

Right to Information – An Overview

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Introduction

Right to Information Act, 2005 can be considered to be one of the most reformatory and ambitious legislations in both Indian political as well as administrative history. It was enacted by the 14th Lok Sabha, under the leadership of the then Prime Minister Dr. Manmohan Singh. The provisions of the act give to all Indian citizens the right to information². It empowers Indian citizens against corrupt and erroneous administrative practices. It replaced the Freedom of Information Act³ and repealed the Official Secrets Act⁴ along with several other minor legislations tracing their origin to the British Raj.

It can be asserted without any doubt that this legislation helps in raising public knowledge about the functioning of the government. In a developing country like India, availability of information regarding functioning of public organisations needs to be promoted further, in order to tackle the menace of corruption. The Right to Information Act, can be made more useful for the public by its effective implementation leading to improved public administration and betterment of the people.

Effective implementation of the act is possible only through the government's bringing down of its iron curtains as well as people's active involvement in this process. It has been rightly observed by Henry Clay that the government is a trust and the officers of the government are trustees and both the trust and the trustees are created for the benefit of the people⁵.

In order to ensure effective implementation, the legislation provides a provision for appointment of a Public Information Officer (PIO) in every public authority⁶. The Public Information Officer is answerable to public requests regarding information within a time

limit of 30 days. In case the Public Information Officer fails to provide the required information to the applicant, he/she will be held responsible and liable to pay a penalty of Rs.250 per day, up to a maximum of Rs.2500⁷.

Since its very inception, this legislation has been used by civil society organizations as well as ordinary citizens to tackle corruption and bring greater transparency and accountability in the government.

However, this legislation is a double-edged sword with ample scope for misuse as well. As the legislation does not enquire about the purpose of the information being sought. The purpose behind acquiring the information is not always positive but sometimes it is to malign the department or a person of very high stature in the government organization. The legislation has been misused by several people for settling personal scores with their opponents' arising out of their family or matrimonial disputes, maintenance claims, rivalry, enmity or vengeance or for harassing public officials.

Judicial Interpretation

The Supreme Court held in *Raj Narain v. State of Uttar Pradesh*⁸ that right to information is a part of constitutional and fundamental rights under article 19(1)(a)⁹. Even though the Right to Information Act, 2005 or any such legislation did not exist at that point of time, Indian courts had already recognized the importance of information as early as 1975, as is evident from the above judgement.

The Supreme Court further held in *Central Board of Secondary Education v. Aditya Bandopadhyay*¹⁰ that the right to information is a cherished right. Information and Right to Information are intended to be formidable tools in the hands of responsible citizens to

fight corruption and to bring in transparency and accountability¹¹. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under clause (b) of section 4(1)¹² which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption¹³. But in regard to other information, equal importance and emphasis are given to other public interests. The Apex Court further remarked, “indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information¹⁴.”

The Court further remarked that the exemptions specified in Section 8¹⁵ should not be considered as “a fetter on the right to information but they should be taken as equally important provisions protecting other public interests essential for the fulfillment as preservation of democratic ideals”. The Act should not become a “tool of oppression” and obstruct the national development and integration or to destroy peace, tranquility and harmony among citizens. The Court observed that, “the nation cannot afford to have the honest public officials bogged down with all and sundry requests unrelated to corruption as it will adversely affect the efficiency of the government agencies.”¹⁶

In order to reduce the burden on public authorities due to multiple requests for the same information, the Central Information Commission held in *R.K. Gupta v. Income Tax Appellate Tribunal*¹⁷ that the provisions of the RTI Act cannot and should not be used for starting a parallel process about information disclosure.

The case of *Uma Kanti & Ramesh Chandra v. Navodaya Vidyalaya Samiti*¹⁸ is a glaring example of the worst possible misuse of the RTI Act. The

appellants filed several unnecessary information requests under the RTI Act due to a personal grievance with the defendant organization. The Central Information Commission held that this case along with some others like *Shri Faqir Chand v. North Western Railway, Jabalpur*¹⁹ “show the necessity of including a provision in the RTI Act for taking punitive action against the appellants who seek to misuse the RTI Act in such an abhorrent fashion.”²¹

The Central Information Commission remarked in *Satish Tiwari v. I.O.C.L*²² that it is “indeed very unfortunate that a large number of persons who themselves are not so clean in so far as their conduct and behaviour, including economic integrity is concerned and it is they who have been misusing the provisions of the RTI Act for promotion of personal interest at the heavy cost of public expenditure which are incurred in processing the RTI applications.”²³

The scope of the RTI Act has also been expanded as well as restricted after several judicial pronouncements. The Supreme Court held in *Reserve Bank of India v. Jayantilal Mistry*²⁴ that RBI ought to act with transparency and therefore it comes under the RTI Act. The Delhi High Court ruled in *Subhash Chandra Agrawal v. Office of AG*²⁵ that the Office of the Attorney General of India is a “public authority” under the Right to Information Act. This was contrary to the order of the Central Information Commission that held that the Office of the Attorney General of India is not a “public authority”. The Delhi High Court held in *Subhash Chandra Agarwal v. The Registrar, Supreme Court of India*²⁶ that the medical expenses of judges and their families do not fall under the ambit of the RTI Act.

The Delhi High Court held in *Adesh Kumar v. Union of India*²⁷ that an RTI application can be filed even if the information sought under such application is not genuine or even if the applicant has access to such information through other means. The Kerala High Court

held in *Jiju Lukose v. State of Kerala*²⁸ that police authorities are duty bound to provide a copy of the First Information Report on receiving an RTI application, unless an appropriate authority declares it to be exempt under Section 8²⁹. The Central Information Commission directed the Department of Justice in *S.N. Shukla v. Ministry of Law & Justice*³⁰ to disclose the cabinet note and details about its decision to establish National Judicial Appointment Commission. Prior to this, the Department of Justice had refused an RTI application seeking the same information reasoning that it was a cabinet secret and therefore exempt under Section 8³¹.

Misuse

After going through the relevant judgements concerning the Right to Information Act, 2005, one can infer that it is being misused by casual or habitual information-seekers due to two primary reasons. The first one being, non-applicability of the *locus standi* rule for filing RTI applications. The second being, non-requirement of giving reasons for seeking information. Both of these loopholes “leave ample scope for non-serious information seekers to misuse it for their personal interest³².”

RTI is misused not only by the private citizens but by the politicians and bureaucrats as well for their own gains. Political parties have cleverly avoided coming under the scope of the Right to Information Act, 2005, because if they did then they would have to furnish details of the sources of their funding. The legislature has not entered this controversial arena for the sole reason that the legislature itself comprises of political parties.

It may be noted that at several occasions, the RTI applications, are not to satisfy one's doubt but also to derive various vicarious pleasures. “Public interest” which the Act intends to secure is missing in many RTI applications. There have been instances where applicants seek

policy related information and many a times the applicants have vested interests. At times the Act is used by people to harass their colleagues. There are numerous instances of applicants demanding irrelevant or frivolous information. Such a selfish and unintelligent use of the Act will defeat the very objective of the Act. It has also been observed that the Act is frequently being used by government servants, mostly disgruntled, under disciplinary proceedings to settle their service matters. It is also being misused by people interested in gathering evidence in their litigation cases³³.

There is also a likelihood that the applicant may not turn up to pay the additional fees once the information is ready. It is also unfortunate that the language being used by requestors is at times, intemperate and impolite, to say the least³⁴. The RTI Act is being used by business competitors of public authorities. In certain cases, some NGOs are indulging in getting projects sanctioned from international agencies which they complete by simply filing a RTI application in the Central Ministry concerned, which in turn has to procure the data from various states and districts. The Central Information Commission has now started looking at some alternative remedies while dealing with information requests. It now insists that if a normal internal mechanism for assessing information is good enough, recourse to RTI Act may not be permissible³⁵.

Conclusion

One may infer after much deliberation that the Right to Information Act, 2005, is a revolutionary piece of legislation, especially in the field of governmental transparency. The Judiciary combined with the Central Information Commission have, through their judgements, expanded the scope of the Act. It must be noted that the judiciary has balanced the right of one person to privacy and the right of another to information, very delicately. However, it would not be wrong to say that the Act suffers from a few drawbacks as well. The Act has ample scope

for rampant misuse and the Government needs to address these loopholes, failing which, any miscreant armed with the powers conferred by the Act, will be able to harass and hold the public authorities hostage.

(Endnotes)

- 1 * 1st Year, B.A.LL.B Hons., National Law Institute University, Bhopal.
- 2 Sec.3, Right to Information Act, 2005.
- 3 Freedom of Information Act, 2002.
- 4 Official Secrets Act, 1923.
- 5 Lovekesh Jain, "The Information Gleaner", pp.03, New Century Publication, 2010.
- 6 Sec. 5, Right to Information Act, 2002.
- 7 Sec. 20, Right to Information Act, 2002.
- 8 Raj Narain v. State of Uttar Pradesh, 1975 SCR (3) 333.
- 9 Art. 19(1)(a), Indian Constitution.
- 10 Central Board of Secondary Education v. Aditya Bandopadhyay, (2011) 8 SCC 497.
- 11 *Ibid.*
- 12 Sec. 4(1)(b), Right to Information Act, 2002.
- 13 *Supra* note 10.
- 14 *Ibid.*
- 15 Sec. 8, Right to Information Act, 2005.
- 16 *Supra* note 10.
- 17 Shri Rakesh Kumar Gupta v. Income Tax Appellate Tribunal, CIC/LS/A/2010/000378.
- 18 Uma Kanti & Ramesh Chandra v. Navodaya Vidyalaya Samiti, New Delhi, CIC/OK/C/2007/00362 & 367.
- 19 Shri Faqir Chand v. North Western Railway, Jabapur, CIC/OK/A/2008/00409.
- 20
- 21 *Supra* note 18.
- 22 Satish Chandra Tiwari v. Indian Oil Corporation Limited, CIC/MA/A/2009/001042.
- 23 *Ibid.*
- 24 The Reserve Bank of India v. Jayantilal N. Mistry, AIR 1 SC 2016.
- 25 Subash Chandra Agrawal v. Office of the Attorney General of India, 2015 (2) RCR (Civil) 338.
- 26 Subash Chandra Agarwal v. The Registrar, Supreme Court of India, 2015 (150) DRJ 628.
- 27 Adesh Kumar v. The Union of India, MANU/DE/1577/2015.
- 28 Jiju Lukose v. State of Kerala, 2016 (1) KLJ 32.
- 29 *Supra* note 15.
- 30 S.N. Shukla v. Ministry of Law & Justice, CIC/SA/A/2014/00478.
- 31 *Supra* note 15.
- 32 Paranjape, N.V., "Right to Information Law in India", pp.170, LexisNexis, 2014.
- 33 Jain, A. & Jain, A., "Promoting Right to Information Through E-Governance-A Case of E-Soochna and other initiatives in H.P.", pp.38, The Indian Journal of Public Administration, Vol.55, No.1, January-March 2009.
- 34 Saxena, P., "The Flip Side of RTI Act", pp.23-25, The Administrator, Lal Bahadur Shastri National Academy Journal of Administration, Vol.50, No.1.
- 35 *Ibid.*