

## **RIGHT TO INFORMATION & EVIDENCE**

This is a time when lot of information is being gathered with the help of RTI Act. In fact there are specialists in the field popularly known as RTI Activists. Without going into the motive of the RTI Activists and thinking purely from legal point of view the question arises is "Does the information gathered under the RTI Act can be termed as a good evidence under the Evidence Act".

The Information given under the RTI Act is in reply to the information sought by the Applicant under the RTI Act. Thus reply is correlated to the query and has to be in context of information that is sought. Thus any reply can never be read in isolation and has to be read along with the information sought. Further, the information may not be complete and it is only based on what is there in record and is in reply to the query and therefore it is important to have the copy of the documents based on which the information is provided. This certified copy can be termed as good evidence.

Section 79 of the Indian Evidence Act reads as under:

"The Court shall presume to be genuine every document purporting to be a certificate, certified copy, or other document, which is by law declared to be admissible as evidence of any particular fact, and which purports to be duly certified by any officer of the Central Government or of a State Government, or by any officer in the State of Jammu and Kashmir who is duly authorized there to by the Central Government:

Provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

The Court shall also presume that any officer by whom any such document purports to be signed or certified, held, when he signed, the official character which he claims in such paper".

Any person, who obtains the information under the Right to Information Act may either receive incomplete or complete information. It is, therefore, that when the informant is required to prove the case before any authority, or judicial authority, the same has to be proved completely by discharging the "onus". The Public Information officer is parting with the information that is available on record, but the supplied information, although issued by the public authority remains "uncorroborated".

Under Section 2 (j) (ii) of the RTI Act, the applicant can ask for certified copies of the documents or records. This certified copy of the document giving information can be admitted in the Court as Secondary Evidence. Note that under the RTI Act, the right to information includes the right to inspection of work, documents and records; taking notes, extracts or

certified copies of documents or records; and taking certified samples of material held by the public authority or held under the control of the public authority. A citizen has a right to obtain information from a public authority in any relevant form including in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs provided such information is already stored in a computer or in any other device from which the information may be e-mailed or transferred to diskettes etc.

Information obtained under the RTI Act is part of the documents held by Public Authority, who are Gazetted officers. A certified copy of a document received by virtue of RTI Act is secondary evidence as provided under Section 63 of Evidence Act, 1872. It can be used as Secondary Evidence in Court, since it is part of the Government records and provided by Govt. Authorities, certified under Govt. Seal.

For information obtained under the Act to be admissible in Court, it is essential that a certified copy of the same is obtained. The information can become important evidence and it can be used for proving one's stand in Court. Hence, it is advisable to base the pleading based on such information and ask the parties involved in a litigation to produce the document by way of discovery as provided under the provisions of Civil Procedure Code. Once, the documents are placed in compliance with the order of the court, it can be treated as authenticated and genuine documents. However, such documents placed on record by way of discovery are still required to be either proved or disproved as provided under the Indian Evidence Act. The "relevant fact" has to be established and proved.

These days the Courts are allowing information obtained under RTI as evidence in an increasing number of cases. In fact in one of the recent cases Madhya Pradehs High Court held that "certified copy of documents obtained under Right to Information Act 2005 can be admitted as secondary evidence" (Narayan Singh vs Kallaram @ Kalluram Kushwah decided on 19 March, 2015, Writ Petition No. 7860/2014) it held that Clause (f) of [Section 65](#) of Evidence Act makes it crystal clear that a certified copy permitted under the [Evidence Act](#) or by any other law in force can be treated as secondary evidence. Right to [Information Act](#), in courts view, falls within the ambit of "by any other law in force in India". The definition of "right to information" makes it clear that certified copies of documents are given to the citizens under their right to obtain information. In courts view, the court below has rightly opined that the documents can be admitted as secondary evidence. Hon'ble Court did not see any merit in the contention that the documents obtained under the Act of 2005 are either true copies or attested copies. Court held that the definition aforesaid shows that the same are certified copies. Even otherwise, it is interesting to note that in Black Dictionary, the meaning of "certified copy" is as under: -

"Certified copy" - a copy of a document or record, signed or certified as a true copy by the officer to whose custody original is entrusted."

The Court further held that "Since the documents are covered under [section 65](#) of the Evidence Act, there was no need to compare the same with the originals".