, JanuaryMarch 2009, at p. 38
32. Prabodh Saxena "The Flip Side of RTI Act", The Administrator, Lal Bahadur Shastri National Academy Journal of Administration, June 2997, Vol. 50, No. 1, pp. 23-25, at p. 23. 234
33. Prabodh Saxena "The Flip Side of RTI Act", The Administrator, Lal Bahadur Shastri National Academy Journal of Administration, June 2997, Vol. 50, No. 1, pp. 23-25, at p. 23. 234
34. A.B. Avadhanulu v. South Central Railway, Vijayawada & Secunderabad dt. 25.1.2008, CIC Digest (Vol. II) 2021 (992).
35. Manohar Singh Pangtey v. North Eastern handloom & handicrafts Dev. Corporation dt. . 06.07.2007, CIC Digest (Vol. II) 1603 (420).
36. J.I. Buck v. State Bank of Saurashtra 2010 (1) ID 291 (CIC, New Delhi).

