

**MAJOR IMPEDIMENTS BEFORE A CITIZEN SEEKING  
INFORMATION UNDER THE RIGHT TO INFORMATION ACT WITH  
SPECIFIC REFERENCE TO KERALA EXPERIENCE**

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The Right to Information Act is a revolutionary enactment empowering a citizen to audit the performance of the public authorities in a democratic polity and evaluate the success and failure of the Government returned to power through ballot. It is an enactment that put strings on the bureaucrats and a feeler to them that they are not masters but servants of the public. The Act can attain its destined object only by removing the hurdles laid in the procedure prescribed for obtaining information.

The Act recognizes the right of a citizen to seek information from any public authority without stating the purpose for seeking particular information. By a legal fiction, the presumption is that every information sought from public authorities is essentially in public interest. That is why under Section 6(2) of the Right to Information Act it is declared that an applicant “shall not be required to give any reason for requesting the information”.

Section 8 of the Act deals with the exemption from disclosure of informations which include personal informations of a public servant that amounts to unwarranted invasion of privacy of the individual. The State Public Information Officers, the Appellate Authorities and even the state information commissions , when entertain an application for personal information touching matters of a public servant, mechanically issues notice under section 11 of the Act on the ground that the information sought are of third parties. This is totally unacceptable in as much they have a duty before issuing such notice to satisfy whether information sought for has any relationship to the public activity or public interest of the public servant. If on examination of the request in that perspective, only if it is found that the information sought for has nothing to do with his activity as public servant or public interest, and that the information sought, on the contrary

public activity as public servant or public interest, but also, it is an invasion to his privacy. Even thereafter, it is still open to the State Public Information officer to direct discloser, if he considers the disclosure of information is warranted in public interest. That is to say, even if it is information that invades the privacy of the public servant, the same has no immunity from disclosure when it is in public interest. That is say the Act has upheld the supremacy of disclosure of all informations in public interest. Unfortunately, the trend among the State Information Officers, Appellate Authorities and even State Commissions is to deny information on the ground of third party information or want of his consent. The question of consent of the public servant in fact does not arise. What matter is the public interest?

The other aspect of hurdle sought to be placed before the State public Information Officers and other authorities under the Act is to plead the status of a constitutional functionary. Institutions such as Judiciary, Legislative Assembly, and Public service Commissions are seen claiming constitutional protection from the application of the Right to Information Act. This plea of constitutional protection is nothing but to deny the right of a constitutional entity that has concern to protect the State binding to the Constitutional goals. A citizen is a Constitutional entity and have all right to be governed by Constitutional means to achieve its goal. If these institutions's claim for constitutional protection is upheld, it will result in a conflict between two constitutional entities. It is perhaps to avoid such conflict the Act refused to concede any such right to Constitutional bodies and used the word 'public authorities' to encompass all authorities whether constituted under any statute or by Constitution itself. Admittedly all are public authorities and hence accountable to the people. It is shame on those who plead Constitutional protection without understanding this simple principle. How is our nation safe in the hands of those who refuses to account their function to its own people?

The Competent authorities vested with powers to make rules for implementation of the Act has been successful to put as many hurdles as possible

“13. No application for information or document relating to a policy matter under consideration shall be entertained.”

The above two provisions in the rule are directly in conflict to the provisions of the Right to Information Act. Section 22 of the Act reads thus:

“22. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

As per Section 22 of the Right to Information Act the provisions of R.T.I. Act will have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

In the circumstance, the provisions of the Kerala High Court Rules are no impediment to make application for information or document relating to judicial proceedings. This rule therefore is ultra virus of the Act.

Further under the provisions of the Right to Information Act, Section 4 (1) (c) all Public Authorities are required to publish all relevant facts while formulating important policies or announcing the decisions which affect public. This being the mandate of the Act the High Court cannot make a rule denying “information or document relating to a policy matter under consideration”. In fact, all relevant facts while formulating important policies are matters to be published or made available on request. The rule 13 of the Kerala High Court (Right to Information) Rules 2006 is therefore ultra virus of the Act.

Further the Rule 16(f) of the Kerala High Court (Right to Information) Rules 2006 mandate payment of Rs.50/- for preferring Appeal. In fact, the Act does not contemplate any fee at the appellate stage and/or at the complaint or second appeal stage before the State Commissions. In fact, the rule making power under the Act does not authorize the competent authority to prescribe fee for entertaining Appeal under section 19 of the Act. It only empowers to lay down the procedure to be adopted in deciding the appeals. The rule prescribing Rs.50/- as

head separately to each public authorities for making payment of fees which should be allowed to be drawn by the designated State Information Officers on production of a copy of the receipt indicating payment of the required fee and cost for supplying information under the said head. This would enable each State Public Information Officer to draw the money for meeting the expenditure at the local level from the fund remitted by the applicant without waiting for sanction orders in the matter. The simplification of the procedure will go a long way in minimizing the difficulties now faced by the State Public Information Officers of various public authorities who often complains paucity of fund to meet the cost of the information. Even budgetary allocation can be a better solution to the present problem.

Under Section 24 of the Right to Information Act certain intelligence and security organizations have been exempted from the provisions of the Act. But even in the case of these organizations information pertaining to allegations of corruption and human rights violations is not excluded. The Government of Kerala issued a Notification No. SRO 127/06 dated 7.2.2006 under Section 24(4) of the Act enlisting the organizations to which the provisions of the Act have been exempted. In the said list it is seen mentioned “confidential branch in the Police Headquarters, Kerala and confidential sections in all Police Offices in Kerala” along with Special Branch CID, Crime Branch CID etc. The confidential branch in Kerala Police Headquarters and confidential sections in all Police Offices do not form part of intelligence and security organizations. Such a wing in fact never existed before the implementation of the RTI Act. A confidential wing is provided to deny information regarding various crimes registered by the Police by referring the same to these confidential sections in the Police Stations. It is an act to subvert the object of the Act and therefore the State Information Commissions have to take exemption of such a category from being included under the list of intelligence and security organizations.

Further it is not known under what justification the District and Crime Record Bureau of the State Government have been included in the list of

These hurdles are artificially created and could be removed with certain amount of dynamism on the part of State Information Commissions and Governments/competent authorities who have a constitutional and statutory obligation to ensure transparency in all field save those deals with intelligence and security of the nation. Public awareness will also help the Government to act in proper direction lest they may become unpopular.