



Right to information act: A step towards transparency and accountability

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Abstract

In a democratic setup, informed citizenry is one of the most indispensable pillars. Right to Information Act, 2005 is a major attempt to build up this pillar. One main aim of the Act is to ensure that Justice should be extended to all the sections of society and to bring transparency and accountability in the working of public authorities, as well as to ensure that this law does not become a device to obstruct National development. Right to information Act, 2005 is itself and outcome of Freedom of Information Act, 2002 which failed due to many of its shortcomings. Article 19(1) (a) on the Constitution of India itself provides sanctity to the Right to Information Act, 2005. Though the Act has already proved its might by ensuring transparency in the functioning of government agencies by exposing many malpractices in the working of government, especially in rural areas. But the Act still suffers from some lacunae, which if removed from the Act; will help a lot to further enhance the transparency and accountability in Governance. This Article will also cover the historical background of the Act, as well as will highlight some of the challenges in its effective implementation, a tabular representation of disposal of Appeals and Complaints by SIC (2006-2007) and lastly, will provide some suggestions.

Keywords: information, democracy, transparency, accountability, governance

Introduction

“Information may be defined as data that has been verified to be accurate and timely, is specific and is organized for a purpose; is presented within a context that gives it meaning and relevance; and that can lead to increase in understanding and decrease in uncertainty”^[1].

Right to Information Act is Legislation with the aid of which we possess a right to seek some information which is held by any department of the government or any other body constituted or established by the government or any other body which is owned, controlled or financed by the State, including those bodies which are Non-Government Organisations (NGOs)^[2]. Information can be demanded which is available with any one of the bodies above mentioned in any form (documents, records etc). Any question that starts with “Why”, cannot be asked. This law has already been adopted as a Fundamental Right by Indian Judiciary, due to which it has become a ‘statutory right’ inherent under Right to Information Act, 2005 (22 of 2005). Also, under the said Act, a person is prohibited from asking any information upon which the development of Nation, friendly relations with other states, tranquility among citizens might be endangered or prejudiced^[3].

The Right to Information Act, 2005 derives its sanctity directly from Article 19(1) (a) of Indian Constitution and has been declared a Fundamental Right as a part of Freedom of Speech and Expression^[4].

Historical Background

The evolution of law relating to RTI all initiated from the State of Rajasthan, where some malpractice was found in the

vouchers of the employees of a village. Under this voucher it was noticed that there was corruption in the Board and also some nexus between Government Officials. Later, one person, named ‘Nikhil Dev’, studying in U.S.A, left job from there and also Aruna Rai (IAS officer) lead a group of people as an organization, named “*Mazdoor Kisaan Shakti Sangathan*” (MKSS) and directed the Government to produce those vouchers, which were enough to held the person guilty. On 5th April, 1995, the Chief Minister of Rajasthan announced in the legislative assembly the his government would be the first in the country to confer upon every citizen the right to obtain for a fee, photo copies of all official documents relating to local development works^[5]. Being under pressure due to agitation of MKSS, the Chief Minister of Rajasthan, on 5th April, 1995 announced that Rajasthan will be the first state where common people can ask for photocopies of documents. This movement lead some other states also to pass such a law. Later on, some states adopted this law for themselves, as:

Tamil Nadu Right to Information Act, 1997; Goa Right to Information Act, 1997; Rajasthan Right to Information Act, 2000; Karnataka Right to Information Act, 2001; Delhi Right to Information Act, 2000^[6].

Further, Freedom of Information Act, 2002 was passed, which failed due to many of its shortcomings. One main argument which is given behind its failure is the use of the word “Freedom”. People were free to ask for information, but it does not impose any corresponding duty upon public authority to furnish information. Therefore, they wanted to replace the word “Freedom” with “Right”, as rights and duties being corresponding.

Lastly, the new Bill was passed by Lok Sabha on 11th May,

2005 and by Rajya Sabha on very next day, i.e. 12 May, which got the Presidential assent on 15th June, 2005 and came in the Statute book as Right to Information Act, 2005 (22 of 2005), which came into force on 120th day, such that- 12th October, 2005.

Impact of RTI in Rural India

The Act is leaving great impact on rural masses to come forward and question the progress on several welfare schemes, leading to a positive change in the most backward areas of Rajasthan, Uttar Pradesh, Bihar, Jharkhand, Madhya Pradesh, Karnataka, Assam and Maharashtra. Following are some instances where the RTI became a major device for achieving Good Governance in India.

1. Rajasthan- The very first noteworthy battle to combat corruption by accessing information from public authorities took place in the Devdungri village of Rajasthan. Aruna Roy, (IAS officer) who left her job to contribute for the betterment of rural people who were often deceived in their wages because of their illiteracy and lack of awareness. Observing the difficulty of the rural people, Aruna Roy, in 1987, along with Nikhil Dev and Shankar Singh formed the Mazdoor Kisan Shakti Sangathan (MKSS). Since many years, in that area, the people have been habitual victims of constant tradition of practice of corruption by state authorities, like extortion, nepotism, arbitrariness, yet they have been silent sufferers for most of the times trapped in settled despair and distrust. In 1994, MKSS entered a new stage, breaking new ground with experiments in combating corruption through the tactic of “Jan Sunwais” or public hearings. This movement, regardless of its local character, had state wide impact to shake the very foundation of traditional domination, arbitrariness and corruption of the state bureaucracy. It was because of this RTI Act that made access to official records available which helped in organizing the Jan Sunwais.
2. Assam: Krishak Mukti Sangram Samiti (KMSS) is a well-known organization in the state of Assam founded by RTI activist Akhil Gogoi. The organization deals in wide range of issues ranging from corruption/malpractice in Public Distribution System, Non execution of ‘Rural Employment Guarantee Scheme’ (NREGA), land rights, Governmental corruption and corporate corruption, construction of huge dams in weak seismic territories of North East India etc. The most famous work of KMSS was noted in 2007 when they filed an RTI application that exposed some irregularities in the distribution of food meant for people below the poverty line. The allegations of corruption were probed and many high profile Government Officials were arrested. They are still

undergoing suspension because of their corrupt activities.

3. Delhi: For the purpose of ensuring the food security and to preserve the appropriate level of nutrition among citizens the government has introduced the Public Distribution System (PDS), whose work is to grant monthly rations of the people at subsidized rates to the Below Poverty Line (BPL) and the poorest of the poor section of the people. But as a result of the presence of unholy nexus between the licensees of the Fair Price Shops (FPS) and the officers belonging to the Food Supply Department, considerable portion of the money is siphoned off by way of black marketing, as a result of which the whole PDS system is in mess. But, the fact that the use of RTI can change the whole PDS system was proved by the people of Sunder Nagri of New Delhi. The information acquired by way of RTI revealed large scale corruption in the system and immediate action regarding this was taken ^[7].

Positive Outcome of Right to Information Act

With the enactment of Right to Information Act, 2005, following points may be enumerated, which reflects its positive outcome:

1. Good Governance: The enactment of RTI Act has contributed a lot in promoting good governance in the functioning and affairs of government. It has promoted transparency and public accountability in the working of government functionaries ^[8].
2. Participation of people ensured: In a democratic setup, participation of people in the affairs of government is cardinal. It is the contribution of RTI Act itself that provided free access to people to participate freely in the affairs of government by removing the prevailing practice of secrecy.
3. Established Rule of Law: With the upcoming of RTI Act, the Rule of Law is well established. It has taken away a wide discretionary power from the Government and supremacy of law has been ensured.
4. Curtailed Corruption: Right to Information Act have proved its might by combating corruption and malpractices in the functioning of government. It has helped exposing many Scams, e.g.- *The Adarsh Scam, 2G Scam, Commonwealth Games-Diversion of Dalit Funds’ Scam, Indian Red-Cross Society Scam* etc.
5. Prohibited the Misuse of Discretionary powers: As it has just been discussed that RTI Act helped in establishing Rule of Law, so, in addition to it, the Act also imposed a restriction on unnecessary and wide discretionary powers of Government which were often being misused against the information seekers ^[9].

Table 1: Tabular Representation of Disposal of Appeals and Complaints by SIC (2006-2007)

S. No.	State	Appeals Received	Appeals disposed off	Disposal rate % (Appeal)	Complaints received	Complaints Disposed off	Disposal rate % (Complaint)	Penalties imposed
1	Madhya Pradesh	1639	481	29%	970	831	86%	Nil
2	Rajasthan	415	248	60%	56	32	57%	Nil
3	Gujarat	869	385	44%	1732	465	27%	16
4	Himachal P.	26	20	77%	44	35	80%	Nil
5	Haryana	443	442	99.7%	442	440	99.5%	-
6	Andhra P.	1263	840	66%	-	-	-	Nil
7	Jharkhand	471	193	41%	78	48	62%	4
8	Chhattisgarh	585	375	64%	828	679	82%	-
9	Kerala	510	385	75%	960	645	67%	26
10	Punjab	3101	2561	83%	-	-	-	-
11	Uttarakhand	283	184	65%	293	190	65%	Nil
12	Bihar	3065	1730	56%	-	-	-	-
13	Goa	176	136	77%	-	-	-	-
	Total	9605	6114	64%	5403	3365	59%	46

Source: Data of all states except Punjab and Goa has been collected by PRIA investigator from State Information Commissions. Data of Punjab and Goa SIC is on their web site ^[10].

So, as per the above data, the total disposal rate of Appeals is 64% and in case of Complaints its 59% for the year 2006-2007.

Thus, an inference may be drawn that, just after one year of passing of RTI Act, 2005, the awareness level amongst people was quite satisfactory.

Obstacles in the effective implementation of RTI Act

- Insufficient Public Awareness-* Notwithstanding huge publicity through various means, the public awareness regarding significance of this Act, the mode of getting information, and the knowledge of names of PIO's or APIO's etc. is very low. The attempts made by public authorities and governments have not been sufficient in generating awareness regarding RTI Act at mass level. Educating the people is very important in this regard.
- Constraints faced in filing applications* ^[11] - It has been firmly noticed that the appropriate government has taken insufficient steps to make RTI a citizen-friendly process. Many a times, the citizens are unaware of the appropriate or proper offices where the applications are to be filed or the authority before whom they can approach in case their application is rejected or not replied up to the satisfaction.
- Unfriendly attitude of PIOs:* Applicants generally complain of the unfriendly nature of the officers. Nearly 90% of the information seekers find the PIOs lacking in general courtesy. A number of information seekers find that they are being humiliated at the hands of the officers. They are of the view that one has to be really stubborn and indifferent to this condescending behavior of the officers to fetch information out of them. It is felt that such an attitude dissuades the citizens from approaching the authorities.
- Technicalities in Forms and Conditions* ^[12] - A number of public authorities are making their own forms and also applying conditions that are contrary to law. For example, the Ministry of Home Affairs demands for proof of residence with applications, whereas, the Ministry of Environment and Forests states that information only for three years will be given at a time. However, RTI Act does not require any form and that people are free to apply on plain paper.
- Lack of Single Window Approach:* Many Government departments and ministries in India seem to have appointed multiple PIOs. As a result of which citizens have to run from office to office finding out the correct PIO. There is absence of Single Window System which causes unnecessary harassment of the applicants. Clearly there should be a single window approach in each department/ministry.
- Fee Payment:* The fee charged for delivering information and the mode of payment is not homogeneous. There is also uncertainty regarding head of accounts to which that application and other fees are to be credited.
- Whistleblowers' Protection Denied:* One of a crucial problem is that there is no protection provided to the ones trying to combat corruption by taking on influential officials and politicians. The murder of Amit Jethwa, a Gujarat based RTI Activist, clearly reflects that asking for information against the corrupt can also sometimes cost one his life. Amit Jethwa had initiated several RTI cases against the illegal mining lobby in the Gir Lion Sanctuary. The voices of the ones who are sufficiently brave to speak up against dishonesty are often oppressed. At an Activists' Meet held at Ahmedabad in March, many talked about receiving death threats from corrupt politicians and government officials. Manjunath Shanmugham of Indian Oil Corporation and Sateyendra Dubey of National Highways Authority of India (N.H.A.I) were killed because they also stood up against corrupt. Same was the fortune of RTI Activists Datta Patil and Satish Shetty, who had exposed various land scams and corrupt politicians and Bureaucrats in Maharashtra ^[13].
- Expensive Appeal Process:* People belonging to rural areas are of the view that appeal process is expensive as many a times, there is only one First appellate authority for the entire department and that also is situated in capital cities. Due to which they find going to these places a bit difficult because it involves expenditure both in terms of resources and time.

Suggestions for effective implementation of RTI Act

1. *Spreading awareness in public:* Generating awareness among masses regarding the Act is the prerequisite for the better implementation of the Act. Public awareness camps to educate general public regarding their right to information should be conducted at the order of the government at all levels (national, state and district) ^[14].
2. *Preventing harassment of applicants and information providers:* A number of applicants felt that they have to go through victimization by those whose illegal acts are revealed. In a lot of cases, the applicants were attacked and were even murdered as discussed previously in the case of whistleblowers like Amit Jethwa, Satyendra Dubey, Manjunath Shanmugham. This being the situation, it is very difficult for ordinary people of the Nation to ask for information.
3. *PIOs to be duty centric:* It has sometimes been observed that PIOs are quite careless towards their duty. PIOs are the foundation of this Act; they should be more duty centric ^[15].
4. *Enforcement of Pro-active Disclosures:* Section 4 of the Act speaks about proactive disclosures. This section is generally misunderstood. According to this section, it is the duty of all public authorities to prepare a 'seventeen-point document' regarding the organisation and its activities and that information should be made accessible to public. Some officers believe that if there is an official website of their organization, it will be sufficient. Many others believe that the traditionally framed annual report of their agency would cater the purpose. However, the Act has specifically spelt out seventeen points on which pro-active disclosures are to be made. All public authorities must fulfill their pro-active disclosure obligations.
5. *Improving record management system:* Section 4(1) (a) of the Act mandates that management of record, policies and procedures should be made in consistence with the Act. Every authority must make it sure that there should be proper classification, indexing and maintenance of records. Poor record management system and gathering of information from field offices is the main cause of delay in the disposal of RTI applications. Public authorities should also make it sure that all records are to be computerized within a reasonable time period.
6. *Preventing misuse of RTI Act:* It must be ensured that while executing the RTI Act maximum care should be taken for minimizing the chances of it being misused. In India, media is sometimes responsible for distributing information in a fabricated manner with a motive to make sensational news items for the sake of pushing up the scale. Utmost care should be taken to prevent any witch-hunting or harassment of officials in public authorities.
7. *Uniformity between state governments:* As, under the Act, the State Governments possess the authority to frame their own rules, it is, however, recommended that they could consider adopting uniform rules regarding designation of PIO/APIOs, fees etc.
8. *Enhancing Information delivery in local bodies:* The requirement of information at decentralized levels from local bodies- rural or urban- is very high. A number of

development schemes and programmes e.g. NREGA are executed through local bodies involving a huge budget, people and villages. Access of information at such decentralized levels brings improvement to the rural development standard ^[16].

Conclusion

In the light of above discussion, it can be fairly concluded that Right to Information Act, 2005 is the most potent weapon in the hands of common people of India. This Act has added a most important ingredient which is most important in a Democratic setup, i.e. 'Answerability of Government'. The Act has brought a transformation from the previous practice of 'secrecy' to the present practice of 'transparency'. Though, the Act is to a larger extent complete in itself, but it still suffer from some lacunae which must be removed to make this piece of legislation, a perfect one. For this, the Government needs to adopt the practice of "Maximum Disclosure and Minimum Exemptions".

References

1. Available on: www.businessdictionary.com/definition/information.html.... visited on: 19/4/2018
2. Public Authority, Section 2(h) of Right to Information Act, 2005.
3. See Section 8 of Right to Information Act, 2005.
4. Bennett Coleman & Co. v Union of India (AIR 1973, SC, 106)
5. Available on: www.humanrightsinitiative.org/content/state-level-rti-rajasthan..... Visited on: 19/4/2018
6. Available on: <https://netjrfmasscomm.blogspot.in/2010/03/rti-history-and-historical-background.html>..... visited on 19/4/2018.
7. An Article by a Research Scholar on Manupatra, available on: www.manupatra.com (visited on 19/4/2018).
8. Available on: <https://pdfs.semanticscholar.org/1a50/bf12f0bf13c121419599c9092308757e926d.pdf>... Visited on 20/4/2018
9. Dr. Anshu Jain. A Treatise on the Right to Information Act, Universal Law Publication, 2014 Edition, pg. 190.
10. Available on: www.cic.gov.in/sites/default/files/PRIA-Tracking-RTI-in-States.pdf..... visited on: 20/4/2018
11. Available on: http://rti.gov.in/rticorner/studybypwc/key_issues.pdf... visited on 21/4/2018
12. Available on: http://www.humanrightsinitiative.org/programs/ai/rti/india/national/ncpri_rti_implementation_problems.pdf... visited on: 21/4/2018
13. Dr. Anshu Jain. A Treatise on the Right to Information Act, Universal Law Publication, 2014, 181.
14. Available on: http://shodhganga.inflibnet.ac.in/bitstream/10603/7657/13/13_chapter%208.pdf... visited on: 21/4/2018
15. Available on: http://shodhganga.inflibnet.ac.in/bitstream/10603/7657/13/13_chapter%208.pdf... visited on: 21/4/2018
16. Dr. Anshu Jain. A Treatise on the Right to Information Act, Universal Law Publication, 2014, 199.