

MAHARASHTRA RIGHT TO INFORMATION ACT, 2002

SLIDE 1

India is the largest Democracy in the world. Democracy means government of the people, by the people and for the people. If democracy has to really succeed then government by the people is very important which was missing all these years. So People's Participation in Governance is very important..

Citizen & Governance has three features

- A strong state and a strong civil society
- A deepened democracy and a democratic culture
- An enlarged role for the citizen

If citizens have to participate in governance, they need to have information on the working of government. So, information is the key to democracy and there can be no democracy without information. Lack of information opens the door for corruption and mismanagement. Citizens know very little about how tenders are finalized, the way the police functions, what works are to be undertaken, results of feasibility studies of various projects etc.

But **now**, we have an instrument, a tool - the Maharashtra Right to Information Act - in our hands, which empowers us to get all this information. It is a very important Act because under this, we can ask from the government or public bodies information on anything that affects our lives. There are of course a few exemptions, which we will talk about later in the presentation. It is now up to us citizens to use this act and make it functional.

If we want a positive response, it is important to **ask for information** and not just make comments or suggestions e.g. We need to ask when a pavement was repaired, how much money was spent, who did the job, how many licenses have been given to hawkers on a particular road etc. Merely complaining or saying that the pavement needs repairs or that there are too many hawkers on the pavement will not be of any use.

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In the Preamble to the Act itself, the Government of Maharashtra states:

I quote

“WHEREAS the right to information has been recognised by the Supreme Court as a part of the fundamental right guaranteed to the citizens under Article 19[I] of the Constitution of India.

AND WHEREAS the right to information is the bed-rock of democracy and can pave the way for transparency, openness and accountability in governance of the affairs of the State and ensure effective participation of the people in a democratic society”

Unquote

Thus the Fundamental Right to express is enshrined in Article 19[1][a] of the constitution of India. The Supreme Court has also ruled that this cannot be tampered with even by Parliament. That’s how on March 13 last year the Supreme Court ruled the amendment to RPA as unconstitutional and null and void.

However whenever there is a right, there is a corresponding duty.

As stakeholders people have a **right** to ask for information from the government and public bodies about things that affect their lives. It is the **duty** of the government to provide this information upon request.

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As stated in the Preamble to the Act, Information brings about transparency and accountability, both of which help to reduce corruption and increase efficiency. Information also helps to increase participation in governance.

Transparency – The government takes various decisions that affect our lives. Therefore we have a right to know about these decisions and how they affect our lives. e.g. if a bridge is being built, we need to know all details i.e. how many people will be employed, who will carry out the work, how much time will it take, how much money is allocated for the job etc.

Accountability – The details can be checked with the actual work done, this leads to accountability. If there is a problem with the work e.g. the bridge collapses, people will know who is responsible and what action to take.

Corruption - If all details of expenditure and the above mentioned details are made known the chances of corruption are minimized.

Efficiency - Information helps to improve efficiency by keeping a check on work done. When people are watching, systems function better.

Participation – In a democracy, we the people form the government. All work is carried out with our money (public money through taxes). For it to be according to our needs, we as stakeholders must be able to take part in the decision-making or give our suggestions. For this, we need information on details of all work.

If citizens have information on the discretionary funds of elected representatives, they will be able to participate in planning / suggesting how these funds should be spent according to the needs of the area.

We have a right to participate in the formation of our government by exercising our vote. But unless we have sufficient information about the candidates, we will not be able to exercise our vote correctly. Information is important for participation. Therefore the Supreme Court has made it mandatory to disclose criminal background, assets and educational qualifications of candidates. Now we have an informed choice.

Information is therefore the key to **Democracy** and **Development**.

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History of the Act

- There was a MRTI Act in 2000, which was a very weak Act.
- Therefore, it was replaced by an Ordinance, which was promulgated in September 2002.
- Since this was not converted into an Act in the next Assembly Session (i.e. winter session), it lapsed.
- However, due to public pressure, the government passed the MRTI Act in the budget session in March 2003.
- This was sent to the President for his assent, but remained unsigned until Shri Anna Hazare under took a fast unto death on 9th August 2003.
- Within a day, the President gave his assent and on 11th August 2003, the Act was notified in the government gazette.
- It was due to the effort of Shri Anna Hazare that this Act is now functional.

MAHARASHTRA RIGHT TO INFORMATION ACT, 2002 was notified on 11 August 2003 with retrospective effect from 23 September, 2003.

9 States in India have Act on RTI

Tamilnadu

Goa

Rajasthan

Jammu & Kashmir

Assam

Madhya Pradesh

Karnataka

Delhi and

Maharashtra

However Maharashtra's is one of the best Act.

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WHAT INFORMATION CAN YOU ASK?

- According to the MRTI Act, “information” means information relating to any matter in respect of the affairs of the government and any public authority. This includes a copy of any record in the form of a document, diskettes, floppies or any other electronic mode.

For example:

- You can demand a copy of a building permission granted to any third party by the civic body.
 - You may ask the status of your case pending with any office
 - You can ask for a copy of a contract awarded to a contractor for a particular work.
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- Any information available to Parliament / State legislature cannot be denied to citizens.

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SUO MOTO DISCLOSURE

This information is to be given proactively. We do not have to ask for this, it is the duty of an organization to make this information known.

Information to be published from time to time:

- Particulars of organization, functions and duties;
- Powers, duties of officers and decision making procedures;
- Norms followed in discharge of functions;
- Rules, regulations, guidelines applicable to the department;
- List of records maintained by the particular department;
- Facilities available to citizens for obtaining information;
- Details of Public Information Officers

In addition, the following information should be made available:

- Relevant facts concerning important decisions / policies while announcing the same;
- Before initiating a project, relevant information to general public and affected persons.

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As stated earlier there are some information that are exempted from disclosure. They are

- Information that would affect Sovereignty, Integrity, Security, relation with foreign state or lead to incitement of offence.
- Information that has been forbidden by the court of law.
- Information prohibited under Official Secrets Act.
- Commercial information, including trade secrets, intellectual property etc.
- Personal information of no public interest.
- Information about service records of a person.
- Information, which would endanger the life or safety of a person if disclosed.

A special Committee will take a decision in the above cases

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There are OTHER GROUNDS FOR REFUSAL even if not exempted.

Information may be refused if:

- It is already published in Official Gazette and available to the public
- It is required by law to be published at a particular time OR
- The volume is too large, requiring diversion of resources

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However even exempted information can be disclosed

- When the Competent Authority is convinced that it is in **larger public interest**, commercial information (trade secrets, intellectual property) or personal information (which invades privacy) may be disclosed
- When it can be severed from an exempted document provided that part does not contain any information exempt from disclosure
- Information about decision making in a case can be disclosed after the decision is taken or deemed to have been taken.
- If it pertains to a matter that has taken place 15 years before the request

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Having understood the need of information for success of democracy and participation in governance how to ask for information. Yes the Act has provided a procedure.

- In every department, one or more Public Information Officers (PIOs) have been appointed by the concerned Competent Authorities, to deal with requests for information.
- Written applications for information are to be made to these PIOs on plain paper in the given format by affixing a court fee stamp of Rs. 10/-.
- An acknowledgement must be taken on a copy of the application for record.
- The PIO has to maintain a register of applications received for information in a particular format.

Slide 11 FEE STRUCTURE

For giving information, the Act has stipulated a Fee Structure.

- When the concerned department has already published priced documents, maps, etc
The price so fixed + postage charges (unless collected personally)
- When the information is readily available either by photo copying or by the other ways then
50 paise per page + postage charges (unless collected personally)
- If the information is not readily available and needs to be collected then
Rs. 2/- per page + postage charges (unless collected personally)

One applicant was charged Rs. 50/- a page. But later the BMC issued a refund order for the excess amount.

Similarly another applicant a demand of Rs. 54000 was made for maps but on arguing was finally charged 50 paise a page.

Slide 12 WHEN TO EXPECT A RESPONSE

The Act stipulate the time limit everywhere.

Within 15 working days, the PIO has to either:

- Supply the information.
- Reject the request and communicate the reasons to the applicant.
- Communicate if additional fees are required to cover costs and the date by which payment is to be made
- In some cases, PIO may need more time to get information but within 15 days he has to inform the applicant the reason for extension of time but not later than 30 days from application
- *But if it involves life and liberty of a person, it must be given within 24 hours*

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REJECTION OF REQUESTS

The PIO while rejection of request for information has to give reasons and also the time within which the applicant can appeal and to whom.

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First Appeal

An appeal may be made to the first Appellate Authority (generally the Competent Authority) within 30 days, on a plain paper in the format given but in this case a court fee stamp of Rs. 20/- has to be affixed if:

- There is no communication from PIO within 15 working days OR

The applicant is aggrieved by the order of the PIO in which case a copy of the order should be attached with the appeal)

The order passed by the Appellate Authority has to be communicated to the Appellant (Applicant) and the PIO

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The Act also provides for a Second Appeal

- If aggrieved by the order of the first Appellate Authority, the applicant may appeal to the Lok Ayukta or Up-Lok Ayukta in a format similar to the first appeal.
- The order of the Lok Ayukta has to be communicated to the Appellant and First Appellate Authority
- All appeals to be disposed off within 30 days or an extended period of further 30 days after stating reasons
- Decisions of Lok / Up-Lok Ayukta are final.

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There are PENALTIES laid down in the Act for violation.

After giving the PIO an opportunity of being heard, the Appellate Authority can impose fines if:

- Without valid reason there has been delay in supply of information, an amount of Rs. 250/- per day of delay to be deducted from salary of PIO
- If PIO has knowingly given wrong, incomplete, misleading information, penalty of Rs. 2000/- can be imposed.
- *Disciplinary Action can also be taken against the officer concerned*

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MONITORING OF THE ACT

- A State level Council is set up to monitor the working of the Act. It is chaired by the Chief Secretary and has citizens of repute as its members.
- Similar Councils are set up in every Revenue Division under the chairmanship of the Divisional Commissioners concerned.
- The Councils are to meet at least once in six months to review the working of the Act and made suggestions to the government.

In fact on July 6, 2004, the then state Chief Secretary issued a stern warning to the appellate authorities that action would be taken against them if they do not dispose off the appeals within the stipulated time and penalise defaulting PIOs. Even Vendana the present Secretary i/c of MRTI has taken cognizance of actions not taken and has followed them up.

Slide 18 COMPETENT AUTHORITY

Competent Authority as per the Act means:

- Head of every Administrative Department of State Government
- Administrative Heads of public and other authorities in the State
- Registrar of Co-operative Societies for the Co-operative societies registered under the Maharashtra Co-operative Societies Act, 1969
- Registrar of Societies for the Societies registered under the Societies Registration Act, 1860
- Charity Commissioner for Charity Commissioner's Office and the Public Trusts registered under the Bombay Public Trusts Act, 1950
- Commissioner of Labour for trade unions registered with him
- Secretary of Maharashtra Public Service Commission (MPSC) for the administrative wing of the Maharashtra Public Service Commission
- Registrar of Lok Ayukta and Up-Lok Ayukta for the administrative wing of the office of Lokayukta and Upa-Lokayuktas.

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The duties of the **COMPETENT AUTHORITY** is

- To appoint PIOs and display their details at prominent places in offices
- To serve as first Appellate Authority or authorize someone for the same
- Maintain records as required
- Publish details of organizations, functions duties, rules, regulations etc.
- Communicate to the public essential facts related to any project to be undertaken

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The Act defines PUBLIC AUTHORITY as

- Any body constituted by any State or Central law, owned and controlled by the State or which receives aid from government like concessional land or tax exemption etc.
- Also includes bodies whose composition and administration are mainly controlled by government
- The functions of which are of public interest
- On which office bearers are appointed by the government.

A citizen requisitioned information from the b s n I. which was rejected. Went in second appeal to the hon lokayukta. The hon lokayukta it seems has gone by section 2(6) of the act and has held that yes, indeed, b s n I is covered as far as its operations in maharashtra are concerned.

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SUMMING UP

Just read the slide

As mentioned earlier, Maharashtra has provided us one of the best Right to Information Act, but this BEST Act becomes useless if it is not used by the citizens and Hence I appeal to you all to make full use of the ACT. There are many in Maharashtra who have used the Act and got information though with difficulties. In some cases they may not have got the information but quietly the government has rectified its action, like Ministers or Politicians influencing transfers or promotion which has come down drastically this year, or curbs of dividers/pavements being painted etc.

AGNI volunteers in the last 5 months made 38 applications of which 23 replies received, 1 recd after 1st appeal and 1 recd after end appeal and balance pending at various levels.

So IN CONCLUSION there has been response and actions based on the citizens using this Act.

THANK YOU