

**"CJI Bobde has called for a way to stop abuse of RTI. A look at the Supreme Court's observations over the years, at times stressing the right to know, and at other times critical of the way RTI is being used."**

On Monday, Chief Justice of India Sharad Arvind Bobde called for a "filter" to check "abuse" of the Right to Information (RTI) Act. "There is paralysis and fear about this Act. People are not taking decisions... We want to find a way to stop the abuse of RTI Act," he said.

Bobde's remarks came a month after the Supreme Court declared the office of the CJI a public authority under the ambit of the RTI. Over the years, the Supreme Court has stressed the importance of transparency under RTI at times, and also remarked on its overuse at other times.

### For a stronger RTI

**DENIAL OF INFORMATION:** On December 16, 2015, in Jayantilal N Mistry vs Reserve Bank of India, Justice M Y Eqbal and Justice C Nagappan observed: "It had long since come to our attention that the Public Information Officers under the guise of one of the exceptions given under Section 8 of RTI Act, have evaded the general public from getting their hands on the rightful information that they are entitled to... The ideal of 'Government by the people' makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of Government paves way for debate in public policy and fosters accountability in Government. It creates a condition for 'open governance' which is a foundation of democracy."

**NGOs UNDER RTI:** In DAV College Trust and Managing... vs Director of Public Instructions on September 17, 2019, a Bench of Justice Deepak Gupta and Justice Aniruddha Bose declared that NGOs are not beyond the RTI Act. This was based on an examination of the question whether NGOs are substantially financed by the government. The Bench observed, "In our view, substantial means a large portion. It does not necessarily have to mean a major portion or more than 50%. No hard and fast rule can be laid down in this regard. Substantial financing can be both direct or indirect. To give an example, if a land in a city is given free of cost or on heavy discount to hospitals, educational institutions or such other body, this in itself could also be substantial financing. The very establishment of such an institution, if it is dependent on the largesse of the State in getting the land at a cheap price, would mean that it is substantially financed. Merely because financial contribution of the State comes down during the actual funding, will not by itself mean that the indirect finance given is not to be taken into consideration. The value of the land will have to be evaluated not only on the date of allotment but even on the date when the question arises as to whether the said body or NGO is substantially

financed. Whether an NGO or body is substantially financed by the government is a question of fact which has to be determined on the facts of each case.”

Because of this observation, the spotlight falls of several NGOs that have been getting public money and were not covered under the RTI. There are societies directly controlled by politicians, but fighting cases that they are not covered under the transparency law.

### **Critical of overuse**

**TIME CONSUMED IN REPLYING:** In Central Board of Secondary Education (CBSE) & Anr vs Aditya Bandhopadhyay and Others in 2011, the Supreme Court said: “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.”

According to estimates, nearly 60-70 lakh RTI applications are filed in India every year, and activists have questioned whether addressing these would require 75% of the time of government staff. Several public authorities have used this observation while denying information, ignoring the fact in the same case, the Supreme Court had ordered disclosure of the requisite information.

**PERSONAL AND PUBLIC:** In Girish Ramchandra Deshpande vs Central Information Commission & Ors in October 2012, a Bench of Justices K S Radhakrishnan and Dipak Misra observed, “The performance of an employee/officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression ‘personal information’, the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which would cause unwarranted invasion of privacy of that individual. Of course, in a given case, if the Central Public Information Officer or the State Public Information Officer of the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, appropriate orders could be passed but the petitioner cannot claim those details as a matter of right.”

Various public authorities have used this order to deny information on cases/inquiries going on against government officials.

### **Genesis of the law**

It was the Supreme Court that had sown the seeds of the RTI Act when, in 1975, in State of Uttar Pradesh vs Raj Narain, Justice K K Mathew observed, “The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security.” Since that remark, the country saw many demands for an RTI Act; 12 states had enacted their own transparency laws before it was passed as a central legislation and implemented in 2005.

Before the RTI Act, the Supreme Court advocated for the people’s right to know in Union of India Vs Association for Democratic Reforms in 2002. It observed, “Voters’ (little man-citizens’) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers.” This judgment was to make provision for declarations of assets, liabilities and criminal cases against electoral candidates, but for government officials the information is often denied by several public authorities, using the Supreme Court observation of October 2012 .

Section 6(2) of the RTI Act says: “An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.” Section 8(1)(j) says, “The information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person” under the RTI Act.

In *Bhagat Singh vs CIC* in 2007, then Delhi High Court Justice Ravindra Bhat (now a Supreme Court judge) observed: “Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore be strictly construed. It should not be interpreted in manner as to shadow the very right itself.”

### Expected Questions (Prelims Exams)

1. **Recently, some amendments have been made in the provisions of the Right to Information Act 2005 by the Right to Information (Amendment) Bill 2019, in this context, consider the following statements: -**

1. Through this amendment, constitutional bodies like President, Vice President, Supreme Court and Election Commission have also been brought under the purview of the Right to Information Act.
2. Under this Act, a Chief Information Commissioner at the Central level and a Central Information Commission with a membership of at least 10 or more Information Commissioners has been constituted.

Which of the above statements is/are correct?

- (a) Only 1                      (b) Only 2  
(c) Both 1 and 2              (d) None of these

**Note:** Answer of Prelims Expected Question given on 18 Dec., is 1 (c)

### Expected Questions (Mains Exams)

Q. 'Right to information is a necessary right for a person's dignified life even after not being directly included in the fundamental right. Discuss the role of the Supreme Court in the development of this right.

(250 words)

**Note:** - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC main examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.