

**KPA MUN**

**RAJYA SABHA**

**BACKGROUND GUIDE**

**LETTER FROM THE EXECUTIVE BOARD**

Greetings Members!

It gives us immense pleasure to welcome you to this simulation of RAJYA SABHA at KPA MUN 2020. We look forward to an enriching and rewarding experience.

The agenda for the session being *‘Review of RTI (Amendment) Act 2019 with special emphasis on PM Cares Fund’*.

This study guide is by no means the end of research, we would very much appreciate if the leaders are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee. Please do not hesitate to contact us regarding any doubts that you may have.

All the Best!

Executive Board

## **What is Right to Information?**

Information is an inalienable and natural right of every human being. In a democratic country each person has the right to freedom of opinion and expression. This right includes right of holding public opinion and to seek, receive and impart information and ideas from the public authorities. The available and appropriate information helps citizens to live a dignified life in a civilized society. Moreover there is a close link between right to information and good governance. Good governance is characterized by transparency, accountability and responsiveness. Consequently, the citizen's right to information is increasingly being recognized as an important mechanism to promote openness, transparency and accountability in government administration. People are the sole part in a representative form of government. So it is necessary that they must have to know all the functioning of government activities to frame a practical regime of good governance in administrative process.

In India Right to Information is the need of the hour. Human security, shelter, food, environment and employment opportunity are all bound up with right to information. In the absence of information on this issue, people can not live a dignified life and will remain ever marginalized group in the society. It is a powerful instrument to protect the fundamental rights of people.

Corruption and criminalization is the nerve of Indian bureaucracy today. The secrecy they have maintained is a source of corruption and harassment. Though India is the world largest democracy, it now fails to attain confidence from common people. As a taxpayer, each person should have the right to know the functioning of government machinery. In addition to this, in a democratic country, citizens can be regarded asset only when citizens develop the skills to gain access to information of all kinds and to put such information to effective use. Without intellectual freedom the success of democratic governance can not be imagined. Information is now the sole of every government. The need for transparency and efficiency in the governance become more important to achieve the goal of good governance.

Right to Information is a part of fundamental rights under Article 19(1) of the Constitution. Article 19 (1) says that every citizen has freedom of speech and expression. As early as in 1976, the Supreme Court said in the case of Raj Narain vs State of UP, that people cannot speak or express themselves unless they know. Therefore, right to information is embedded in article 19. In the same case, the Supreme Court further said that India is a democracy. People are the masters.

Therefore, the masters have a right to know how the governments, meant to serve them, are functioning. Further, every citizen pays taxes. The citizens therefore, have a right to know how their money was being spent. These three principles were laid down by the Supreme Court while saying that RTI is a part of our fundamental rights.

The Indian parliament had enacted the —Freedom of Information Act, 2002 in order to promote transparency and accountability in the administration. The report envisaged by the National Common Minimum Programme, the —Freedom of Information Act, 2002 has repelled and

—Right to Information Bill, 2004 (RTI) was passed by both the houses of parliament on May

2005. The —Right to Information Act<sup>11</sup> was notified in the Gazette of India on 21st June, 2005. This new law empowers Indian citizens to seek any accessible information from a public authority and makes the government and its functionaries more accountable and responsible.

### **Judicial Cases concerning Right to Information**

- In *Bennett Coleman v. Union of India*, in 1973, our Supreme Court ruled that the right to freedom of speech and expression guaranteed by Art. 19(1) (a) included the right to information.
- In *State of UP v. Raj Narain*, in 1975, Justice Mathew explicitly stated: It is not in the interest of the public to cover with a veil of secrecy the common routine business ... the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.
- In *Secretary, Ministry of I & B, Government of India v Cricket Association of Bengal*, in 1995, the Supreme Court held that the right to impart and receive information from electronic media was included in the freedom of speech.
- In *S.P. Gupta v. Union of India*, in 1982, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was illustrated.
- In *People's Union for Civil Liberties v. Union of India*, in 2004, the right to information was further elevated to the status of a human right, necessary for making governance transparent and accountable. It was also emphasized that governance must be participatory.

## **Background of RTI Act 2005**

The national campaign for people's right to information was initiated by social activists, journalists, lawyers, professionals, retired civil servants and academics, in 1996 with the objectives of a national law facilitating the exercise of the fundamental right to information. The Government introduced the Freedom of Information Bill in Parliament, in 2002.

This bill did not meet the expectation of the people. Then after over a number of amendments an act titled "Right to Information Act 2005" was enacted on 15 June 2005 and came into force from 12 October 2005. Right to Information Act 2005 is an act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

As per the act Information means material in the form of documents, memos, e-mails, press release, circulars, orders, contracts, reports, data materials. The act covers central, state and local governments, and all bodies owned, controlled or substantially financed by the government or any non-government organization substantially financed, directly or indirectly by the appropriate Government. The objective of the act is to hold government and their instrumentalities accountable to the governed and to contain corruption. With potential application in meeting the government's obligations to provide information on request and proactively, e-governance is a viable option for public authorities to address the information needs of RTI Act.

The act similar to RTI Act, 2005 also exists in other countries. In other countries the implementation of such act has taken more than one year. However, In India the RTI Act, 2005 is implemented in just four months. This fast implementation encourages to know the problems (if any) faced by the organization due to the implementation of RTI Act.

**RTI application details in nutshell –  
(Annual report 2011-12) Central Information Commission**

<b>Key Aspects</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10</b>	<b>2010-11</b>	<b>2011-12</b>
<b>Number of requests received during the year</b>	<b>2,63,261</b>	<b>3,29,728</b>	<b>5,29,274</b>	<b>4,17,955</b>	<b>6,55,572</b>
<b>Total number of requests at the end of the reporting year</b>	<b>2,87,187</b>	<b>3,62,520</b>	<b>6,26,748</b>	<b>5,55,726</b>	<b>10,85,997</b>
<b>Number of request for information rejected</b>	<b>18,966</b>	<b>23,954</b>	<b>34,057</b>	<b>21,621</b>	<b>53,419</b>
<b>Percentage of rejection vis a vis number of applications received during the reporting year</b>	<b>7.20%</b>	<b>7.26%</b>	<b>6.43%</b>	<b>5.2%</b>	<b>8.1%</b>

## **Timeline of Events related to Right To Information In India**

**1975:** Supreme Court of India rules that the people of India have a right to know.

**1982:** Supreme Court rules that the right to information is a fundamental right.

**1985:** Intervention application in the Supreme Court by environmental NGOs following the Bhopal gas tragedy, asking for access to information relating to environmental hazards.

**1989:** Election promise by the new coalition government to bring in a transparency law.

**1990:** Government falls before the transparency law can be introduced.

**1990:** Formation of the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan and the launching of a movement demanding village level information.

**1996:** Formation of the National Campaign for People's Right to Information (NCPRI). **1996:** Draft RTI bill prepared and sent to the government by NCPRI and other groups and movements, with the support of the Press Council of India.

**1997:** Government refers the draft bill to a committee set up under the Chairmanship of HD Shourie.

**1997:** The Shourie Committee submits its report to the government.

**1999:** A cabinet minister allows access to information in his ministry. Order reversed by PM.

**2000:** Case filed in the Supreme Court demanding the institutionalization of the RTI.

**2000:** Shourie Committee report referred to a Parliamentary Committee.

**2001:** Parliamentary Committee gives its recommendations

**2002:** Supreme Court gives ultimatum to the government regarding the right to information.

**2002:** Freedom of Information Act was passed in both houses of Parliament.

**2003:** Gets Presidential assent, but is never notified.

**2004:** National elections announced, and the —strengthening of the RTI Act included in the manifesto of the Congress Party.

**May 2004:** The Congress Party comes to power as a part of the UPA coalition government, and the UPA formulates a —minimum common programme which again stresses the RTI.

**June 2004:** Government sets up a National Advisory Council (NAC) under Mrs. Sonia Gandhi. **August 2004:** NCPRI sends a draft bill to the NAC, formulated in consultation with many groups and movements. NAC discusses and forwards a slightly modified version, with its Recommendations to the government.

**December 2004:** RTI Bill introduced in Parliament and immediately referred to a Parliamentary Committee. However, Bill only applicable to the central government.

**Jan-April 2005:** Bill considered by the Parliamentary Committee and the Group of Ministers and a revised Bill, covering the central governments and the state



introduced in Parliament.

**May 2005:** The RTI Bill passed by both houses of Parliament. **June 2005:** RTI Bill gets the assent of the President of India **October 2005:** The RTI Act comes into force.

## **Problems due to the implementation of Right to Information Act, 2005**

Seeing the increasing trend of request for the information in the different organizations and the implementation of the RTI Act, 2005 in just four months, personal interview of the Public Information Officers (PIO) of different organizations were conducted with the objective to identify the problems (if any) faced by them due to the implementation of RTI Act, 2005 and the suggested solution. It was found that three types of organizations exist on the basis of use of information technology

- **Low use of Information Technology:** In these organizations most of the records are maintained manually (paper work) and computer is not used to store information.
- **Medium use of Information Technology:** In these organizations moderate level of information technology is used. Some of the records are maintained in computer and some are maintained manually.
- **High use of information Technology:** In Such type of organizations high level of information technology is used and the computerized records are stored at central place.

It was found that the organizations with low or medium use of information technology are facing problems due to the implementation of RTI Act, 2005. The organizations with high use of information technology are not facing difficulties due to the implementation of RTI Act, 2005.

From the interview conducted in different organizations, the difficulties are identified due to the implementation of RTI act, 2005. These difficulties are as follows:

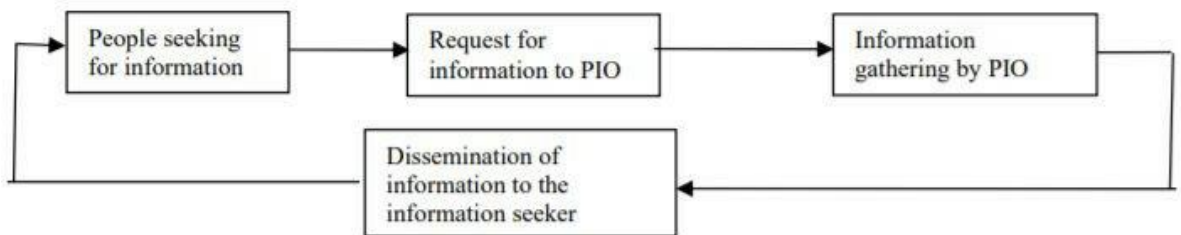
- **Difficulty to access the information:** Public Information Officers face difficulties to access the required information from the concerned department in his organization so that it can be provided to the information seeker.
- **Time constraint:** It is mandatory to provide the information in the given time frame of 30 days. Since the information system of the organization is not integrated, therefore it becomes difficult to provide the information in the given time.
- **Lack of co-ordination from the concerned department:** Sometimes the different departments of the organization do not cooperate with the PIO, so it becomes difficult for him to get the information so that, it can be provided to the information seeker.

- **Difficulties in doing the routine work:** Different departments find difficulties in doing their routine job, because sometimes they are also asked to provide the information to PIO as per RTI Act, 2005.
- **Lack of preparedness for responses:** RTI Act, 2005 was implemented in a short time of just 4 months. Many departments couldn't prepare themselves to respond according to act.
- **PIO is an additional responsibility:** Additional responsibility of PIO is given to an executive from the organization and he/she is not fully dedicated to disseminate the information to the people as per the RTI Act, 2005.

### **Process of information gathering**

In order to get the information as per the RTI Act, 2005 the information seeker has to send the request for information with the requisite fee to the Public Information Officer (PIO). Then the PIO gather the information from the concerned department. The PIO is facing difficulties in gathering the information where medium or low level of information technology is used.

However, the PIO is not finding any difficulties in gathering and disseminating the information where high level of information technology is used.



### **Information: Which can be denied**

There are some matters where information can be denied, which are given in section 8, and section 9 of RTI. Sections read as under:

#### **Exemption from disclosure of information:**

Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

1. Information, disclosure of which would prejudicially affect the sovereignty and integrity of
2. India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
3. Information which has been expressly forbidden to be published by any court of law or Tribunal or the disclosure of which may constitute contempt of court;
4. Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
5. Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent
6. authority is satisfied that larger public interest warrants the disclosure of such information;
7. Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

8. Information received in confidence from foreign Government;
9. Information which would impede the process of investigation or apprehension or prosecution of offenders;
10. Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

11. Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

**Who is included in the ambit of ‘Public Authorities’?**

‘Public Authorities’ include bodies of self-government established under the Constitution, or under any law or government notification. For instance, these include Ministries, public sector undertakings, and regulators. It also includes any entities owned, controlled or substantially financed and non-government organizations substantially financed directly or indirectly by funds provided by the government.

**How is the right to information enforced under the Act?**

The Act has established a three tier structure for enforcing the right to information guaranteed under the Act.

Public Authorities designate some of their officers as Public Information Officers. The first request for information goes to Central/State Assistant Public Information Officer and Central/State Public Information Officer, designated by the Public Authorities. These Officers are required to provide information to an RTI applicant within 30 days of the request. Appeals from their decisions go to an Appellate Authority. Appeals against the order of the Appellate Authority go to the State Information Commission or the Central Information Commission. These Information Commissions consists of a Chief Information Commissioner, and up to 10 Information Commissioners.

## **What is CIC and SIC?**

### **Central information Commission**

Central Information Commission is constituted by central government. It is composed of 1 chief Information Commissioner (CIC) and not more than 10 Information commissioners. Commission shall have its headquarter in Delhi. CIC shall be appointed for a term of 5 years. The candidate for CIC must be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, mass media or administration.

### **State Information Commission**

The state Information Commission is constituted by state government. It consists of one state Chief Information Commissioner (SCIC) and not more than 10 state Information Commissioners to be appointed by the Governor. Both the Central Information Commission and State Information Commission have a duty to receive complaints from any persons: -

- Who has not been able to submit an information request because a PIO has not been appointed.
- Who has been refused information that was requested.
- Who has received no response to his/her information request within specified time limits.
- Who thinks the fees charged are unreasonable.
- Who thinks information given is incomplete or false or misleading and
- Any other matter relating to obtaining information under this law.

## **Srikrishna Committee Draft Report**

The Justice BN Srikrishna committee has submitted its report on data protection to IT Minister Ravi Shankar Prasad. Titled, “A Free and Fair Digital Economy – Protecting Privacy, Empowering Indians”, the report was submitted during a press event at the IT Ministry, along with a draft Data Protection Bill.

The ten-member committee was tasked with studying and identifying key data protection issues and recommend methods for addressing them. Here are the some of the highlights from the report and Bill:

### **Restrictions on Processing and Collection of Personal Data**

The committee recommends that processing (collection, recording, analysis, disclosure, etc) of personal data should be done only for “clear, specific and lawful” purposes. Only that data which is necessary for such processing is to be collected from anyone.

### **Processing of personal data for ‘Functions of the State’**

One of the more problematic suggestions of the committee is that they suggest that your personal data may be processed by the government if this is considered necessary for any function of Parliament or State Legislature. This includes provision of services, issuing of licenses, etc. On the face of it, this looks extremely vague and could lead to misuse.

### **Right to be forgotten**

The committee recommends giving “data principals” (persons whose personal data is being processed) the ‘right to be forgotten’.

This means they will be able to restrict or prevent any display of their personal data once the purpose of disclosing the data has ended, or when the data principal withdraws consent from disclosure of their personal data. In the EU, this has been used by people to get unflattering records of them on news websites taken down after the matter is no longer a matter of public interest.

This right is one of several given to data principals, including the right to confirm what information is being held or disclosed about them, and to get this corrected if necessary.

### **Data Localisation**



Personal data will need to be stored on servers located within India, and transfers outside the country will need to be subject to safeguards. Critical personal data, however, will only be processed in India.

Processing of Sensitive Personal Data to Require Explicit Consent

The Committee recommends that “sensitive” personal data (such as passwords, financial data, sexual orientation, biometric data, religion or caste) should not be processed unless someone gives explicit consent – which factors in the purpose of processing.

So, if you have disclosed your sexual orientation in a survey where you were told it would be used to assess the numbers of people with such orientation in a particular place, your name and orientation cannot then be sent to an advertising agency to send you targeted ads, as this is different from the purpose you had agreed on.

## DATA PROTECTION AUTHORITY

The Committee has recommended setting up a Data Protection Authority which is supposed to “protect the interests of data principals”, prevent misuse of personal data and ensure compliance with the safeguards and obligations under the data protection framework by corporations, governments or anyone else processing personal data (known as “data fiduciaries”). The obligations on data fiduciaries include conducting audits and ensuring they have a data protection officer and grievance redressal mechanism – the Authority will need to publish Codes of Practice on all these points.

The Authority shall have the power to inquire into any violations of the data protection regime, and can take action against any data fiduciaries responsible for the same.

## RTI ACT AMENDMENTS

The Committee recommends the amendment amend section 8(1)(j) of the RTI Act that pertains to the disclosure of personal information in the larger public interest. The old 8(1)(j) said there would be no obligation to reveal personal information which was not related to “public activity or interest”, or would be an invasion of privacy. The new 8(1)(j) looks at a balancing act between the public interest in accessing the information on one hand, and the **harm** that could be caused to the data principal on the other.

### **What does the Right to Information (Amendment) Bill, 2019 propose?**

The Bill changes the terms and conditions of service of the CIC and Information Commissioners at the centre and in states.

**Table 1: Comparison of the provisions of the Right to Information Act, 2005 and the Right to Information (Amendment) Bill, 2019**

<b>Provision</b>	<b>RTI Act, 2005</b>	<b>RTI (Amendment) Bill, 2019</b>
<b>Term</b>	The Chief Information Commissioner (CIC) and Information Commissioners (ICs) (at the central and state level) will hold office for a term of five years.	The Bill removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
<b>Quantum of Salary</b>	<p>The salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively.</p> <p>Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.</p>	The Bill removes these provisions and states that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.
<b>Deductions in Salary</b>	<p>The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension.</p> <p>Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) company owned or controlled by the central or state government.</p>	The Bill removes these provisions.

### **Various Stances on RTI Amendment Act, 2019**

Recently, the Central Government created a record of passing the maximum number of bills in the first session of the Lok Sabha. But the proposed amendment to the RTI Act caused controversy around the institution of the Central Information Commission being weakened. While there is a reason for the concern, it arises not purely because of the text of the law, but the absence of accurate justification for the amendments.

Every single citizen of India has the right to file an RTI from any public office, or any government-funded office about their structure and functioning. The Act ensures transparency even when the public officer doesn't want it. It empowers the citizens to examine and question the government's decisions and assess if they are in the interest of the public. But what happens if any department does not want to reveal the information that we ask? There comes the role of the Information Commissioner (IC) and Chief Information Commissioner (CIC).

If any department refuses to provide information that we ask, then we can appeal to the IC and CIC who can impose a fine on the officer who refused to provide information. To ensure work without any political pressure, these IC officers and the CIC officers were kept free of any interference from the government in the 2005 Act. Their terms and salaries were fixed and no one in power could have fired them or decided their salary. This certainly gave them the freedom to work honestly without any fear, and that is where the soul of the RTI lay.

The 2019 Bill is killing this very soul by removing the fixed tenure and salary of these officers, and clearly indicating intervention in their work since it proposes that the salary and tenure of IC and CIC will be decided by the Centre. It grants larger powers to the Government as everything will be decided by the Centre. Thus, the neutrality of ICs would be crippled to make them "more loyal" to the

central government. They will act as the employees of the Centre, and if they wish, they can decide to withhold information that can shore up the government. The amendment has the potential to harmfully affect the

independence of the CICs and ICs, since the central government will now have the authority to decide the terms, tenure, and salaries of these officials. Hence, it is a threat to independence.

The Bill was introduced and passed without public consultation which obstructs the citizens' RTI, as a public consultation is crucial for laws to become successful and drafting of the legislation cannot be left to the elected representatives alone. This amendment subtracts transparency as it gives power to the Centre to unilaterally make decisions, which will fundamentally weaken the whole basic idea and structure of the RTI. But the Centre claims that the equivalence drawn between the Amendment Bill and the Election Commission of India and the Central and State Information Commissioners are flawed.

In this account, the central government says the difference between ECI and the CIC, ECI is responsible for the direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislative of every State and of elections to the offices of President and Vice-President held under the constitution and It is a constitutional body established under the Article 324 (1) conversely, the Central Information Commission and State Information Commissions are statutory bodies established under the provisions of the RTI Act, 2005. Hence, the mandate of ECI and Central & State Information Commissions are different. Rather, they have justified the amendment by stating that it is an attempt to streamline and reinforce the Act, and also bringing greater transparency.

Office of the ICs is the highest appellate authority in the RTI framework. After the amendments, who would control these offices through the instrument of service rules? Can citizens expect openness and fairness, especially when the information demanded from the government might be against them?

The answer to these questions is at the heart of confrontation against the amendment to the RTI Act. As citizens, we all must be aware of the rules and laws based on which we are governed. What happens if the government takes a decision arbitrarily and does not make it

available for public knowledge? Now the IC or CIC will be like caged parrots who will sing according to the government, or at least will not sing against the will of the government. We all must remember that democracy alone means nothing without rights and laws that empower ordinary people against powerful governments. One such law is being diluted, and others can be in line.

The purpose of the Right to Information Act 2005 was to promote transparency and accountability in the working of every public authority. But the citizens' right to secure the access to information is being crippled by the Amendment Bill. The amendment has taken away the free flow of unbiased information and has weakened the law without providing any reliable justification.

### **Background of RTI Amendment Act, 2019**

It is important to note that This Act comes in the backdrop of a few orders of the information commission that were considered uncomfortable for the Modi government in recent times. Two examples can be gauged from PM Modi's degree row and the status of non-performing assets in public sector banks.

In January 2017, acting on an RTI activist's application, information commissioner Sridhar Acharyulu ordered the Delhi University to allow inspection of records of students who had passed BA course in 1978, the year in which Prime Minister Narendra Modi passed the examination.

Within the next couple of days, Sridhar Acharyulu was stripped of human resource development portfolio. Then Chief Information Commissioner RK Mathur took away HRD ministry from him. Interestingly, in a reshuffle within the central information commission on December 29, 2016, Acharyulu had retained HRD



ministry in his portfolio.

In another incident from the previous Modi government's tenure, the Reserve Bank of India had been directed on an RTI application, to provide details of the NPA in public sector banks and the details of big loan defaulters. The RBI had denied revealing information sought citing the confidential nature of the same.

The matter reached the Supreme Court, which first in 2015, directed the RBI to make the information available and reiterated the order in April this year after the central bank failed to comply with the order.

### **What is the government's defence to these claims?**

The government has maintained that it has not tinkered with autonomy or independence of the central information commission. Minister of State in the Prime Minister's Office Jitendra Singh while introducing the RTI Amendment Bill 2019 in the Lok Sabha on Monday said the Modi government is correcting the anomaly in the RTI law passed by the UPA government.

The Government has specifically stated that Probably, the then government of the day, the UPA- I in a hurry to pass the RTI Act, 2005, overlooked a lot of things. The Govt has questioned that The Central Information Commissioner has been given the status of a Supreme Court judge but his judgments can be challenged in the high courts.

The RTI Act did not give the government rule-making powers and the RTI Amendment Act has only corrected these errors in the earlier Act.

### **Reasoning by the Government:**

1. Section 13 of the Act provides for the term of office and conditions of service of the Chief Information Commissioner and Information Commissioners. It

provides, inter alia, that the Chief Information Commissioner and every Information Commissioner shall hold office for a term of five years or till they attain the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment. It further provides that the salaries and allowances and other terms and conditions of service of the Chief Information Commissioner and Information

Commissioners shall be the same as that of the Chief Election Commissioner and Election Commissioner, respectively.

Similarly, section 16 of the Act provides for the term of office and conditions of service of the State Chief Information Commissioner and State Information Commissioners.

It provides, inter alia, that the State Chief Information Commissioner and every State Information Commissioner shall hold office for a term of five years or till they attain the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment. It provides that the salaries and allowances and other terms and conditions of service of the State Chief Information Commissioner and State Information Commissioners shall be the same as that of the Election Commissioner and the Chief Secretary to the State Government, respectively.

**2.** The salaries and allowances and other terms and conditions of service of the Chief Election Commissioner and Election Commissioner are equal to a Judge of the Supreme Court, therefore, the Chief Information Commissioner, Information Commissioner and the State Chief Information Commissioner becomes equivalent to a Judge of the Supreme Court in terms of their salaries and allowances and other terms and conditions of service.

**3.** The functions being carried out by the Election Commission of India and the Central and State Information Commissions are totally different. The Election Commission is a constitutional body established by clause (1) of article 324 of the Constitution and is responsible for the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under the Constitution. On the other hand, the

Central Information Commission and State Information Commissions are statutory bodies established under the provisions of the Right to Information Act, 2005. Therefore, the mandate of Election Commission of India and Central and State Information Commissions are different. Hence, their status and service conditions need to be rationalised accordingly.

## **PM CARES FUND AND RTI**

The Prime Minister's Office (PMO) has clarified that the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM-CARES Fund) is not a public authority under the ambit of the Right To Act (RTI), 2005.

PM-CARES Fund was set to accept donations and provide relief during the Covid-19 pandemic, and other similar emergencies. The PMO's response came in the backdrop of the RTI query filed to know the Fund's

trust deed and all government orders, notifications and circulars relating to its creation and operation.

### **PM-CARES Fund**

#### **Description:**

- PM-CARES was set up as a public charitable trust with the trust deed registered on March 27, 2020.
- It can avail donations from the foreign contribution and donations to fund can also avail 100% tax exemption.
- PM-CARES is different from the Prime Minister's National Relief Fund (PMNRF).

#### **Purpose:**

- It is meant for supporting relief or assistance of any kind relating to a public health emergency or any other kind of emergency, calamity or distress, either man-made or natural.
- It includes the creation or upgradation of healthcare or pharmaceutical facilities, funding relevant research or any other type of support.

#### **Composition:**

- Prime Minister as chairperson
- Defence Minister, Home Minister, Finance Minister
- Three trustees nominated by the Prime Minister "who shall be eminent persons in the field of research, health, science, social work, law, public administration and philanthropy".

## **Prime Minister's National Relief Fund (PMNRF)**

### **Description:**

- PMNRF was instituted in 1948 by then Prime Minister Jawaharlal Nehru, to assist displaced persons from Pakistan.
- The fund is recognized as a Trust under the Income Tax Act and the same is managed by the Prime Minister or multiple delegates for national causes.
- The contributions towards PMNRF are notified for 100% deduction from taxable income under section 80(G) of the Income Tax Act, 1961.

### **Purpose:**

- The fund is currently used primarily to tackle natural calamities like floods, cyclones and earthquakes.
- The fund is also used to help with medical treatment like kidney transplantation, cancer treatment and acid attack.

### **Contributions:**

- The fund consists entirely of public contributions and does not get any budgetary support. It accepts voluntary contributions from Individuals, Organizations, Trusts, Companies and Institutions etc.
- The corpus of the fund is also invested in various forms with scheduled commercial banks and other agencies. Disbursements are made with the approval of the Prime Minister.

### **Key Points**

#### **PM-CARES Not a Public Authority:**

- It has been stated that the PM-CARES Fund is not a Public Authority under the ambit of Section 2(h) of the RTI Act, 2005.
- However, relevant information in respect of PM-CARES Fund may be seen on the website [pmcares.gov.in](http://pmcares.gov.in).

### **Ambiguous Nature of PMNRF Under RTI:**

- There is ambiguity regarding whether the PMNRF (Prime Minister's National Relief Fund) is subject to the RTI Act.
- The Central Information Commission (CIC) has directed PMNRF to disclose information as a result of the Delhi High Court's split opinion on the question of whether PMNRF is a public authority under the Act.
- The split opinion signifies that some Justices from the Delhi High Court Bench held PMNRF as a public authority, whereas some Justices held that PMNRF is not a public authority.

### **Audit of PM-CARES and PMNRF:**

- Earlier, the Comptroller and Auditor General's (CAG) office had clarified that it wouldn't audit the PM-CARES Fund as it is 'a charitable organisation' and is also based on donations from individuals and organisations.
- The PMNRF too is not audited by CAG but it is audited by an independent auditor outside of the government.

### **Section 2 (h) of the RTI Act**

Under section 2(h) of the RTI Act "Public authority" means any authority or body or institution of self-government established or constituted—

- by or under the Constitution;
- by any other law made by Parliament/State Legislature.
- by notification issued or order made by the appropriate Government, and includes any—
- body owned, controlled or substantially financed;
- non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.



