

Right to Information: Perspective Obstacles and Role of Information Literacy

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Abstract – The Government of India resolved that in order to ensure greater and more effective access to information, it is required that the Freedom of Information Act, 2002 must be made more progressive, participatory and meaningful. On this issue National Advisory Council suggested certain important changes to be incorporated in the said Act to ensure smoother and greater access to information. After examining the suggestions of the National Advisory Council and others the Government decided to make number of changes in the law. In view of the significant changes proposed by the National Advisory Council and others, it was decided to repeal the Freedom of Information Act, 2002 and enact another law for providing an effective framework for effectuating the right of information recognised under Article 19 of the Constitution of India. To achieve this object, the Right to Information Bill was introduced in the Parliament.

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INTRODUCTION

Accountability and transparency is the corner stone of democracy. Transparency is possible only when the common man has the access to information relating to the functioning of the Government Departments and Agencies. In most democratic countries the Right of People to know is now a well-established right created under the Law. In India, there is a great amount of indifference and hostility to the idea of Right to Information. The Government servants and other agencies maintain secrecy in government functioning and to get information about any thing is very difficult. The approach of most of the government department is everything is secret unless permitted to be disclosed.

To bring the transparency and accountability in the functioning of the Government Agencies, the Right to Information Bill, 2005, introduced by the Union Ministry of Personnel, Public Grievances and Pensions was passed by the Parliament of India and received the assent of the President of India on 15th June 2005. It comes on the statute book as The Right to Information Act, 2005 (Act 22 of 2005). It is an act to provide for setting out the practical regime of Right to Information for citizens to secure access to information under the control of public authorities in order to promote transparency and accountability in the working of every public authority, the Constitution of the Central Information Commission and State Information Commission are for matters connected therewith or incidental thereto.

STATEMENT OF OBJECTS AND REASONS

In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law.

The important changes proposed to be incorporated, *inter alia*, include establishment of an appellate machinery with investigating powers to review decisions of the Public Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities, etc. In view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act, 2002. The proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.

The Bill seeks to achieve the above objects.

ACT 22 OF 2005

The Right to Information Bill having been passed by both the Houses of Parliament received the assent of the President on 15th June, 2005. It came on the Statute Book as THE RIGHT TO INFORMATION ACT, 2005 (22 of 2005).

1. Short title, Extent and Commencement

- a. This Act may be called the Right to Information Act, 2005.
- b. It extends to the whole of India except the State of Jammu and Kashmir.
- c. The provisions of sub-section (1) of section 4, sub-sections (1) and (2) of section 5, sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day¹ of its enactment."

2. Definitions

In this Act, unless the context otherwise requires,

- a. "Appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly
 - i. By the Central Government or the Union territory administration, the Central Government;
 - ii. By the State Government, the State Government;
- b. "Central Information Commission" means the Central Information commission constituted under sub-section (1) of Section 12 ;
- c. "Central Public Information Officer" means the Central Public Information Officer designated under sub-section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5;
- d. "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of section 12;
- e. "competent authority" means
 - i. The Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and

the Chairman in the case of the Council of States of a Legislative Council of States;

- ii. The Chief Justice of India in the case of the Supreme Court;
- iii. The Chief Justice of the High Court in the case of a High Court;
- iv. The President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution.
- v. The administrator appointed under article 239 of the Constitution;
- f. "Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, 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 other law for the time being in force;
- g. "Prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;
- h. "Public Authority" means any authority or body or institution of self-government established or constituted,
 - √ By or under the Constitution;
 - √ By any other law made by Parliament;
 - √ By any other law made by State Legislature;
 - √ By notification issued or order made by the appropriate Government, and includes any
- i. Body owned, controlled or substantially financed;
 - (i). Non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

3. "Record" Includes

- any document, manuscript and file;

- ▶ any microfilm, microfiche and facsimile copy of a document;
 - ▶ any reproduction of image or images embodied in such microfilm (Whether enlarged or not)
 - ▶ any other material produced by a computer or any other device;
 - ▶ “Right to Information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to
 - a. Inspection of work, documents, records;
 - b. Taking notes, extracts, or certified copies of documents or records;
 - c. Taking certified samples of material;
 - d. 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;
 - ▶ “State Information Commission” means the State Information Commission constituted under sub-section (1) of section 15;
 - ▶ “State Chief Information Commissioner” and “State Information Commissioner” mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (3) of section 15;
 - ▶ “State Public Information Officer” means the State Public Information Officer designated under sub-section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of section 5;
 - ▶ “Third party” means a person other than the citizen making a request for information and includes a public authority.
- i. The RTI Act will make governance more transparent and accountable. Transparency and openness in the functioning of the government and other agencies will keep a check on doing and misdoings of the government and corruption. If the Act is implemented properly, it will bring the efficiency and check the corruption;
 - ii. It can bring a sense of empowerment to its citizens of the country. RTI Act will promote citizens participation in official decisions that directly affect their lives. It enables the citizens to get most information held by the Government. It can bring a sense of empowerment to the citizens of the country and safeguards the rights of the citizens.
 - iii. The Right of the citizens are very much important in the democracy to keep active and alive. The achievement of technology may bring long-term benefits for the society and can improve the quality of the administrative services. RT1 Act is the property of the people, it will guide to the modern administrative policies and framing the civil society,
 - iv. The implementation of the RT1 Act will build public trust in the government's functioning and in those leaders who have had the courage and vision to enact and implement effectively the Right to Information,
 - v. It will bring more effective and efficient records management techniques that are needed to facilitate the provision of information in response to public interests. Under Section 4(i) of the Act, it was obligatory for the public authority to maintain all its records duly catalogued and indexed. Under Section 4(b) every public authority is required to publish within 120 days from the enactment of Act as many as 17 manuals.
 - vi. It provides a weapon to honest politicians and bureaucrats to fight corrupt practices in their jurisdictions . Only those officials who have something to hide should fear the new law and will feel the heat of the Act once it is fully implemented.
 - vi. It will enable the common citizen to question the working and non-working of government departments and agencies.
 - vii. It will enable the official to obtain the information inexpensively and within a time bound framework. So the each Ministry or Departments has to organize its materials and its working and system in order to be

OBJECTIVES OF THE RTI ACT

The Right to Information Act is one of the strongest indication of India's growing strength and reputation as democratic country. The objectives of RTI Act is to promote transparency and accountability in Government main objectives of the RTI Act are as under :

able to respond the future requirements of the public.

To put it in a nutshell, it makes government fully accountable to every citizen. But what it entails is that there has to be much greater sense of responsibility. It is a power that has to be given to every citizen in reorganization of the fact that it is government of the people, for the people and by the people-the essence of democracy.

OBSTACLES IN THE IMPLEMENTATION OF THE RTI ACT

RTI Act, 2005 makes the government fully accountable to every citizen. The greater challenge is the actual implementation of the Act. There are many hurdles in the implementation of this Act. In India, citizen are denied the basic information. However, the experience of the NGOs and social activists shown that it is very difficult to get the information from officials. The major obstacles in the implementation of the RTI Act is as under :

- i. Official secrets Act given the Officer enough protection and excuse to deny even basic information to the people. Bureaucracy has typical colonial mind set and they have developed deep vested interests in guarding information and working in secrecy. By denying the information to the people, bureaucrat think that they gains more power, so they do not disclose the basic information to the citizen ;
- ii. People do not know what are their rights and what is the procedure to obtain the information under RTI Act ;
- iii. Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intension secret. Bureaucratic administration always tends to be an administration of 'secret success': In so far as it can, it hides its knowledge and action from criticism. That is why says Weber, the "officers secret" could only have been invented by the bureaucracy. It follows that the power of bureaucracy is in direct proportion to the ignorance of the legislative and citizens;
- iv. 'Information Commissioners' who are to oversee the implementation of the Act, will become the choke points to prevent effective functioning of the statute. Twelve Chief Information Commissioners constituting the Central Information Commission have reportedly all have been drawn from the IAS. Replacing a bureaucracy with super bureaucracy of access, would greatly diminish the scope of the law;

- v. On paper, the process of getting the information appears to be very simple. But in actual fact, it is very tedious to get information unless there are agencies at the local level that guide the citizen and interpret what could be unwieldy and inaccessible information in indecipherable language. Local civil society organization can play a meaningful role;
- vi. Political influence could stymie the efforts of conscientious officers to be more open and accountable. The Right to Information could not function on the integrity of just a few good officers. Our civil servants may not realize this now, but the RTI regime may actually give them some autonomy in dealing with more egregious demands of their political masters. This, however, would require them to take seriously Section 3 of the RTI Act, which makes it incumbent on public authorities to "maintain all records duly catalogued and indexed" and to provide "as much information suo moto to the public at regular intervals";
- vii. In a democracy, people, not governments, are supreme and this is the truth that governing classes cannot stomach, they cannot imagine their performance being scrutinized by the Great unwashed. The Right to Information was fuelled by the energy of very poor and vulnerables people who created a movement out of their desperation for good governance. It was passed with the intent of creating accountability and putting power where it belongs in the hands of people. It was designed to reduce the discretions and bias that plague government decision making. To comprise these principles would be to dishonor the aspirations of the most vulnerable among us;
- viii. Development of different set of rules for the Centre and States, it becomes the confusion for the public;
- ix. File nothings in some ways the heart of official decision making, will now be included in the list of records, documentations, memos, e-mails, opinions, advices, press release, circulars, orders, etc. The problem that has plagued our bureaucracies have been bottle necks red tape and quasi theological reasoning that block rational politics or decision. To have access to file nothings the various opinions made on the "margin" of file by bureaucrats is to not only know how the process works but also why the process is at times scrapped.

PROCEDURES FOR OBTAINING THE INFORMATION

This act has set out a relatively simple process for accessing information. Applicant can make a request in writing or electronic form to the Central/State Public Information Officer. It is not binding on the applicant to give the reason for obtaining any information except the contact address. Application fee of Rs. 10 by way of cash, demand draft, bankers cheque to pay for obtaining any information. Applicant has also to pay Rs. 2 for each page (A4 or A3 size) for photocopies. This is actual in case of large size paper. If the applicant wants to inspect the record there is no fee for the first one hour and Rs. 5 for each fifteen minutes thereafter. If the applicant wants the information on floppy, he has to pay Rs. 50 for each floppy. If the applicant is below poverty line, he is exempted to pay any fees but he should have to prove by way of certificate/document that he belongs to BPL.

TIME LIMIT FOR SUPPLY OF INFORMATION

Each public authority must appoint Public Information Officer who accepts requisitions and provide information. The PIO must supply the information within 30 days on payment of fees. Extension are allowed in some cases. Information relating to life or liberty of a person must be provided within 48 hours. The Act provides for two levels of appeals against the PIO, the first an Officer senior to PIO and the second to Central or State Information Commission against delay in supplying, or refusal to supply information by the PIO. The section appeals specifies that the onus of proof that the denial of a request was justified would be on the PIO. The act also specifies that appeals should be disposed of within 30-45 days.

PENALTIES

Penalties are prescribed in the Act for delay in information to make the Act most effective. The Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be has without any reliable cause, refused to receive an application for information or has not finished information within the time specified under Sub-Section (1) of Section 7 or malafidly denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of Rs. 250 each day till application is received or information is furnished, so however the total amount of such penalty shall not exceed Rs. 25,000: provided that the Central Public Information Officer or the State Public Information Officer as the case may be, shall be given a reasonable opportunity of being heard before any

penalty is imposed on them. Provided further that the burden of providing that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be at the time of deciding any complainant appeal is of the opinion that Central Public Information, or the State Public Information Officer as the case may be, has without any reasonable cause and persistently fail to receive an application for information or has not furnished information within time specified under Sub-Section (1) of Section 7 or malafidly denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State as the case may be, under the service rules applicable to them

SUGGESTIONS: TO MAKE THE RTI ACT SUCCESSFUL

- i. Government has to take keen interest towards creating awareness among the people. The citizen do not have the knowledge about the PIO and what the procedure in scrapping of fees and how they can get the information.
- ii. A Parliamentary Committee has decided to recommend scrapping of fees at the times of filing applications, seeking information all government departments under RTI Act. This has been welcomed by Central Information Commissioner Wajahat Habibullah, Dr. E.M. Sudarasna Natchippan has said scrapping of fees at the initial stage would help in effective implementation of two year old law. It will encourage more people to make use of RTI Act.
- iii. Government department should make the implementation of RTI easy for applicants seeking information rather than making it difficult through tough procedures. Noted RTI Activists Nikhil De cautioned that there was a need for having some sort of a record with the applicant to keep his process alive.
- iv. The present need of the hour is to think to implement it at the grass-root level since the decentralized governances are not working efficiently. The Act has not yet reached the common man. Only the creamy layer of society is putting it to use. So the Act has not yet been implemented properly. There is a general complaint that the corruption is largely practiced and they are suffering with proper coordination's.

- v. The public administration is heart of the democracy. New procedures and codes adopted to fulfill the provision of RTI in each department.
 - vi. The accountability and service mentality of bureaucrats should be verified. A study was conducted by the participatory research in Asia (PRIA) shocked that the attitude of the Public Information Officer was apathetic and hostile. About the 60 percent of them said that they were harassed or denied information, which meant that the Information Commission had not sent the right signals down the ladder,
 - vii. The study also concluded that while information under the Act was accessible to the middle class, the poor and Marginalized were kept out of loop which was totally contrary to the objectives of the Act.
 - viii. Talking about the public awareness of the Act, Habibullah listed the States where the number of applications was higher. The number is on the rise in Arunachal Pradesh, Himachal Pradesh, Uttarakhand and Punjab. The awareness of people in Gujarat, Madhya Pradesh, Jharkhand and Uttar Pradesh is not high.
 - ix. Citizen who would like to get information, the applications should be précised and clear. Habibullah found that the applications received from Chandigarh are precise and clear. Those coming from a city like Delhi where the migrant is very high are not very clear.
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Everything has its pros and cons, of course, the Act is misused. Such frivolous applications are rejected by the Judge at the Commission. Some persons have been using this Act to settle scores or stall action against them. But we can say that RTI Act enriches the culture of democratic administration into transparent and accountable manner. The gap between government and public is to be relined through effective implementation of RTI. The successful implementation of this act rests with the sincere involvement of the public, so that they should be quite aware of it.

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