

---

## RIGHT TO INFORMATION AND GOOD GOVERNANCE

\*SATYAJI LONKAR

### INTRODUCTION

Meaningful substantive democracy ought to be founded on the notion of an informed public adequately equipped to participate thoughtfully and actively in the governance of the country. If transparency and accountability are the imperatives for sustaining democratic governance, access to information is a vital instrument of societal transformation and the Right to Information Act, 2005 helps in achieving the same. Besides, apart from ensuring greater transparency it also acts as a deterrent against the arbitrary exercise of public powers. The governance is, therefore, undoubtedly strengthened by the RTI.

The RTI Act has brewed a quiet social revolution and played a vital role in the governance of the country. RTI users and activists in practically every nook and corner of the country are asking questions on varied subjects. The Act has produced a better impact on the quality of the life of the poor and marginalized. During the past five years, the Act has brought positive changes in the levels of corruption and accountability. Students appearing for competitive and board examinations who were not convinced with their mark sheets have demanded original

answer sheets under RTI and most have received them, these are the few examples where with the help of RTI the implementation of law has reached till the grass root levels.

### OBJECTIVE AND IMPORTANT FEATURES OF THE RTI ACT

Objective of the Act is to establish “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 a Central Information Commission and State Information Commission and for matters connected therewith and incidental thereto.”<sup>2</sup>

#### IMPORTANT FEATURES OF RIGHT TO INFORMATION ACT, 2005

- i. All citizens possess the right to information
- ii. 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.
- iii. 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.
- iv. Applicant can obtain Information within 30 days from the date of request in a normal case.
- v. Information can be obtained within 48 hours from time of request. If it is a matter of life or liberty of a person.
- vi. Every public authority is under obligation to provide information on written request or request by electronic means.
- vii. Certain information's are prohibited.
- viii. 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.

- ix. 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/-.
- x. Central Information Commission and State Information Commission are to be constituted by the Central Government and the respective State Governments.
- xi. No Court can entertain any suit, application or other proceedings in respect of any order made under the Act.<sup>3</sup>

The aforesaid mentioned promote transparency in government organizations, makes them function more objectively thereby enhancing predictability. In a fundamental sense, right to information is a basic necessity of good governance.<sup>4</sup>

### **LINKS BETWEEN RTI AND THE ELEMENTS OF GOOD GOVERNANCE**

Since Independence government of India and state governments have been entrusted by the legislature on behalf of people of India, Billions of Crores of Rupees for various schemes for the welfare of the people so that the disadvantaged group of people can enjoy the fruits of freedom.<sup>5</sup> Clearly, the Act has laid emphasis on good governance, of which the major elements that have been identified are: informed citizenry for encouraging people's participation in development process, transparency, accountability and reduction in corruption. Thus, the major objectives of the Act are:

**Greater Transparency :** 'provide as much information suo motu to the public at regular intervals through various means of communication, including internet, so that the public have minimum resort to the use of this Act to obtain information'. In addition, a public authority, u/s 4(1)(d) of the Act, is required to "provide reasons for its administrative or quasi-judicial decisions to the affected persons". To facilitate the access to information, a citizen has, u/s 2 (j) of the Act, the right to:

- i. Inspection of work, documents, records;
- ii. Taking notes extracts or certified copies of the documents or records;
- iii. Taking certified sample of material; and
- iv. Obtaining information in electronic form, if available.

The Commission, u/s 20(1) of the Act, has the mandate, inter-alia, to impose penalty and/or to recommend disciplinary action against the information providers, if held responsible for obstructing the free flow of information. The Commission may also award compensation for any detriment suffered by a requester for seeking information.

The information seekers and the NGOs have put pressure on the public authorities for promoting the culture of openness in functioning of the Government. Of the millions of applications for information, less than 5 per cent have been denied information under various exemption categories, u/s 8(1) of the Act, on the grounds of national interest, personal or third party information or those pertaining to commercial confidence, the disclosure of which would affect competitiveness of public authorities. In effect, thus, there is greater transparency than ever before in the working of the public bodies. The media and civil society have raised development issues, based on facts about the use of funds as well as the best practices in formulation and implementation of pro-poor schemes. The citizens are thus better informed about the performance and contributions of the elected representatives, which augurs well for a healthy democracy and democratic governance of projects.

**Greater Accountability:** Every public authority is required 'to provide reasons for its administrative or quasi-judicial decisions to the affected persons' u/s 4(1)(d) of the Act. There is therefore no scope

for any arbitrary decision.

The world-wide governance indicators report on 6 broad dimensions of governance for over 200 countries over the period 1996-2011<sup>6</sup>

- Voice and accountability
- Political stability and absence of violence
- Government effectiveness
- Regulatory quality
- Rule of law
- Control of corruption

#### **An Interface:**

Right to information has been seen as the key to strengthening participatory democracy and ushering in people centered governance. Access to information can empower the poor and the weaker sections of society to demand and get information about public policies and actions, thereby leading to their welfare. Without good governance, no amount of developmental schemes can bring improvements in the quality of life of the citizens. *“Open Government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. In a country like India which is committed to socialistic pattern of society, right to know becomes a necessity for the poor, ignorant and illiterate masses”*.<sup>7</sup>

Good governance has four elements- Transparency, Accountability, Predictability and Participation. Transparency refers to availability of information to the general public and clarity about functioning of governmental institutions. Right to information opens up government’s records to public scrutiny, thereby

### **RIGHT TO INFORMATION AND GOOD GOVERNANCE**

‘Right to Information’ (RTI) refers to the right of every citizen to access information held by or under the control of public authorities. Information is crucial for good governance as it reflects and captures Government activities and processes. It is said that information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of the society. Access to information not only promotes openness, transparency and accountability in administration, but also facilitates active participation of people in the democratic governance process. The RTI ACT is a tool helping to ensure rights already promised in the constitution.<sup>8</sup>

Public participation in Government, respect for the rule of law, freedom of expression and association, transparency and accountability, legitimacy of Government, and the like which are the core values of good governance, can be realised only if the right to information is implemented in the right spirit.<sup>9</sup>

#### **Performance of The Right To Information Act, 2005**

PM said this legislation was not a substitute for good governance, but was intended “to support and aid the process of good governance”.<sup>10</sup> The passage of RTI Act has up to a certain extent infused transparency and accountability in the working of public departments. This has increased the efficiency of decision making process. This has led to reduction in corruption in the country as evident from the

following:

1. The Transparency International (TI) has reported that perceived corruption in India (a score of 3.5 out of 10) has declined at the rate of about 15-20 per cent per year, due mainly to the implementation of the RTI Act.
2. The Centre for Media Studies in collaboration with TI has recently accomplished an all India survey study (un-published) of the poor below the poverty line. The views of the poor have been elicited in respect of all the flagship programmes that have been implemented for alleviation of poverty. At least 40 per cent of the respondents have reported that corruption has declined.
3. It has also been observed that wherever NGOs are actively involved in the development activities, the perceived corruption is abysmally low. The progress of RTI Act has been studied by PRIA (Society for Participatory Research in Asia) in August 2006.

In order to track the progress of RTI Act in 12 states (Himachal Pradesh, Haryana, Rajasthan, Jharkhand, Madhya Pradesh, Uttar Pradesh, Uttaranchal, Chhattisgarh, Andhra Pradesh, Kerala, Gujarat and Bihar), PRIA decided to conduct a study on a set of indicators namely the constitution of State Information Commission and its role, role of Nodal agencies, appointment of PIOs, experience of seeking from PIOs mandatory disclosure under section IV of RTI Act and role of government in educating people under 26 of the Act. The study indicated the following results, which are discussed in very brief manner as following:-

- The constitution of SIC in some states like Bihar, Jharkhand, Uttar Pradesh, Himachal Pradesh, Haryana and Rajasthan, the constitution of SIC was delayed by several months.
  - Inadequate infrastructure and working staff has been provided to the SIC.
  - There has been a general tendency of non imposition of penalties on the PIOs who have indulged in dereliction of duty.
  - People belonging to rural areas feel that appeal process is very expensive.
4. Public Information Officers have been appointed in most public authorities in the states. The process of accessing information by people has started slowly through Right to Information Act. However, there exists great confusion in definition of public authority.
  5. Most of the PIOs at state level and district level are not cooperative and they sometimes threaten applicants to withdraw applications. PIOs should be given more training so that they are sensitive to people's need and PIOs who are guilty of deliberate denial of information should be penalized.

#### **THE GENESIS AND EVOLUTION OF THE RTI ACT, 2005:**

The evolution of the act can be traced back to the following:

Good Governance

Global trend

Democratization of government

People's participation

Public accountability

Rule of Law and Right to information

Combating corruption

1. Checking the misuse of discretionary powers
2. Administrative efficiency
3. Reforming administration
4. Right to information as a fundamental right
5. Media's effectiveness
6. Movement for transparency
7. The Effective Implementation of Government Schemes.
8. Protection of Civil Liberties
9. create more democratic and open society
10. Reducing poverty and achieving the millennium development goals.

## **JUDICIARY: ENFORCEMENT OF RTI**

In order to understand the effectiveness of an act it is important to analyse the various aspects in which the act has been utilized and its outcomes. In order to understand its effectiveness and use, various cases registered under RTI have been gathered. A few sample cases have been taken to highlight the various facets of the act. They have been categorized under various heads, in order to come to conclusion about what all could be done with the RTI.

### **1) CREATING AWARENESS ABOUT RTI**

Drive against bribes: A Gujarat based Ngo Mahiti Adhikar Gujarat Pahel organized a drive against bribe using the Right to Information Act at the Satyagrah Kochrab ashram for 15 days which ended on 15 July 2006. They had over 1400 visitors at the ashram, they filed 1366 applications for RTI. They received about 1275 phone calls. The impact is not to be assessed in terms of numbers but in terms of the creation of awareness about RTI among people. The citizens were empowered with the confidence that they can ask for information, and ask questions, from government functionaries. Some of the citizens could be transformed into propagators of RTI and a core of volunteers who were aware about the provisions, uses and implementation aspects of RTI. The people who attended the camp were from various parts of the State as well as various walks of life from a daily wage-earner to well-off business people.

### **2) HEALTH SERVICES**

Use of RTI to improve health care services: Boru is a small village in Gujarat and the Primary Health Centre is 8 km away from the village due to which the villagers were not able to get timely and desired medical help. Deaths had occurred in the village due to inadequate medical facilities. They filed an application with the doctor in the Primary Health centre who was also the PIO on the health facilities provided to the villagers, what they were entitled to and the duties carried out by the Health worker who was supposed to visit their village three times a week and administer medicines and vaccinations to children, pregnant women and TB patients. Once the application was filed the health worker started visiting the village regularly. But the villagers still insisted to get a reply for their queries so that they were aware about their entitlements.

### **3) WATER & SANITATION**

Water Pollution:-An environmental activist Ajay Dubey filed an RTI application seeking information

on number of industries emitting waste in air and water beyond the norms set by the government. The state pollution control board in its reply said that more than 300 commercial units in Madhya Pradesh are causing pollution by emitting harmful air and water effluents beyond the permissible limits. The State Pollution Control Board gave details of about 313 such industries which flouted standard pollution control norms during 2009-10. 170 such units are located in the industrial hubs -- Ujjain, Indore and Dhar, followed by 48 in Bhopal and 32 in Jabalpur. About 24 such commercial establishments are located in Gwalior, 18 in Guna, 12 in Rewa and two in Patna.

#### **4) LAND SCAMS**

**Illegal Buildings:** An RTI application was filed after the collapse of the building in Lalita Park in Delhi in which 65 persons were killed. More than 65 buildings in Shahadra, East Delhi are illegal. The information also reveals a close connection between the builders and officials of the MCD and DDA. They have particular modus operandi, a building is constructed in three to six months. While the building is constructed no attention is given to any complaint and later the building is declared as old and given a regularization certificate.

#### **5) FAKE CERTIFICATES**

**Corporate with fake certificate:** An RTI application filed in the caste verification department, Swargate, Pune by Santosh Shrimant Jadhav, a resident of Ward no.42 same as that of Suresh Shivaji Kulkarni, corporator from Navi Mumbai revealed that kulkarni's caste certificate was fake. Kulkarni was a Telgu Brahmin from Andhra but he claimed to be an OBC (Vadari) from Maharashtra.

#### **TRANSPORT AND COMMUNICATION**

**Railways false assurance exposed:-**The Human Rights Defence Forum filed an RTI application to the Deputy Chief Operating manager, Southern Railways. The Ernakulam Kayamkulam passenger train has fewer coaches than the sanctioned number of 14. Though the Railway authorities have agreed to increase the number of coaches in certain trains after a protest by the passengers at Thuravoor. In a reply to the application, the Southern Railway said: "Owing to shortage of general second class unreserved coaches, it is not feasible at present to augment Train no: 339 Ernakulam Kayamkulam passengers." The forum had filed an application with the Railway Minister.

#### **CONCLUSION & SUGGESTIONS**

The first national youth convention on Right to Information and democracy, held in Rajasthan's Beawar town recently, has raised the demand for incorporating the text of the Right to Information Act, 2005, in the school and college curriculum across the country so that the youth get a firm footing on the fundamentals of citizens rights.<sup>11</sup>

With a view to realizing the development goals, the followings are suggested to strengthen the RTI regime:

First, all the development projects, particularly poverty alleviation programmes should incorporate transparency and accountability norms to allow for objective scrutiny of the process of execution of programmes and to assess the extent of adherence of the norms of equity and justice in delivery of essential services to the persons who are entitled for the specified benefits.

Second, with a view to reaping the benefits of RTI for rapid poverty reduction, the Government should develop the capacities for access to information. The capacities of both the public authorities (i.e. the duty – bearers) and the citizens (i.e. the claim holders) may have to be enhanced, for which a

two-pronged strategy would be needed. A comprehensive Information Management System should be developed by each public authority for storage and retrieval of data and information that may be shared with anyone who seeks to inspect the records and use the information for development purposes. Use of information technologies would not only facilitate faster dissemination of information but would also reduce the costs of servicing and sharing information.

Third, in view of high illiteracy among the poor, a multimedia approach should be adopted to educate and train people of diverse linguistic backgrounds. Besides, they should also know as to how to make best use of information for effective participation in economic and political processes. This alone can ensure cost-effective use of the provisions of the RTI Act and promote efficient use of resources that are allocated for development purposes, including poverty alleviation.

Fourth, the role of NGOs is critical for creating effective demand for maximum disclosure of information relating to public activities so that an informed citizenry can participate in designing and implementation of socio-economic programmes. This task is challenging in deed. Increase in awareness about the human rights and how to realize them would lead to a strong multiplier effects to eradicate poverty and to create necessary conditions for good governance, of which all the stakeholders would be duly proud of.

Finally, democratization of information and knowledge resources is critical for people's empowerment to realize the entitlements as well as to augment opportunities for enhancing the options for improving quality of life. The strengthening of information regime is therefore sine quo non for promoting democratic governance and right to development.<sup>12</sup>

The general awareness amongst people about the RTI Act and how it can be used for their benefit is still low. Moreover, there is a lack of sincerity on the part of government officials in disclosing information, who often threaten the applicant or refuse to provide information. Additionally, the Information Commissioners have time and again cited the lack of man power required to comply with all the provisions of the Act.<sup>13</sup> The RTI Act, as it stands today, is a strong tool to uphold the spirit of democracy. The need of the hour is that the RTI Act should be implemented to ensure that the objects of the RTI Act are fulfilled. Any attempt to dilute the provisions of the RTI Act will only quell its' success

### (Endnotes)

\* Advocate , District Court Shivajinagar,Pune

2 The preamble to the RTI Act, 2005

3 [http://rti.kerala.gov.in/highlights\\_rtiact.pdf](http://rti.kerala.gov.in/highlights_rtiact.pdf)

4 FIRST REPORT,SECOND ADMISTRATIVE REFORMS COMMISSION, RIGHT TO INFORMATIONJUNE 2006, Master Key to Good Governance

5 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1572238](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1572238)

6 <http://info.worldbank.org/governance/wgi/resources.htm>

7 S P Gupta vs. Union of India (AIR) 1982 SC (149)

8 <http://pcgt.org/current-projects/rti.html>

9 The Right to Information Act, 2005,A Guide for Civil Society Organisations

10 <http://www.financialexpress.com/news/pm-says-rti-not-a-substitute-for-good-governance/180763>

11 <http://www.isidelhi.org.in/hrnews/isidownload/Nhrc/Rti/RTI-2008.pdf>

12 <http://cic.gov.in/CIC-Events/IC-MA-LectureAtUNESCO-04122008.pdf>

13 <http://barandbench.com/brief/3/2945/the-rti-act-a-seven-year-retrospect>