

Right To Information Act, 2005 -concepts & Issues In India



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A B S T R A C T

It's right time to answer to the question..... Is India a Democratic Country? Indian Constitution proudly speaks India is a Democratic country. But is it really true??... What made me to ask this question? - How Democratic is Indian polity? It is because Indian polity has failed to provide solutions to the common man's problems. If a government teacher does not teach properly, can the parents do anything about it? Or if a doctor in a government hospital does not treat properly or does not give medicines what action can be taken against him? Or what can any one of us do if the policeman refuses to register our FIR or registers a false case against us? We cannot do anything about it. We can only complain to the higher authorities who do not act upon our complaints or who rarely act upon it. So, the citizens do not have any control over government employees. Some of us feel that this country would be a better place to live in if we had good politicians and bureaucrats. However, real change can come only when the people of this country hold their government and public servants accountable, so that they are forced to respond to the poorest citizen of this land. And when that happens, no public servant or government would dare to be corrupt, inefficient or insensitive.

But How Do We Hold The Government Accountable?

Thomas Jefferson rightly said... "Information is the currency of democracy." We cannot even begin to make the government accountable if we do not have the basic information regarding government decisions and functioning. But, is it possible for an ordinary citizen to get right information in this regard?. Yes! The Right to Information Act that was passed by Indian Parliament in May 2005 empowers us to do just that. It gives us the right to question our Government and get information about matters that affect us in thousands of ways. Used innovatively, this information can then be used to hold our Government accountable. In State of U.P Vs Raj Narain Supreme Court has observed..... "In a government of responsibility like ours where the agents of the public must be responsible for their conduct there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings." Right to Information is a small concrete step in making our polity more democratic. It has given power to the people to "just question" the government. The main objective of this paper is to create Awareness regarding "Right to Information Act" through which much of the common man's day to day life problems can be solved thereby making our country really democratic. The paper is more of application oriented rather than mere descriptive of the act.

KEYWORDS: Information, Appeal, Public Information Officers (PIO), Assistant Public Information Officers (APIOs), Appellate authority.

Introduction

We blame the politicians and administrators who keep our nation still a developing country. I know every reader of this paper wish is to make India - a well developed nation, development as a whole and not as a part! I strongly appreciate your wish but what action we people took to bring our wish into reality. Definitely the answer is No! How many of us dare to question the politicians and bureaucrats when they remain unaccountable, inefficient and Corruptive? The real problem not because that we are afraid of them but we don't know whether we have right to question them? There comes darkness. Darkness I mean "Ignorance?- Ignorance the root and stem of every evil. Ignorance is not innocence but it is sin. Today we the public suffers a lot. It is because of our ignorance, Ignorance on our rights, freedom and more-

over on information.

"It is better to light a candle than curse the darkness" Sure! Right to information Act acts as a small candle which throws out the darkness prevailed in our society. "If you have knowledge, let others light their candles by it." This is the philosophical underpinning of the freedom of movement. Freedom of information and in particular, the right of access to information held by public bodies, has attracted a substantial amount of attention recently. In the past several years, many countries have taken steps to enact legislation giving effect to this. By doing so, these countries join others around the world which have a long tradition to right to information, such as Sweden, the United States, Finland, the Netherlands, Australia and Canada.[1] We all pay taxes. Even a beggar on the street pays sales tax when he buys anything from the market. This money belongs to us. But

where does this money go? Why are there no medicines in the hospitals? Why are people dying of starvation? Why are the roads in such pathetic conditions? Why are the taps dry? Now we have a right to question governments. The Parliament of India has passed Right to Information Laws, which empower citizens to question the government, inspect their files, and take copies of government documents and also to inspect government works.

Historical Approach

It has taken India 82 years to transition from an opaque system of governance, legitimized by the colonial Official Secrets Act, to one where citizens can demand the right to information. Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. Democracy revolves around the basic idea of Citizens being at the center of governance. And the freedom of the press is an essential element for a democracy to function. It is thus obvious that the main reason for a free press is to ensure that Citizens are informed. Thus it clearly flows from this, that the Citizens Right to Know is paramount. In order to ensure greater and more effective access to information, it was decided to repeal the Freedom of Information Act, 2002 and enact another law for providing an effective framework. To achieve this object, the Right to Information Bill was introduced in the Parliament and was passed by the Lok Sabha on 11th May, 2005 and by the Rajya Sabha on 12th May, 2005 and it received the assent on 15th June, 2005. It came on the Statute Book as THE RIGHT TO INFORMATION ACT, 2005. The primary power of RTI is the fact that it empowers individual Citizens to requisition information. Hence without necessarily forming pressure groups or associations, it puts power directly into the hands of the foundation of democracy- the Citizen.

Theoretical Approach Where The Act Applies?

The Act applies both to Central and State Governments and all public authorities.
INFORMATION- DEFINITION

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

Right To Information- Definition

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

Maintenance and Publication of Records

Sec. 4 makes it a duty of public authorities to maintain records for easy access and to publish within 120 days the name of the particular officers who should give the information and in regard to the framing of the rules, regulations etc.

Subsection (3) of sec. 4 states that for the performance of subsection (1), all information shall be disseminated widely and in such form and manner, which is easily accessible to the public.

Sec. 6 permits persons to obtain information in English or Hindi or in the official language of the area from the designated officers. The person need not give any reason for the request or any personal details.

Sec. 7 requires the request to be disposed of within 30 days provided that where information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours.

Under sec. 7(7) before any decision is taken for furnishing the information, the designated officer shall take into consideration the representation, if

any, made by a third party under sec.¹¹.

A request rejected shall be communicated under sec. 7(8) giving reasons and specifying the procedure for appeal and the designation of the appellate authority. Sec. 7(9) exempts granting information where it would disproportionately divert the resources of the public authority or would be detrimental to the safety and preservation of the record in question.

EXEMPTIONS Sec. 8 exempts from disclosure certain information and contents as stated in Sub-clauses (a) to (j) thereof. Sub-clause (b) exempts information, which is expressly forbidden by any court of law or tribunal or the dispute of which may constitute contempt of court. Sub-clause (g) exempts information the disclosure of which would endanger life, or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose. Sub-clause (h) exempts information, which could impede the process of investigation or apprehension or prosecution of offenders. Sub-clause (i) exempts Cabinet papers.

It is important to note that the Act specifies that intelligence and security organizations are exempted from the application of the Act. However, it is provided that in case the demand for information pertains to allegations of corruption and human rights violations, the Act shall apply even to such institutions.

Right To Appeal

Under the Act, where a citizen has exhausted the remedy of appeal or second appeal, the finality given to the orders of the commissioners and appellate authorities is only for the purposes of the Act and the citizen has a right to approach the High Court under Art. 226 or where it refers to a fundamental right, he may even approach the Supreme Court under Art. 32.

Constitutional Approach

The right to information is a fundamental right flowing from Art. 19(1)(a) of the Constitution is now a well-settled proposition. Over the years, the Supreme Court has consistently ruled in favor of the citizen's right to know. The nature of this right and the relevant restrictions thereto, has been discussed by the Supreme Court in a number of cases: In Bennett Coleman, the right to informa-

tion was held to be included within the right to freedom of speech and expression guaranteed by Art. 19 (1) (a).

In Raj Narain, the Court explicitly stated that it is not in the interest of the public to "cover with a veil of secrecy the common routine business - the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.?"

In S.P. Gupta, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described.

Need Of The Study

In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by countries, intergovernmental organizations, civil society and the people [3]. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The right to information forms the crucial underpinning of participatory democracy - it is essential to ensure accountability and good governance [4]. The greater the access of the citizen to information, the greater the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on access, the greater the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights as citizens or make informed choices [5]. However, the free flow of information remains severely restricted by three factors:

The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923;

The pervasive culture of secrecy and arrogance within the bureaucracy; and

The low levels of literacy and rights awareness amongst India's people.

Practical Approach

How does the Right to Information (RTI) Act help us? RTI Act gives us the right to ask the Government for information that can expose inaction and corruption, and address our grievances.

Under the RTI Act we can:

Demand from the government information pertaining to any of its departments.

Demand photocopies of government contracts,

payment, estimates, measurements of engineering works etc. Demand from the government samples of material used in the construction of roads, drains, buildings etc. Demand to inspect any public development work that may be still under construction or completed. Demand to inspect government documents- construction drawings, records books and registers etc.

Demand status of your requests or complaints.

Are Private Bodies Covered Under The RTI Act?

All private bodies, which are owned, controlled or substantially financed by the Government, are directly covered. Others are indirectly covered. That is, if a government department can access information from any private body under any other Act, the same can be accessed by the citizen under the RTI Act through that government department.

Who Will Give Me Necessary Information?

One or more existing officers in every Government Department have been designated as Public Information Officers (PIO). These PIOs act like nodal officers. We have to file our applications with them. They are responsible for collecting information sought by us from various wings of that Department and providing that information to us. In addition, several officers have been appointed as Assistant Public Information Officers (APIOs). Their job is only to accept applications from the public and forward it to the right PIO.

Where Do I Submit Application?

We can do that with the PIO or with APIO. In the case of all Central Government Departments, 629 post offices have been designated as APIOs. This means that we can go to any of these post offices and submit your fee and application at the RTI counter in these post offices. They will issue us a receipt and acknowledgement and it is the responsibility of that post office to deliver it to the right PIO. The list of these post offices is given at <http://www.indiapost.gov.in/rtimanual16a.html>

Is There Any Fee? How Do I Deposit That?

Yes, there is an application fee. For Central Government Departments, it is Rs 10. However, different states have prescribed different fee. For details see rules framed by the states on this website. For getting information, we have to pay Rs 2 per page of information provided for Central

Government Departments. It is different for different states. Similarly, there is a fee for inspection of documents. There is no fee for first hour of inspection, but after that, we have to pay Rs. 5 for every subsequent hour or fraction thereof. This is according to Central Rules. For each state, see respective state rules. We can deposit fee with in cash or through a DD or bankers cheque or postal order drawn in favor of that public authority. In some states, we can buy court fee stamps and affix it on our application. This would be treated as if we have deposited the fee. We can then deposit our application either by post or by hand.

What Should I Do If The Pio or The Concerned Department Does Not Accept My Application?

We can send it by post. We should also make a formal complaint to the respective Information Commission under section 18. The Information Commissioner has the power to impose a penalty of Rs 25000 on the concerned officer who refused to accept our application.

Is There An Application Form For Seeking Information?

For Central Government Departments, there is no form. We should apply on a plain sheet of paper like an ordinary application. However, many states and some ministries and departments have prescribed formats. We should apply in these formats. We should read rules of respective states to know about it.

How Can I Apply For Information?

Draft our application on a normal sheet of paper and submit it by post or in person to the Public Information Officer (PIO). Remember to keep a copy of the application for our personal reference

Can I Submit My Application Only With The PIO?

No, in case the PIO is not available we can submit our application with the Assistant PIO or any other officer designated to accept the RTI applications.

Where Can I Locate The Concerned PIO?

A list of PIOs/APIOs and Appellate Authorities for all Central and State departments/Ministries is available online at www.rti.gov.in

What If I Cannot Locate My PIO OR APIO?
In case we have problems locating your PIO/APIO

we can address our RTI application to the PIO C/o Head of Department and send it to the concerned public authority with the requisite application fee. The Head of Department will have to forward our application to the concerned PIO.

Do I Have To Personally Go To Deposit My Application?

Depending on our state rules for mode of payment we can deposit our application for information from the concerned departments of our state government via post by attaching a DD, Money Order, Postal Order or affixing Court fee Stamp. For all Central government departments the Department of Posts has designated 629 postal offices at the national level. The designated officers in these post offices work as Assistant PIOs and collect the application to forward to the concerned PIO. A list is available on <http://www.indiapost.gov.in/rticontents.html>

Is There A Time Limit To Receiving Information?

Yes. If we file our application with the PIO, we must receive information within 30 days. In case we have filed our application with Assistant PIO then information has to be made available within 35 days. In case the matter to which the information pertains affects the life and liberty of an individual, information has to be made available in 48 hours.

Do I Have To Give Reasons Why I Want Particular Information?

Absolutely not! We are not required to give any reasons or additional information other than our contact details (i.e., Name, Address, and Phone No.). Sec 6(2) clearly says that no information other than contact details of the applicant shall be asked.

Can The Pio Refuse To Accept My RTI Application?

No. The PIO cannot refuse to accept our application for information under any circumstances. Even if the information does not pertain to his/her department/jurisdiction, she/he has to accept it. If the application does not pertain to that PIO, he would have to transfer it to the right PIO within 5 days under sec 6(2).

What Should I Do If I Do Not Receive Satisfactory Information or If I Do Not Receive Information?

If we do not receive information or are dissatisfied with the information received, we can file an appeal with the first appellate authority under section 19 (1) of the right to Information Act.

What Should I Do After Getting Information?

There cannot be one answer for that. It depends on why we asked for that information and what type of information is it. Often a lot of things start falling in place just by asking for information. For instance, we would get our passport or a ration card just by asking for the status of our application. In many cases, roads got repaired as soon as the money spent on its repairs in the last few repairs was asked. So, seeking information and questioning the government is an important step, which in itself is complete in many cases. But suppose we expose some corruption or wrongdoing using RTI. Then, we can complain to vigilance agencies, CBI or even file an FIR. But it is seen that the Government does not take any action against the guilty even after repeated complaints.

Though one can keep up the pressure on vigilance agencies by seeking to know the status of complaints under RTI, however, the wrongdoings can also be exposed through media. However, experience has not been very encouraging at getting guilty punished. But one thing is certain. Seeking information like this and exposing wrongdoings does improve the future. The officials get a clear message that the people of that area have become alert and any wrongdoings in future would not remain hidden as they were in the past. So, their risks of getting caught increase.

Practical Case on Implication of The Act Getting A Ration Card

Nannu is a daily wage earner. He lives in Welcome Mazdoor Colony, a slum habitation in East Delhi. He lost his ration card and applied for a duplicate one in January 2004. He made several rounds of the local Food & Civil Supplies office for the next three months. But the clerks and officials would not even look at him. Ultimately, he filed an application under the Right to individual, information has to be made available in 48 hours.

Information Act asking for the daily progress made on his application, names of the officials who were supposed to act on his application and what action would be taken against these officials. Within a week of filing application under

Right to Information Act, he was visited by an inspector from the Food Department, who informed him that the card had been made and he could collect it from the office. When Nannu went to collect his card next day, he was given a very warm treatment by the Food & Supply Officer (FSO), who is the head of a Circle. The FSO handed over the card to Nannu, offered him tea and requested him to withdraw his application under Right to Information, since his work had already been done.

Recent Global Trends On Information Act

Since the 1980s, the collapse of authoritarianism and the emergence of new democracies have given rise to new constitutions that include specific guarantees of the right to information. At the same time, older democracies such as the United Kingdom are seeing the wisdom of enacting legislation. International bodies such as the Commonwealth, Council of Europe and the Organization of American States have drafted guidelines or model legislation to promote freedom of information.

The World Bank, the International Monetary Fund and other donors are also pressing countries to adopt access to information laws as

part of an effort to increase transparency and reduce corruption. Finally, there is agitation from media and civil society groups for greater access to government-held information and for more participation in governance. 9/11 has actually led some countries to limit information access. The restrictions have been most profound in the United States and Canada where proposals to limit national and local freedom of information acts have been adopted. In the UK, implementation of the long-awaited information act has been delayed until 2005.

Conclusion

I am sure this paper will definitely serve its purpose. That is creating awareness on Right to information Act. Yes, Right to Information Act has moved our country from an opaque and arbitrary system of government to the beginning of an era where there will be greater transparency and to a system where the citizen will be empowered and the true center of power. Without widespread education and awareness about the possibilities under the Act, it could just remain on paper. The real democracy will come not by acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused. If every citizen had such capacity then we can proudly say..... "India is a democratic country in reality".

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