

RIGHT TO INFORMATION ACT : A TOOL OF TRANSPARENCY IN GOVERNANCE

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Abstract: *The Right to Information Act, 2005 (RTI) is doubtless a milestone in the deliberate route taken by the country for setting up bedrock foundation for democratic institutions and impart depth to public responsive functioning of the Government and its various agencies. It is a significant tool to ensure transparency in most of the operations of the Government. Its proper implementation will ensure good governance and eliminate corruption and thereby move up the ranking of the country in the index of honesty in the governmental and institutional operations. Right to Information means the freedom of people to have access to government information. It implies that the citizens and non-governmental organizations should enjoy a reasonable free access to all files and documents pertaining to the governmental operations, decisions, and performance. In other words, it means openness and transparency in the functioning of government. Thus, it is antithetical to secrecy in public administration. According to the Woodrow Wilson, "I for one have the conviction that government ought to be all outside and not inside. I, for my part, believe that there ought to be no place where everything can be done that everyone does not know about. Everyone knows corruption thrives in secret places and avoids public places. With this perspective, the present paper purports to explain about the importance of Right to Information Act in India, the provisions in this Act, challenges in implementing RTI in India and suggest some policy recommendations to improve it.*

Keywords: *Right to information Act, Corruption, Information commissions, Transparency, Good Governance*

INTRODUCTION

As a democratic device to empower the common man in relation to the Government, the Right to Information Act, 2005 has raised high expectations in India. The ambitious charter of this central legislation, as spelt out in the Preamble, is "to provide an effective framework for effectuating the Right to Information recognized under Article 19 of the Constitution of India".

Good Governance and Right to Information are complimentary to each other and the success of one depends upon the other. There are large number of problems in the Indian Administration which goes un-noticed and the administration rather than changing continues in its grooves. Right to Information Act, 2005 would make the Civil servants alert to provide information to public challenges and as a bye-product would make administration responsive and transparent which results in good governance.

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The Right to Information has not come on a platter and there have been many activists and citizen groups whose continuous struggle and efforts and movements have brought about this change. A mass based organization called Mazdoor Kisan Shakti Sangthan (MKSS) movement led by Aruna Roy in May 1990 took an initiative to organize people, in a very backward region of Rajasthan, Bhim Tehsil to assert their right to information by asking the copies of bills and vouchers and names of persons who have been paid wages mentioned in muster-rolls on the construction of school, dispensaries, small dams and community centers. It spread quickly to other areas of Rajasthan and to other states. The attempt of Harsh Mandar, the then Divisional Commissioner of Bilaspur, Madhya Pradesh in 1996 to throw open the registers of employment exchanges and the records of Public Distribution System to the citizen or the agitation led by Anna Hazare in Maharashtra in 2001 are some of the examples.

HISTORY OF THE RIGHT TO INFORMATION ACT

It has taken India 82 years to transition from an opaque system of governance, legitimized by the colonial Official Secrets Act, to one where citizens can demand the right to information. The recent enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs.

Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. Democracy revolves around the basic idea of Citizens being at the center of governance. And the freedom of the press is an essential element for a democracy to function. It is thus obvious that the main reason for a free press is to ensure that Citizens are informed. Thus, it clearly flows from this, that the Citizens Right To Know is paramount.

The Act and its rules define a format for requisitioning information, a time period within which information must be provided, a method of giving the information, some charges for applying and some exemptions of information which will not be given.

THE NEED FOR THE RIGHT TO INFORMATION

In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by countries, intergovernmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The right to information forms the crucial underpinning of participatory democracy - it is essential to ensure accountability and good governance. The greater the access of the citizen to information, the greater the responsiveness of government to community needs. Alternatively, the more restrictions that are placed on access, the greater will be the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights as citizens or make informed choices.

The free flow of information in India remains severely restricted by three factors:

- a) The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923;
- b) The pervasive culture of secrecy and arrogance within the bureaucracy; and
- c) The low levels of literacy and rights awareness amongst India's people.\

The primary power of RTI is the fact that it empowers individual Citizens to requisition information. Hence without necessarily forming pressure groups or associations, it puts power directly into the hands of the foundation of democracy- the Citizen.

APPLICABILITY

The Act applies both to Central and State Governments and all public authorities. A public authority (sec. 2(h)) which is bound to furnish information means any authority or body or institution of self-government established or constituted (a) by or under the Constitution, (b) by any other law made by Parliament, (c) by any other law made by State Legislature, (d) by a notification issued or order made by the appropriate Government and includes any (i) body owned, controlled or substantially financed, (ii) non-government organization substantially financed - which, in clauses (a) to (d) are all, directly or indirectly funded by the appropriate Government.

DEFINITION

The Act defines information in sec. 2(f) as any material in any form, including the records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force. Sec. 2(i) defines the word 'record' as including (a) any document, manuscript and file, (b) any microfilm, microfiche and facsimile copy of a document, (c) any reproduction of image or images embodied in such microfilm and (d) any other material produced by a computer or any other device.

The right to information is defined in sec. 2(j) as a right to information accessible under the Act which is held by or under the control of any public authority and includes a right to (i) inspection of work, documents, records, (ii) taking notes, extracts or certified copies of documents or records, (iii) taking separate samples of material, (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

RIGHT TO INFORMATION AS A FUNDAMENTAL RIGHT

The right to information is a fundamental right flowing from Art. 19(1)(a) of the Constitution is now a well-settled proposition. Over the years, the Supreme Court has

consistently ruled in favor of the citizen's right to know. The nature of this right and the relevant restrictions thereto, has been discussed by the Supreme Court in a number of cases: In *Bennett Coleman*, the right to information was held to be included within the right to freedom of speech and expression guaranteed by Art. 19 (1) (a). In *Raj Narain*, the Court explicitly stated that 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 *S.P. Gupta*, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described. Now that the statute requires information about the pendency of the applications, reasons as to why they are not disposed of or the reasons behind the rejection of an application, there is bound to be improvement in the efficiency of the departments. As of now, the only supervision of efficiency is supervision that is made by the superior officers at the time of reviewing the employees' work and while recording comments in the annual confidential reports or ACRs. This process has not proved successful and though it may be continued, still the threat of a Designated official calling for the relevant information at the instance of a citizen will be a salutary check on the inefficiency of officers. It also checks lethargy or bad faith or corrupt motives.

Another important aspect is that in India we have not given respect and prominence to the rights of the individual Citizen. True democracy is impossible until we recognize the majesty of the individual Citizen. If individual Citizens are empowered to ensure greater accountability and transparency in governance, it can bring about a major change. There has been no vehicle available for individual citizens to impact the governance structure. In a system reeking with corruption and becoming increasingly insensitive to the problems of the disadvantaged Citizenry, the Right To Information has shown promise of empowering Citizens to get accountability and act as an enforcer of good governance.

The overall impact of these decisions has been to establish clearly that the right to freedom of information, or the public's right to know, is embedded in the provisions guaranteeing fundamental rights in the Constitution. Various Indian laws provide for the right to access information in specific contexts. Section 76 of the Indian Evidence Act, 1872, contains what has been termed a 'Freedom of Information Act in embryonic form'. This provision requires public officials to provide copies of public documents to anyone who has a right to inspect them.

The Factories Act, 1948, provides for compulsory disclosure of information to factory workers "regarding dangers including health hazards and the measures to overcome such hazards", arising from their exposure to dangerous materials. While this is an excellent provision, in practice it is violated with impunity. The Environment (Protection) Act 1986, and the Environmental Impact Assessment Regulations provide for public consultation and disclosure in various circumstances.

RIGHT TO INFORMATION ACT – GLOBAL SCENARIO

Thus, Finland enacted the Freedom of Information legislation in 1951. Both Denmark and Norway have made the similar legislations in the same year (1970). USA has granted Right to Information to its citizens by the Freedom of Information Act (1966). This Act was amended in 1974 for two purposes: (i) to limit the exemptions (the documents which the administration may keep in secret) and (ii) to provide for penalties for withholding the formation or acting in an arbitrary manner. France, Netherlands and Austria have made the similar legislation in the 1970s. Canada, Australia and New Zealand have done it in 1982. Thailand and Ireland have made the law in the same year (1977). Bulgaria enacted it in 2000. In South Africa, the Right to Information is guaranteed by the constitution itself. This right of the citizens has been further reinforced by enacting a legislation in 2000. In Britain, the Fulton Committee (1966-68) found too much of secrecy in public administration. Hence, it recommended an enquiry into the Official Secrets Act, 1911. In 1972, the Franks Committee also made the similar recommendations. Hence, in 1988, the Act was amended to narrow the scope of official information falling within its ambit. Finally, the UK Freedom of Information Act came into force on January 1, 2005 [2].

THE CHALLENGES FACED BY RTI ACT

The general awareness amongst people about the RTI Act and how it can be used for their benefit is still low. Moreover, there is a lack of sincerity on the part of government officials in disclosing information, who often threaten the applicant or refuse to provide information. Additionally, the Information Commissioners have time and again cited the lack of man power required to comply with all the provisions of the Act. Recently, the Union Cabinet was contemplating amendments to the RTI Act, which were subsequently withdrawn after pressure from activists. The amendments, if cleared, would have restricted the disclosure of file nothings in government departments under the RTI Act only to the ones related to social and developmental issues. Also, the selection process for appointments made to public offices would have been concealed from the public. However, the very fact the such an amendment was even considered by the government and moreover, the Supreme Court's judgment in Namita Sharma's case has set the alarm bells ringing as far as the future of the RTI Act is concerned.

INFORMATION WHICH IS EXEMPTED FROM DISCLOSURE

Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, "strategic, scientific or economic" interests of the State, relation with foreign State or lead to incitement of an offense; 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; Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; 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 authority is satisfied that larger

public interest warrants the disclosure of such information; 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;

Information received in confidence from foreign Government; 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;

Information which would impede the process of investigation or apprehension or prosecution of offenders; Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers; Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);

Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. (NB: This provision is qualified by the proviso to sub-section 11(1) of the Act which exempts disclosure of “trade or commercial secrets protected by law” under this clause when read along with Section 8(1)(d)).

LOOPHOLES OF RTI ACT

As much as the Act has empowered the citizen and given them a “weapon” to keep the public officers in check, not everything about it is foolproof. The Act has flaws – Some of them in its implementation, and some in its interpretations. There are also some specific problems with the implementation of Acts in certain states. For instance, Chhattisgarh has increased the fee for an RTI application to Rs. 500, placing it beyond the reach for a lot of people. This is despite the fact that the Act stipulates a nominal fee. There is hope though. The Whistleblowers Protection Bill is closely connected with the success of the RTI Act, considering the increasing attacks on RTI Activists who have dared to register complaints against corrupt politicians, and wilful misuse of power by them. The legislations to protect whistleblowers, when enacted, shall provide safeguards to an RTI applicant.

CURRENT STATE OF RTI ACT

The Right to Information Act is now more than 13 years old — long enough to give us a fair idea of how it has performed on the ground. Riding on a huge wave of civil society activism, it started on a positive note and made unexpected impact early on. It promised to herald transparency and accountability in government functioning and thus reduce corruption. A number of significant disclosures were forced by the RTI, including the information regarding 2G and Commonwealth Games and so on. Among the educated and city dwellers, the RTI spread faster.

Most importantly, it led to the demand for several other equally important rights like the right to employment guarantee, the right to education and the right to food security. The RTI has had the effect of slackening the tight hold of the government and its officials on both information and instrumentalities of the state. The decade following 2005 witnessed the slow withering away of the Central government and the RTI surely played a role in that unravelling — by increasing irreverence, scrutiny and through the critiquing of its authority among the general public. However, of late, one witnesses a waning of fervour even though the number of RTI applications has been growing. We examine here the reasons for that.

Understandably, from the beginning, civil society activists and the media have been more enthusiastic about the RTI than civil servants, who have traditionally used information as the source of their power and mystique. The civil service's indifference and hostility towards the RTI has not diminished over the years; if at all, it has only increased although many government servants, no doubt mostly disgruntled, have also been most successful users of RTI, largely seeking information to fix their own cases and fix those they did not like. Ordinary citizens mostly seek personal information regarding various services otherwise denied to them by the system, be it a passport or a ration card or various commonly required certificates. Since disclosure of such information poses little threat to the system, the public authorities share such information relatively easily.

It is the contentious or potentially controversial information that the public authorities have been very wary of disclosing. Thus, as far as personal information or information of an innocuous kind, is concerned, the RTI has been a success. But as a tool to inculcate the value of transparency, the RTI has neither sunk deep into the government nor among most of the citizenry.. The civil society enthusiasm for the RTI has declined; some leading stars of the movement that led to the RTI have moved on to politics or other equally important areas like analytical studies for the World Bank. Many small-time blackmailers, in the guise of media persons or RTI activists, have successfully milked the RTI to make a living or settle personal scores, thus giving it a bad name among public authorities. As such, the RTI has, in its rise as well as in its decline, done a lot of good to many people. The public authorities, and their otherwise harried employees, must be heaving a sigh of relief now that the pressure is less.

The initial interest shown by the media has also somewhat waned. The attitude of the judiciary, in any case, was always ambivalent from the very beginning; many high courts had framed very restrictive rules — some even fixing a Rs 500 fee for each piece of information demanded (clearly not intended by the RTI Act), and thus making it very difficult for people to access the information held by courts. Between the Supreme Court and several high courts, a large number of decisions by information commissions have been stayed for years, without much explanation. This has created an impression among the public authorities that the judiciary is not very appreciative of the RTI or the way it is used by citizens.

The contribution of the information commissions, both Central and state, in diluting the public interest in the RTI is no less. Long pendency in most information commissions —

some even for a year or more – signals their casual approach. This, in turn, emboldens public authorities to take the RTI casually. Besides, a widespread reluctance to penalize errant government officials also contributes to a general sense of laxity in the enforcement of this law. The appointment of information commissioners, especially in the states – many of whom are not equal to the task in terms of intellect and stature – has seriously undermined the citizen's trust in information commissions. The absence of enforcement provisions in the law has rendered the information commissions toothless.

The law is too ambitiously and, some say, unrealistically drafted as it defines both “information” and “public authority” in the widest possible manner. As a result, the sheer volume and variety of information being sought places a huge burden on the public authorities. This induces a strong sense of resistance in them. Poor record-keeping makes retrieval of information very cumbersome. In most offices, the public information officer is a reluctant low-level official, without much clue about the information held or sought. Consequently, the response of the public authorities has often been sub-optimal and unsatisfactory for information seekers. Finally, in spite of the mandate of the RTI Act, most public authorities have failed to digitize their records and make proactive disclosure of their information in the public domain.

Looking back, one can say the RTI has achieved much but clearly, it seems to have reached a plateau now. One witnesses the same old faces, some weary and tired, at all RTI meetings. People inside the public authorities seem to have taken the RTI in their stride. It would surely need a second revolution to revive the old enthusiasm with which the RTI was first initiated. As far as laws go, the RTI Act has been the best thing to happen after the Constitution of India; we must make it work.

CONCLUSION

In order to optimize the benefits from RTI lot of suggestions have been pouring in from various quarters. The report of the second Administrative Reforms Commission entitled, “Right to Information – Master Key to Good Governance” recommends that the Official Secrets Act, 1923, should be repealed, as it is incongruous with the regime of transparency in a democratic society. Other key recommendations include total reorganization of public records for effective implementation of the Right to Information Act. An office should be set up in each State as a repository of expertise, to monitor all records. One per cent of the funds for all flagship government programmes should be earmarked for five years for updating records and building infrastructure. At least half the members of the Information Commission (IC) should be drawn from a non-civil service background. Thus, the members will represent variety and experience in society.

Real change begins with small groups of people who are strong enough to take the lead. At some point it reaches critical mass. This is when the balance tips over and change spreads rapidly right through society. The catalytic role of the government and the NGOs in implementing RTI needs to be appreciated and supported by the people at large. NGOs,

whistle blowers and media should be more active. We need a strong law to provide protection for whistle blowers. In the state of Jharkhand, 8 social auditors were killed when they wanted to know about NREGA implementation. Solutions are required to make the Act function better. Campaigns must be conducted in rural areas through multimedia and kiosks.

The government should also create infrastructure like more buildings and provisions to send complaints directly from rural areas through e-mails. Information on the RTI should be included in school syllabi to improve awareness. Government should come out with a special postage stamp of Rs. 10 towards payment of RTI fee nationwide. The amount collected through the stamp and information cost can be used to create awareness programme. Only about 10% of our 300 million populations of the poor are aware of the RTI, as a tool for reaping the benefits of assured entitlements. It therefore calls for making concerted efforts by the Governments, NGOs and media for creating mass awareness among the people, particularly to educate them, as to how to seek the information and how to make the best use of such acquisition of wealth of knowledge in everyday life. It has also been suggested that the State Information Commissioners should be posted in different district towns instead of being grouped together in the capital. The process of moving an RTI application has to be simplified.

The phone-in system has been instituted in Bihar and should now be replicated in the rest of the country. It is not as though there will be reduced accountability with a phone-in system. Not only can an application be phoned in, but first and second appeals can be made over phone as well. It will then be the responsibility of the information commission to see and route the complainant's query to officials for correct answers. It is not just illiterate persons, but all persons unfamiliar with the nitty-gritty of government functioning who can benefit from putting RTI on phone.

The Manual for public authorities should include the procedure for appearing for hearings before the Information Commission while dealing with information cases. It is highly recommended that the appellate authority should also be included within the penalizing provisions and not to put the PIO alone in the frame. The jurisdiction of the Act should be made clear. There should be no doubt that the act extends to all the three organs of the government including the judiciary. The Court must be the most accountable institution in any democracy because of its vital role as a watchdog. Confusion arose when in April 2008 the Chief Justice KG Balakrishnan declared that the Act does not extend to SC functionaries, as they are constitutional authorities.

Training of PIOs should be more structured. In the appraisal report of government officers their performance on response to RTI cases should also be included. Honest officers should be appointed as information commissioners and public information officers. Women Commissioners should also be appointed.

RTI can be termed truly successful only if it becomes "effective" in the true spirit of the Act –

- When there is easy and widespread access for filing RTI queries
- When the masses are aware of the course and recourse they are entitled to
- When the process becomes so easy that the poor and illiterate can also participate
- When a PA can be challenged, but not the citizen who is seeking information
- When all RTI queries can be tracked to completion with full accountability
- When analysis of RTI queries can be done for improvement of governance
- When PAs become proactive in sharing information without an RTI query
- When transparency becomes visible in government, not just in the RTI process
- When transparency in governance in India is recognized internationally

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