

Right to Information in India- Legal Regime

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1. Introduction

India is one of the largest democratic countries in the world and for any such country, which has democratic nature, government plays an important role. It is always beneficial for the nation that its citizens actively participate in the governance and for such purpose it is necessary that citizens must have access to the relevant information to keep a check on the actions of such a government for its evaluation and betterment. Without any information on related issues there will not be enough transparency and accountability on the part of government.

It was rightly said by Justice P.N. Bhagwati that “Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing.” Right to Information (RTI) was not recognized in India for a long. This right was also not given any specific recognition in the

Constitution of India. But, With the advancement of time it became the requirement that there must be some law pertaining to the right to know. This situation led to the passing of Right to Information Act 2005.

Globally, Sweden set an example and was the first country to recognize right to information in the year 1766. Following Sweden many European & Asian countries enacted their laws on right to information i.e., USA in 1966, Norway in 1970, France and Netherlands in 1978, Australia, New Zealand & Canada in 1982, Denmark in 1985, Greece in 1986, Austria in 1987 & Italy in 1990. This way right to information was globally recognized because of its benefits.

2. Object/ Need of Right to Information

Right to information was not separately provided in Indian Constitution. Judiciary played an important role towards the recognition of this right. Earlier the Official Secrets Act, 1923 was in existence which never gave space to this right. In case of *Bennett Coleman & Co. & Ors v. Union of India*¹, right to information was included within the right to freedom of speech and expression guaranteed by Art 19 (1) (a) of the Indian Constitution. Later in other cases, Hon'ble Supreme Court held that in the interest of the public, things which are the common routine business should not be covered with a veil of secrecy and it is the responsibility of officials to explain and to justify their acts and it is the chief safeguard against oppression and corruption. In the case of *S.P Gupta v. Union of India*², this right to know about the public transactions and public acts was considered & recognized by the Supreme Court.

In light of the above cases, Government passed The Freedom of Information Act, 2002 for the purpose of transparency but could not be achieved due to the improper implementation. Various movements throughout the country and simultaneous approach of Supreme Court paved the way for passing of Right to Information Act 2005. After a long journey of movements this citizen friendly legislation was passed which empowered the citizens to access the information, which was earlier held by public authorities. Now the public authorities are under obligation to provide the information to the person who has asked for such information through RTI.

3. Right to information as a tool

Right to information has made it easy for citizens of India to get information from any public authority or any public department. Information in itself cannot make any change in the governance however this obtained information can be used in such a way so that accountability of the concerned department and authority can be set. This can help in good governance. Where public at large is aware and active, there are less chances that government of such nation would be irresponsible. Hence RTI is a tool of good governance.

Role of RTI is quite important in fighting with corruption too. From this tool information can be accessed from grass root level. From the level of Panchayat to central government any information can be sought by general public. This way RTI enhances transparency in working of the government. There are various examples where big scams could have been revealed through RTI only. Some of the big scams are Adarsh Society Scam, 2G scam, Commonwealth Games Scam, Indian Red Cross Society Scam. Various RTI activists worked in best way in the interest of the society. It is very evident in present times that the information which was never in the public ambit and always hidden is easily available now³.

¹ 1973 SCR (2) 757.

² AIR 1982 SC 149.

³ https://www.huffingtonpost.in/2015/10/12/5-most-critical-scams-exp_n_8263302.html

4. Analysis : Right to information Act 2005

On 15th June 2005 the Indian Parliament passed Right to Information Act 2005 (hereinafter the “Act”) which superseded the former Freedom of Information Act 2002. There are many provisions in the Act through which the working of public office can be made transparent and open and the public authorities can be made accountable. The era of hiding information under the veil of secrecy was ended and so any person from the general public can now require any public official to produce any information and the public official so concerned is thereby bound to provide the necessary information within 30 days from filing of the RTI application. Also provisions were made in the act under which every public office is required to keep an online record of all the necessary information so that general public need not go to the resort of RTI very often⁴.

Scope of the Act

The Act is applicable in whole of India except in the State of Jammu and Kashmir. The provisions of the Act are applicable on public authorities which according to Section 2(h) of the Act includes any Constitutional authority i.e. executive, legislature or judiciary, any authority made by Parliament or State Legislature and any other authority made by notification by appropriate government⁵ which shall include any organization substantially financed or owned or controlled and any non-governmental organization which is substantially financed or otherwise directly or indirectly funded by appropriate government.

Hence private organizations are not included within the ambit of the Act unless they are receiving substantial funding from the government (around 95%).

Objectives of the Act

The RTI Act had been enacted with primary objective of bringing about transparency in the working of public departments and to make public officials accountable for their acts thereby preventing and eliminating corruption. The provisions of the Act are also designed to empower the citizens and to transform their relationship with the government. Hence the Act aims at eradicating the concentration of powers in the hands of public authorities and officials.

Constituents of the Act

The Act is divided under 6 chapters containing 31 sections in all. The first chapter contains the objectives of the Act and definitions of some important terms like information, public authority, right to information etc.

⁴ https://en.wikipedia.org/wiki/Right_to_Information_Act,_2005.

⁵ S. 2(a) of the Act – “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;

The second chapter is the most important part of the Act where the right of general public and the obligations of public authority have been detailed. S.3 states that every citizen has a right to information subject to the provisions of the Act. S.4 states that the public authorities are obligated to keep all their records in sorted manner and properly indexed so that the necessary information can be found out easily. Also that the officials need to computerize all the relevant and necessary information as listed down in S. 4 so that anyone can easily have online access to it. They shall also maintain the records and update it from time to time so that resort of RTI is least needed by the people. S. 5 further provides for appointment of Central Public Information Officer and State Public Information Officer in every administrative unit within 180 days of enactment of this Act who shall be responsible for dealing with every application made by public and shall assist them in providing the information sought by them. S. 6 thereafter provides for the procedure and format in which the application shall be made and S. 7 details out the procedure in which such application shall be disposed off.

Certain exemptions have been made under S. 8 and S.9 in which cases the public authorities need not give information to the people. S. 11 further details out the case in which third party information is sought from the public office. In this case the Central or State Public Information Officer as the case may be shall ask the third party for their written or oral submission if their information shall be disclosed and to what extent within 5 days of application being made.

The constitution, terms and conditions of service of Central Information Commission and State Information Commission and removal of Chief Information Officer or Information Officer of Centre and State has further been provided under Chapters 3 and 4 of the Act.

Chapter 5 thereafter provides for powers and functions of Information Commissions and makes provision for appeals, revision and penalty in the relevant cases. Chapter 6 thereafter is a miscellaneous provision in which topics like bar of jurisdiction of other courts, overriding effect of act, power of appropriate government and competent authorities to make rules etc. have been discussed.

Salient Features of the Act⁶

Hence the Act has following features that make it important in context of fundamental right of freedom of speech and expression guaranteed to every individual under Art. 19 of Constitution of India. To have freedom of speech and expression one need not rely on presumptions and implications but has a right to know the truth and reality behind the facts and therefore the Act secures their right to be informed.

- Every citizen of India possesses the right of information.

⁶ http://shodhganga.inflibnet.ac.in/bitstream/10603/102441/11/11_chapter-4.pdf.

- Right to information is available only against the public authorities.
- In a normal case, information can be sought within 30 days of making an application.
- In case involving matter of life and personal liberty of an individual, the information can also be sought within 48 hours of making an application.
- The application to seek information can be made either in written or electronic form. In cases where written application is not possible, the application can also be made in oral and the Central or State Public Information Officer as the case may be, shall have to reduce it into writing.
- Every public office shall be obligated to keep information available in computerized form so that it can be accessed easily by any person online as well. They shall also be required to update it from time to time so that one need not take the resort of RTI application at all times.
- Certain information need not be provided to everyone even on the application been made in this behalf. The Act details on what information need not be given. This is a balancing provision which has been made to ensure safety of the nation at the same time when right to every individual to be informed has been guaranteed.
- Provision for appeal etc. has also been made where the decision of Central Information Commission or State Information Commission can be challenged before an official senior to them in rank.
- Provision for penalty has been made under S. 20 in case the Central or State Information Commission feels that the Central or State Public Information Commissioner has unreasonably not produced the required information or has provided misleading or wrong information or has otherwise destroyed the relevant information that had been sought through the application.

Problems, Issues, Challenges and Constraints⁷

Even though the RTI Act 2005 was a path breaking legislation in Indian history and is seen as one of the most reformative Acts which have contributed towards resolving one of the most important issue in the administration i.e. corruption, but still there are certain challenges that the Act faces⁸. These challenges and problems have been identified over time and have been categorised on the basis of three different dimensions –

a) Demand Side:

The demand side includes the information seekers i.e. the citizens and the past applicants seeking information. The main problems faced by them are:

i) Awareness Issue –

⁷ https://rti.gov.in/rticorner/studybypwc/key_issues.pdf

⁸ <https://journals.sagepub.com/doi/abs/10.1177/0019556120160205?journalCode=ipaa>

It has been found in a survey that only 15% of people all over the country were aware of their rights under the Act and about the provisions of the Act. Even though S. 28 of the Act states that the government should take reasonable efforts to promote awareness amongst the people, more specifically amongst the disadvantaged sections of the society, but the steps taken by government so far do not seem to be effective enough on this end. The percentage of awareness amongst the disadvantaged sections of society is rather more less. The below table gives an insight of this:

Male v. Female Awareness		General v. SC/ST/OBC Awareness		Urban v. Rural Awareness	
Male	Female	General	SC/ST/OBC	Urban	Rural
26%	12%	27%	14%	33%	13%

ii) Application filing Constraints -

Citizens also face several problems in filing the RTI Applications. It is the responsibility of government under the Act to make the process of application filing friendly for the citizens but it has failed in doing so. The problems faced in application filing include the non-availability of user guides which should be provided by the government but no such effort has been taken so long by them. Certain states have chosen standard form of application filing. Even though it is not mandatory under the Act but it makes the process very convenient. But there are still many states which do not provide for it. Further, the submission channels and payment channels are not convenient for people because of which they hesitate in choosing the resort of RTI. Lack of assistance from the PIO and their non-friendly attitude are some other problems faced during application filing. According to the survey 52% of applicants were found to be enquiring about the process and guidelines for application filing which should not be the case after around 14 years of passing of this legislation.

iii) Dissatisfaction with information provided –

According to the survey, 75% people who had ever made the RTI applications were not satisfied with the information they were provided with by the relevant authorities. It was either incomplete or irrelevant or it was never provided. The supposed reasons for this are that either the authority does not have information about it which can be caused because of their incompetence of keeping proper records or lack of proper training of the PIO or the improper draft of the application.

b) Supply side:

This aspect includes the problems faced by public authorities starting from the filing of the application till the provision of information by them.

Inadequate record management procedure in the public departments results in their inadequacy in providing information within stipulated time period. Further, the lack of training of the PIO and appellate authority and the lack of behavioural and refresher training contributes towards their inadequacy. A need is felt for some external training agency to be hired to provide the adequate training to the concerned officials. There is also a need for certain record making guidelines to be issued to the relevant authorities so that the records can be properly maintained. Also there is lack of motivation in the officials and their inability and limited use of IT which contributes towards the inadequate provision of information sought from them.

c) Adjudicatory side:

This includes the problems faced by Information Commission in complying with the provisions of the Act. According to S. 25(1) of the Act the SICs and CIC are required to submit an annual report on implementation of the provisions of Act. But there have been several defaults that have been noticed in this as well. The reports anyhow submitted lack the necessary information that needs to be included in it. Further, the primary role of Information Commission under the Act is to monitor the working of public authorities but instead it is mostly involved in disposing off the appeals. This is another failure of implementation of Act.

Amendments Proposed

Considering all the drawbacks in the implementation of the Act there have been efforts made to pass certain amendments in the Act. One of the recent such efforts is the introduction of “The Right to Information (Amendment) Bill, 2018” in the Rajya Sabha for passing. But since its introduction there have been several debates on the effect of proposed amendments and it is commonly perceived that the proposed amendments would make the process of filing applications more complex in spite of simplifying it. However, the proposed bill is still under consideration and in fact a window has been provided by the government for people to give their comments and suggestions on the proposed amendments. This is a step further towards the transparency ensured by the Act and in the contribution of general public in enactment of any legislation.

5. Impact of the Act⁹

Impact of the Right to information Act is wide enough. Lot of changes can be seen in the present scenario. Public has become more aware and alert and this legislation led more participation of

⁹ <http://docs.manupatra.in/newsline/articles/Upload/AC9CD2C7-B8AD-4C5A-B910-3751BFE5CB28.pdf>

public in the governance. Corruption which used to be a very prominent practice in the public departments has been reduced to a certain extent because the officials involved in such practices are now under fear of RTI legislation. Public officers are more active than earlier. Ratio of accountability and transparency has also increased after the passing of Right to information Act 2005.

Many schemes and programs have been launched in rural areas of India for overall development. Still the rural part of our country is facing problems like poverty, illiteracy, diseases, road and transport issues, electricity issues etc. It is a fact that rural part was never actively connected with politics and other government departments and the reason behind the situation was lack of knowledge. A big change can be seen in the rural India after the Right to information Act. With the help of this tool now people of rural areas are coming forward and questioning the authorities about the development, scheme benefit, fund expenditure, and other relevant issues. The backward areas of States like Rajasthan, Karnataka, Uttar Pradesh, Bihar, Jharkhand, Madhya Pradesh, Assam, etc are getting advantages of this right and witnessing the change. Few examples are given below;

- **Rajasthan**

A movement was launched in Devdungri area of Rajasthan by few people for the benefit of labours who were suffering because of the corruption in public departments. They were being exploited physically, mentally and financially. A group was found with the name of Mazdoor Kisan Shakti Sangathan (MKSS). It started public hearings for the problems of such people who were sufferers in different ways. RTI played vital role for gathering the information which was important for such purpose. This initiative got wide publicity throughout the State.

- **Delhi**

There used to be too much irregularity in Public Distribution System. Government was duty bound to supply nutritious food through fair price shops to below poverty line people. The purpose of the government was to maintain health of the public at large and protection from diseases. Corruption was inside the system at every level, due to that purpose of government remained unfulfilled. In Sundar Nagri area people fought with the corruption in the system with the help of RTI.

- **Uttar Pradesh**

In a village School situated near district Banda (UP) a teacher was appointed but he used to be absent most of the times. Through RTI only poor villagers could take the information about his absenteeism and other records. It ultimately helped the villagers to find a proper solution of that problem.

- **Assam**

RTI activist named Akhil Gogoi formed Krishak Mukti Sangram Samiti (KMSS) in Assam. In 2007 they filed an application under RTI and the information sought by them revealed the situation of corruption in food distribution and NAREGA Schemes. This created a lot of hue and cry in Assam. Many high officers and politicians were arrested in this matter.

- **Punjab**

There was a person named Kishorilal alias Amrik Singh alias Saleem. He worked for Indian Military Intelligence and spied in Pakistan for India and during this he got arrested there. When he was released from prison and returned to India he was disowned by IMI. At that time State government promised him to give some benefits for the services he rendered for the country but later the promise was not fulfilled. He filed an application under RTI Act and it opened the corruption level inside the public department of the State which included Police department, Income tax department, Chief Secretary, Punjab and many other departments.

5. Judicial Activism

In compliance of the Act the courts have given various judgments to clarify the ambiguity arising out of certain provisions of the Acts in different instances on case to case basis. Some of the leading judgments in this behalf are as follows:

1. *Union of India v. Association for Democratic Reforms and Another, (2002) 5 SCC 294*

Facts

In this case a petition was filed in the Delhi High Court by the Association for Democratic Reforms. The petitioner sought the implementation of recommendations of law commission to Election Commission regarding the election. It required that all candidates who were going to contest the election should disclose personal background information to the general public. It included criminal history, educational qualifications, personal financial details and other information which was necessary for judging a candidate's capacity and capability. Delhi High Court ordered in favour of the petitioner. This decision was challenged in Supreme Court on the ground that High Court erred in deciding the matter and Election Commission did not have such right to obtain information from candidates. Voters also did not have any right to get such information.

Decision

Supreme Court held that Delhi High Court rightly ordered the Election Commission to implement the recommendation of law commission regarding information of candidates. Election Commission can issue suitable directions to maintain the purity and transparency of the entire process of election because there is no law regarding such issue. In this case until there is no particular law EC has the right to make directions. SC also held that voters/ citizens have the right

to know and this right is derived from the right to freedom of speech and expression provided under Art 19 of Constitution of India. It is important that voters must have the background information of candidates and it help them to form opinion at the time of election.

It is important to mention here that after this judgment in December 2002 the Parliament amended Representation of the People Act. The Amended Act required a candidate for office to provide information “as to whether he is accused [or convicted] of any offence punishable with imprisonment for two years or more in a pending case” (Section 33A). No candidate could be compelled to disclose any additional information, including educational qualifications and assets and liabilities, “notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission” (Section 33B).

[2. *Girish Ramchandra Deshpande v. Central Information Commission & Ors.*, \(\(2013\) 1 SCC 212\)](#)

Facts

Question before Supreme Court of India was that whether information related to a public servant’s career, his assets and liabilities, information about his movable and immovable property can be called as personal information defined in clause (j) of Section 8(1) of the RTI Act. Can this information be exempted under RTI Act 2005?

Decision

Supreme Court held that information disclosed by one person in his IT return is personal information and can be denied to be provided under RTI Act unless Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the disclosure of such information is in the interest of public at large.

[3. *Jiju Lukose v. State of Kerala*, \(WP. \(C\)1240 of 2015\)](#)

Facts

In this case the petition was filed stating that FIR is a public document and it should be uploaded on the website of police so that accused and other people can access the document and can get the clarity about the particulars of the FIR. It was alleged that accused could get the copy of FIR after 2 months which led lot of hardships to him and his family.

Decision

CIC informed that FIR can be covered under Section 8(1) of the RTI Act also and in that case, it cannot be made public. This situation can vary from case to case. It can be obtained by accused under Cr.PC provisions. Police officials are the competent authorities to decide whether FIR is covered under sec 8(1) of RTI Act. In the absence of such inclusion they are under the duty to provide that FIR to the claimant on RTI application.

4. *Adesh Kumar v. Union of India (WP. (C) 9068 of 2014)*

Facts

In this case on the basis of FIR, charge sheet was filed against the petitioner within the period of his service. Petitioner filed an application to get the information related to the sanction of prosecution against him but the authorities denied to provide this information on the basis of section 8(1)(h) of the RTI Act.

Decision

Hon'ble Delhi High Court decided against petitioner stating that section 8(1)(h) of the RTI Act talks about exempted information. It shows that information which would impede the process of investigation or apprehension or prosecution of offenders can be denied. It was also held by the High Court that on the basis of relevancy any information cannot be denied to be given. Authorities are under duty to provide the information.

5. *The Registrar, Supreme Court of India v. R S Misra, (decided by Delhi High Court on 21 Nov, 2017)*

Facts

In this case respondent was a teacher and he was suspended from his post due to the sexual harassment allegations against him. He challenged such termination before Central Administrative Tribunal, High Court and Supreme Court. He filed an application to get the information regarding the dismissal of his SLP in Supreme Court. This petition was filed by the registrar of Supreme Court against the decision of Central Information Commission.

Decision

Hon'ble Delhi High Court held that Right to Information Act does not prevail over Supreme Court Rules. RTI Act does not provide for an appeal against a judgment or order passed by Supreme Court. Information under the RTI Act could be taken as to how many leaves a Judge takes or with regard to administrative decision a Judge takes. But with regard to a judicial decision no query or information can be given under the Act.

6. *Asian Education Charitable Society v. State of Uttarakhand, (AIR 2010 Uttarakhand 72)*

Facts

In this case the question was regarding the private institutions are within the purview of RTI Act. How they can be differentiated from the public institutions.

Decision

Uttarakhand High Court held that private institutions, individuals or charitable societies which are not governed or controlled by government in any manner under any notification or law are not public authorities under section 2(h) of the Right to Information Act. Thus on the basis of this fact,

the institution cannot be compelled to provide information under the provisions of the RTI Act, 2005.

7. *Harinder Dhingra v. Bar Associations, Rewari, Faridabad, Punchkula (CIC, 2016)*

Facts

This case was related to information sought from the Bar Council of Punjab about the number of complaints against the advocates and other related information in relation to the number of advocates who had violated the provisions of Advocates Act.

Decision

Central Information Commission held that the Bar Council is a statutory body which was constituted under Advocates Act, 1961 with a view to protect the ethical and moral conduct of Advocates and to prevent the advocates from misconduct. Penal provisions were also provided in the Act. The information sought by appellant about this function of Bar Council cannot be denied as it does not attract any exemption under the RTI Act.

Conclusion

Hence, provision of information from the public authorities relating to their working and operation is a fundamental right available to every citizen of our country and this right has been secured through the provisions of RTI Act 2005. The Act has proved to be an important instrument in eradicating corruption to a large extent and in making the system of governance transparent enough. However, there are still operational constraints in the implementation of the Act and there is still a long way that needs to be covered to achieve the objectives of the Act.

“The Right to Know keeps the Government accountable”

- ***Surbhi Aggarwal***
(Founder & CEO, School of Legal Education)
Thankyou