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ROLE OF RIGHT TO INFORMATION LAW IN INDIA: AN ANALYTICAL STUDY *

Abstract

The enactment of the Right to Information Act 2005 is a landmark in the history of administration in India. The new legislation has brought sensitivity, responsibility and accountability to the development process. RTI Act is path breaking in controlling corruption and delays in the implementation of Government sponsored programmes and in the functioning of public authority. The RTI Act 2005 is doubtless a milestone in the deliberate route taken by the country for setting up bedrock foundation for democratic institutions and imparts depth public responsive functioning of the Government and its various agencies. It is a significant tool to ensure transparency in the 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. The focus of this paper is role of RTI Act, 2005 in India and to explain about the way to know how to seek information by the citizens, role of PIO and APIO in access of information and procedure for complaint and appeal provisions under this Act.

Keywords: Right to Information, Govt. Role, Application of the Act etc.

Introduction

“Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens oath to know what their government is doing” -----Justice P.N Bhagawati.

In a democracy, right to information (RTI) is important as an empowerment tool to make the citizens active participants in the political process. It engenders the system of governance transparent, accountable and citizen friendly. It helps reduce corruption and targets public expenditure to be managed better. The participants in a democratic system have right to know ‘what’, ‘why’ and ‘how’ of all that is in the public domain. If any decision is made or changed by the government in a given situation, it is expected to be an effective instrument with responsibility to ensure socially significant benefit. If transparency and accountability are imperative for sustaining governance, access to information is vital instrument of social transformation.

Today more than 85 countries around the world have implemented the act in one form or other. The UN in Article 59 (I) had considered RTI as one of fundamental human rights. Right to information is a part of fundamental rights under Article 19(1) of the Indian constitution. Article 19(1) says that every citizen has freedom of speech and expression.

The first political commitment to the citizens’ right to information came on the eve of Lok Sabha elections in 1977 as a consequence of the public resentment against suppression of information, Press Censorship and abuse of authority during the internal emergency from 1975 to 1977.

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In 1982, Justice K.K. Mathew Commission strongly recommended RTI to make administration system more accountable.

In 1987, the Mazdoor Kisan Shakti Sangathan (MKSS) movement began to bring in transparency in village accounts by making demand for minimum wages in rural India. MKSS demanded that official information should be recorded in government files.

In 1990, Union Govt. headed by Vishwanath Pratap Singh stressed on the importance of RTI as legislative right. But, due to lack of support, it was not materialized.

In 2004, UPA Government appointed a National advisory council to monitor implementation of Government schemes and advise the government on policy and law. NAC recommended changes to the existing Freedom of Information Act 2002. Finally, RTI Act 2005 was passed on 15 June 2005 and came into force from 12 October 2005.

Importance of the Study

The information is power. Justice V. R. Krishna Iyer said that “RTI is vital weapon of the citizens against abuse of power”. There is a wide information gap in our legal system in the matrix of various rights and freedom enshrined in our constitution. Article 19 confers upon every citizen a fundamental right called freedom of speech or expression. To enjoy this freedom, citizens must also have an ancillary right to secure all necessary information on matters of public interest from the authorities. The RTI will enable the citizens to criticize, comment, and approve policies and programs of the rulers. Justice V.R. Krishna Iyer states that “Informational justice has constitutional basis”. The RTI has been extended to all over India except J&K, but Article 370 was abolished and inserted Article 35A of Indian Constitution. All the administrative departments of both the central and the state governments are under the jurisdiction of this right.

Objectives of the study:

1. To understand the circumstances in which the Right to Information Act was passed.
2. To know how the Right to Information Act has helped the citizens in getting their services done, which are explained in the form of success stories.
3. To identify the role of Public Information Officer (PIO) and Assistant Public Information Officer (APIO) in access of information at both Central and State levels.
4. To understand procedure for complain and further appeal.

Right to information in India:

India is a signatory to the Universal Declaration of Human Rights i.e. UDHR (1948) and the International Covenant on Civil and Political Rights i.e. ICCPR (1966). As a party to these instruments it is under an international obligation to effectively guarantee the right to information. Further, under Article 51 (c) of the Indian Constitution the state is duty bound to foster respect for international laws and treaty obligations. This binds the Indian Government to create suitable conditions to implement international laws and obligations with respect to right to information. Further the Indian Constitution also has some provisions which indirectly promote the right to information. India's RTI Act is generally claimed as one of the world's best law with an excellent implementation track record. It is one of the most empowering and most progressive legislations passed in the post Independent India. From the day the Act came into force, enlightened citizenry had started using the law by making information requests in order get the police to act or get their entitlements of food grain under public distribution system or expose the corrupt officials. Most radical provision of the Act is that the information seeker needs not to

give any reason for it or prove his locus standi. Yet the task of implementing the law is not without major challenges. Lack of adequate public awareness, especially in rural areas, lack of proper system to store and disseminate information, bureaucratic mindset and attitude etc. are still considered as major obstacles in implementation of the law.

Right to information under the constitution of India

Freedom of information under Article 19(1) (a): Article 19(1) (a) of the Indian Constitution guarantees to all citizens' freedom of speech and expression. At the same time, Article 19(2) permits the State to make any law in so far as such law imposes reasonable restrictions on the exercise of the rights conferred by Article 19(1) (a) of the constitution in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement of offence. Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a). It must, however, be noted that freedoms under Article 19, including Article 19(1) (a), are available only to citizens of India. An alien or foreigner has no rights under this Article because he is not a citizen of India. Thus to confer protection upon non-citizens one has to depend upon and apply Article 21 which is available to all persons, whether citizen or non-citizen.

Right to know under Article 21:

Article 21 enshrines right to life and personal liberty. The expressions "right to life and personal liberty" are compendious terms, which include within themselves variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time.

Important Features of Right to Information Act, 2005

All citizens possess the right to information

- a) The term Information includes any mode of information in any form of record, document, e-mail, circular, press release, contract sample or electronic data etc.
- b) Rights to information covers inspection of work, document, record and its certified copy and information in form of diskettes, floppies, tapes, video cassettes in any electronic mode or stored information's in computer etc.
- c) Applicant can obtain Information within 30 days from the date of request in a normal case.
- d) Information can be obtained within 48 hours from time of request. If it is a matter of life or liberty of a person.
- e) Every public authority is under obligation to provide information on written request or request by electronic means.
- f) Certain information's are prohibited.

- g) Restrictions made for third party information Appeal against the decision of the Central Information Commission or State Information Commission can be made to an officer who is senior in rank.
- h) Penalty for refusal to receive an application for information or for not providing information is Rs. 250/-per day but the total amount of penalty should not exceed Rs.25, 000/-.
- i) Central Information Commission and State Information Commission are to be constituted by the Central Government and the respective State Governments.

No Court can entertain any suit, application or other proceedings in respect of any order made under the Act.

Access of information by citizens under RTI Act 2005:

According to section 6 of RTI Act 2005 provides that prescribe simple procedure for securing information by citizens.

- A person who desires to obtain any information under this Act shall make a request in writing or through electronic means in English or Hindi or in the official language of area in which the application is being made accompanying such fee as may prescribed to the public information officer of the concerned public authority.
- Cause of information subsection 6(2) an applicant making request for information shall not be required to give any reasons for requesting the information or any other personal details, except those that may be necessary for contacting him or her.
- Transfer of application to another Public Authority under subsection 6(3) of RTI Act 2005.where an application is made to a Public Authority requesting for information –
 - a) Which is held by another Public Authority ;or
 - b) The subject matter of which is more closely connected with the functions of another Public Authority.
- The Public Authority ,to which such application is made ,shall transferred the application or such part of it as may be appropriate to that other Public Authority an inform the applicant immediately about such transfer.
- Such application shall be transfer within 5 days from the date of receipt of the application.

Impact of Access of RTI in Rural India:

Information is the currency that every citizen requires to participate in democracy. The greater the access of the citizen to information, the greater would be the responsiveness of Government towards its people. Despite launching various schemes and measures for empowering and developing rural India, the majority of rural India is still recognized by high incidence of poverty and illiteracy, widespread disease, considerable unemployment, prevalent malnutrition level among children, miserable rural infrastructure like roads, electricity, primary health, drinking water, traditional way of farming, lack of irrigation facilities and many other such sociopolitical

problems. It is a non deniable fact that the rural people are less aware in knowing and exercising their right that results in growing corruption rate of public works in the rural area. It is at this juncture that a tool like RTI can make the path breaking impact in combating corruption and giving the people their share of interest which the Government assures them. The most important feature that distinguishes the Right to information from other rights is that it is deeply rooted in the struggles and concerns for survival and justice of most disadvantaged rural people.

Role of PIO and APIO under RTI Act, 2005:

Right to information Act 2005 requires a Public Authority to designate “as many” officers as Central Public Information Officer or the State Public Information Officer, as the case may be, in all administrative units and offices under it as may be necessary to provide information to persons requesting for the same. Central or State Assistant Public Information Officers are to be designated at “each sub-divisional level or other sub-district level” to receive applications or appeals and forward them on to the concerned Public Information Officers, Designated Appellate officers and the Information Commission. This is to ensure that the public can apply for information in their own local areas without the need for traveling long distances to the offices of the Public Information Officers.

According to section 7 which fixes the time limits for providing information by PIO and APIO’s disposal of request by an applicant to a PIO & APIO’s shall be furnished “as expeditiously as possible”. The time limits prescribed under the Act for disposal of requests for information are as follows:

- 30 days: On receipt of a request for information, the PIO has either to provide information on payment of such fees as prescribed or reject the request with reasons for the same.
- 48 hours: If the information sought concerns the life or liberty of a person, the same has to be provided immediately, in any case, within 48 hours.
- 35 days: 5 more days to be added to the above time limits if the application is submitted to the Assistant Public Information Officer.
- 40 days: Where third party is involved (If the PIO intends to disclose any information which relates to or has been supplied by a third party and has been treated as confidential by it, the PIO has to give a written notice to such third party within 5 days from the receipt of request inviting such third party to make a submission.
- 45 days: Information pertaining to allegations of human right violations from scheduled security and intelligence agencies.

DUTIES & RESPONSIBILITIES OF PIO & APIO's:

The Act prescribes the obligations of a Public Information Officer (PIO), Assistant Public Information Officer (APIO) and other officers as follows:

Public Information Officer

- To deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information, taking the assistance of any other officer, if considered necessary by him or her for the proper discharge of duties.¹
- To render 'all reasonable assistance', where request for information cannot be made in writing, to the person making the request orally to reduce the same into writing.²
- To dispose request for information under the Act, either providing the information requested on payment of prescribed fee or rejecting the request for reasons to be specified within the time period stipulated under the Act .National Implementing Agency Capacity Building for Access to Information Project .³

Assistant Public Information Officer:

- To receive applications for information or appeals under the Act for forwarding the same forthwith to the Central Public Information Officer or state Public Information officer or appellate officer or Central Information Commission or the State Information Commission, as the case may be.⁴

Officer whose Assistance a sought:

- To render all assistance to the public information officer who sought his or her assistance.
- To be treated as Public Information Officer for the purposes of any contravention of the provisions of the Act⁵.

Procedure for filing complaints and Appeal under RTI Act 2005:

How to file a complaint under RTI Act 2005:

A citizen has right to seek such information from public authority which is held by the public authority which is held by public authority or which is held under its control. It is the duty of the state to provide such Information.

¹ Section 5 (3) &5(4)

² Section 6(1)

³ Section 7(1)

⁴ Section 5 (2)

⁵ Section 5(5)

If any person unable to submit a request PIO either by reason that such an officer has not been appointed by the concerned public authority or the APIO has refused to accept his or her application or appeal for forwarding same to the PIO or the appellate authority as the case may be; or he has been refused access to any information requested by him under the RTI Act, or he has been not been given a response to a request for information within the time limit specified in the Act, or he has been required to pay an amount of fee which he considers unreasonable or he believes that he has been given incomplete misleading or false information, he can make a complain to the information commission.

Section 18 of the act empowers Central Information Commission (CIC) and also state information commissions (SIC) to enquire in to complaints against Public Authority, PIO and First Appellate Authority (FAA). The section has provided for enquiring and taking corrective steps by the respective commissions in respect of majority steps by the respective commissions in respect of majority of problems that the applicant may face in getting information to which he is entitled to under this Act. According to this section 18 (3) the central information commissioner or state information commission as the case may be is satisfied that there are reasonable grounds to inquire in to matter under this section, have the same powers as are vested in a court while trying a suit under the code of civil procedure 1908, in respect of the following matters namely –

- a) Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things.
- b) Requiring the discovery and inspection of documents.
- c) Receiving evidence on affidavit
- d) Requisition any public record or copies thereof from any court or office,
- e) Issuing summons for examination of witness or documents and
- f) Any other matter which may be prescribed.

Situations under which complaint can be lodged:

- No PIO or APIO or FAA is appointed by public authority.
- PIO /APIO/ FAA has refused to received application/appeal.
- No reply is received from PIO & FAA within time limit fixed by the act.
- Reply received from PIO IS unsatisfactory irrelevant unreadable misleading unclear, false, incomplete etc.
- Information has been wrongly and unjustifiably refused.
- PIO/FAA disobeys orders of CIC /SIC.
- Any other violation of provisions of the act by public authority, PIO or FAA

- Any other situation where the citizen has been wrongly restrained /refused access to information to which he is entitled under the act.

Time limit:

- a) There is no time limit for filing a complaint one may file a complaint immediately after PIO or public Authority's failure to comply with a requirement of the RTI, Act ,without filling a First Appeal or as and when he wish but it is advisable to file the complaint within a reasonable time.

Procedure for filing appeal under RTI Act 2005:

According to section 19 of this act said that two tier mechanism for appeal. The first appeal lies to an officer within an organization who is senior in rank to PIO.The second appeal lies in the information commission.

However when an RTI is filed with the public authority, it is possible that the required answers are not obtained on the first time and in some cases, information is not received at all.In such cases ,RTI first appeal is to be filed to received the required information to the satisfaction of the citizens.

Who can file RTI first appeal?

- Any citizen who has filed an RTI and is aggrieved by no response or unsatisfactory reply or incorrect information.
- Third parties to whom the information is asked for, relates to or has been supplied as confidential.

When to apply for RTI first appeal?

RTI first appeal is the statutory remedy available to any citizen who is RTI Applicant, when-

- a) There is no response from the public information officer within time limit stipulated or
- b) The response of PIO is unsatisfactory.
- c) The PIO supplied incorrect information
- d) PIO demanded excess fee etc.

Any person who has submitted an RTI application, and hasn't received a response or is unsatisfied with the reply /inadequate information can file RTI first appeal under RTI act 2005 within

- 30 days from the date of expiration of the period prescribed or
- A month from the receipt of communication from PIO.

How to file Second Appeal under RTI:

Anybody who is unhappy or dissatisfied with the decision of the appellate authority can file second appeal to the information commission at the centre or respective States within 90 days from the date on which the decision should have been made or from the date a decision was actually received.

A second appeal can be file electronically on CIC website online along with the requisite documents as per RTI rules 2012. The documents must be duly signed/self attested/verified before scanning and attaching with the appeal or complain being filed.

Landmark decisions regarding right to Information:

In order to understand the effectiveness of a Fundamental Right it is important to analyse the various aspects in which the right has been given effect by the Judiciary. A few landmark cases have been taken to highlight the various facets relating to Right to Information:

1. **Prabhu Dutt v. Union of India**⁶ The court held that there could be no reason for refusing permission to the media to interview prisoners on death row. Repeated violations of civil rights by the police and other law enforcement agencies have compelled the courts to give directions to the concerned agencies for ensuring transparency in their functioning.
2. **Sakal Newspapers (Private) Ltd. v. Union of India**⁷ The Supreme Court held that the impugned Act and the Order imposed unconstitutional restriction on the freedom of the press. The court also held that restriction upon freedom of speech was to be examined with lesser presumption of constitutionality than the restrictions upon freedom of trade or business. The court brought in the preferred freedom doctrine in Indian Constitution.
3. **Romesh Thappar v. State of Madras**⁸ One of the earliest cases where the Supreme Court laid emphasis on the people's right to know. There the petitioner had challenged an order issued by the then Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the circulation of the petitioner's journal Cross Roads was struck down as violative of the right to freedom of speech.
4. **In State of UP v. Raj Narain**⁹ Justice Mathew thoroughly stated, "It is not in the interest of the public to cover with avail 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.

⁶ AIR 1982(1) SCC 1

⁷ AIR 1961 SC 305

⁸ AIR 1950 SCR 594

⁹ AIR 1975 SCR (3)333

Landmark Judgments by Central Information Commission:

- a) **CIC asks UPSC to show marks to Civil Services aspirants** The CIC directed the Union Public Services Commission (UPSC) to declare individual marks scored by 2,400 candidates appeared for the Civil Services Preliminary examinations in 2006 and ordered it to declare cut-off marks for each subject (CIC/WB order, November 13, 2006)
- b) **Record management to be improved by all public authorities** In the case of Paramveer Singh vs Punjab University¹⁰, the applicant applied for information regarding the merit list for selection of candidates to a particular post in the university. However, no proper information was provided Judgment: The Commission held that every public authority, must take all measures in pursuance of Section 4(1) (a), to implement efficient record management systems in their offices so that the requests for information can be dealt promptly and accurately.

Criticisms of right to Information in India:

The Act has been criticized on several grounds. It provides for information on demand, so to speak, but does not sufficiently stress information on matters related to food, water, environment and other survival needs that must be given proactively, or suo moto, by public authorities. The Act does not emphasize active intervention in educating people about their right to access information vital in a country with high levels of illiteracy and poverty or the promotion of a culture of openness within official structures. Without widespread education and awareness about the possibilities under the new Act, it could just remain on paper. The Act also reinforces the controlling role of the government official, who retains wide discretionary powers to withhold information. The most scathing indictment of the Bill has come from critics who focus on the sweeping exemptions it permits. Restrictions on information relating to security, foreign

Policy, defense, law enforcement and public safety are standard. But the Right to Information Act also excludes Cabinet papers, including records of the council of ministers, secretaries and other officials; this effectively shields the whole process of decision-making from mandatory disclosure. Another stringent criticism of the Act is the recent amendment that was to be made allowing for file nothings except those related to social and development projects to be exempted from the purview of the Act.

File nothings are very important when it comes to the policy making of the government. It is these notes that hold the rationale behind actions or the change in certain policy, why a certain contract is given or why a sanction was withheld to prosecute a corrupt official. Therefore the government's intention to exempt the file nothings from the purview of the Act has come in for stringent criticisms.

Recommendations Regarding RTI 2005:

¹⁰ AIR 2006

RTI the significant instrument to access public information is a unique legislation that puts a common man in the same footing as that of an MP, MLA or any other member within the authority to seek accountability and appropriation of the functioning of the Government. Though the RTI is a remarkable piece of legislation yet it has issues and challenges in its execution and implementation especially in the downtrodden areas. For the effective application of the Act, the following suggestions are put forward:

- a) The technicalities of filing an RTI application should be more simplified. The literacy rate of rural India is quite low and thus they find it quite difficult to comply with the procedural formalities. In response to this, the state of Bihar has set a new example by their phone in system of filing an RTI complaint. Even an illiterate can then avail access to RTI through this means. This system needs to be followed throughout the whole country.
- b) The report of the second Administrative Reforms Commission²⁵ 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. This recommendation should be adhered to.
- c) RTI gives twin effect of good governance and inclusive development. Thus, the usability and effect of the RTI should be publicized by awareness campaigns to the general people especially for the poor and marginalized people who are more victimized when compared to the rest. In this aspect, the role of NGO’S and the media is highly anticipated.
- d) There is an urgent need to protect the whistle blowers who are targeted or attacked so easily. The impending bill should be passed or else an ancillary strict measure should be taken in this regard.
- e) The disposal rate of RTI application is quite low. Unless and until the pendency rate is curtailed, the objective of the Act would not be met. Thus, the Information Commission needs to be more active in their functioning.

Concluding observation:

RTI is a powerful tool that can deliver significant social benefits. It can provide a strong support to democracy and promote good governance, by empowering the Citizen’s ability to participate effectively and hold government officials accountable. Rather than just providing information, RTI Act in most of the countries has served to be an effective watchdog ensuring all those coming in purview of the Act to work in accordance with rules and regulations, without any irregularities. However, stricter implementation of this law requires not only political will but also active civil societies, RTI activists and few key democratic features, such as respect for the rule of law. Currently, the RTI Act in India is passing through a decisive phase, much more needs to be done to facilitate its growth and development. Mere protest against the lack of implementation of this law alone is not sufficient one need to

encourage this initiative taken, for the law to grow and mature. Thus it can be concluded that citizens have a right to information and right to know about public affairs and governmental functioning. The legislature, realizing the need and urgency of this requirement, has shown its sensitivity and positive attitude by conferring upon citizens of India various statutory rights, which advance the Right to information and expand its horizons to the deserving limits.

