

Lacuna In the Right to Information Act-2005 In India with Respect to Human Rights

Bapurao S. Bansode

Research Scholar, SRTMU Nanded.

Abstract:

International organizations like Common Wealth Human Rights Initiative strongly advocates that the Right to Information (RTI) is fundamental to the realization of rights and for effective democracy Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed. Says the preamble of the Indian Right to Information (RTI) Act. The act provides effective access to information for citizens of India, which is under the control of the public authority. It promotes transparency and accountability in the working of every public authority. The Right to Information Bill, 2005 was passed by the Lok Sabha on May 11, 2005 and by the Rajya Sabha on May 12, 2005 and received the assent of the President of India on June 15, 2005 and came into force on October 12, 2005. However, there are still some lacunae in the Act that need to be fixed up in order to ensure smooth functioning of the government. The present research work is based on the theoretical study of this topic. The theoretical work will deal with the literature relating to right to information of a citizen from its government. A comprehensive study shall be conducted through the websites, journals, and newspapers and books. On the basis of the above discussion, it is proposed to divide the research paper into the following parts:-

Keywords: Democracy, Freedom of expression, Human rights, Fundamental right Transparency in government, Implementation, RTI, lacunae.

Introduction:

International organizations like Common Wealth Human Rights Initiative strongly advocates that the Right to Information (RTI) is fundamental to the realization of rights and also for effective democracy, which requires informed participation by all. Right to Information Act, 2005 (hereinafter RTI Act) is a law which gives every citizen of India the power to obtain information under the control of a public authority in a purely cost effective and time bound manner. This Act also provides for penalty for any delay in providing the required information. It clearly states that every public authority shall maintain its records, which should be duly catalogued and indexed so as to facilitate the access to the same. It asks the public authority to proactively provide the information so that citizens of India have minimum difficulties to approach the concerned authority for the required information. Thus, this law seeks to regulate the actions of the people who govern the society and hence the onus is on the officer to justify why certain information was not provided or disclosed.

RTI Act promotes transparency and accountability in functioning of government institutions which function more effectively and objectively. Furthermore, it gives information to the citizens and thereby

enables them to participate in the democratic system. In totality, RTI Act ushers good governance. The law is very comprehensive and is applicable to the government at all levels i.e. Union, State and Local (Panchayats). It even includes NGOs which are financed by the government either directly or indirectly. However, there are still some lacunae in the Act that need to be fixed in order to ensure smooth functioning of the government. In this study, an attempt has been made to identify lacunae in the Right to Information 2005 in India.

Human Rights and RTI:

Documents such as the English Bill of Rights, the French Declaration, the American Bill of Rights and UDHR Freedom of Speech and Expression (Article 19 of UDHR) have all greatly influenced the makers of our Constitution. They borrowed all the important notions from those documents. The result was Fundamental Rights or part III of Indian Constitution, the great charter of the rights of Indian people.

Fundamental Rights in the Indian Constitution recognise certain Civil Rights. Civil Rights are invaluable privileges without which no person can attain his best self. Freedom of Speech and Expression Article 19, Clause(1), sub-clause (a). It implies that it is the Fundamental Right of everyone to freely express one's opinions and feelings by the word of mouth, writing, printing, pictures or any other mode.

Freedom of the press – This right is obviously part of freedom of speech and expression. It will be meaningless to talk about democracy and political freedom without having a free press.

The Freedoms of opinion and Expression.(Freedom of Information) (Freedom of the press) (Article 19 UDHR and Article 19 ICCPR)- Freedom of Information includes the right to seek, receive and impart information and ideas. Free media plays a great role in collecting and imparting information and ideas. Hence, a free media is an essential requirement in the exercise of freedom of information as it helps people to hold opinions and express them without interference.

Right to Information – For several decades the Indian citizen did not have the right to acquire information from the state agencies. Official matters were still shrouded under the cover of the Official Secrets Act which the British had passed in 1923. There was no transparency. It led to corruption, nepotism, inefficiency, lack of accountability and many other problems. The Right to Information is a basic right for good governance, democracy, poverty eradication and the practical realisation of human rights. Good governance is not achieved simply by having efficient government or even democratically elected government. The norms of freedom of information and the assurance of widespread citizen participation in public affairs and an active civil society is essential for the full realisation of democracy a system of government responsive to the need of its citizens and to develop a culture of human rights and accountability. The recognition of right to information is crucial to achieving these ends hence the need for guaranteed and legislated right to information.

Evolutionary History of Right to Information Act:

To intensify the process of paradigm shift from state centric to citizen centric model of Rural Development the Right to Information Movement in India came into existence in 1990s by resolving a major contradiction between the Colonial Acts, which prevents access to information and the post-independent Indian Constitution, which recognizes the seeking information as a fundamental right to promote transparent, accountable, responsible, participatory and decentralized democracy. As a result of grassroots movement for the Right to Information to combat corruption, deliberate delays, well informed citizens and to promote the Good Governance, the state has responded in the form of Right to

Information Act – 2005. With the introduction of the Right to Information Act – 2005 the Colonial Acts such as the official Secrets Act, Indian Evidence Act and the Civil Service Code of Conduct Rules, which contain provisions that restrict.

Fundamental Right to Information as ensured to the citizens in the Constitution has now become irrelevant. The National Campaign for People’s Right to Information (NCPRI) was founded in 1996. Its founding members included social activists, journalists, lawyers, professionals, retired civil servants and academics, and one of its primary objectives was to campaign for a national law facilitating the exercise of the fundamental right to information.

The international organizations like Common Wealth Human Rights Initiative strongly advocates that the Right to Information (RTI) is fundamental to the realization of rights as well as effective democracy, which requires informed participation by all. CHRI educates the public about the value of RTI and advocates at policy level for guaranteed access to information. The contribution of Common Wealth Human Rights initiative for the enactment of the national Right to Information Act in India was through providing aid to discussions, analysis of the Freedom of Information of Act and recommendations to the National Advisory Council, to all the Cabinet Ministers and the members of Parliament.

In response to the pressure from the grassroots movements, national and international organizations, the press council of India under the guidance of its Chairman Justice P.B. Sawant drafted a model bill that was later updated at a workshop organized by National Institute of Rural Development and sent to Government of India, which was one of the reference paper for the first draft bill prepared by Government of India. For some political and other reasons the bill could not be taken up by the Parliament

The coalition Government at the Centre led by United Progressive Alliance formulated an agenda called, “Common Minimum Programme”. One of the agenda of the CMP was the introduction of “Right to Information Act.” The CMP stated clearly, “the Right to Information Act will be made more progressive, participatory and meaningful. In order to look after the implementation of the Common Minimum Programme, the UPA constituted a National Advisory Council. In the National Advisory Council some of the activists like Aruna Roy, Jean Drezwas have been associating with the National Campaign for Peoples’ Right to Information Act consistently put the pressure on the UPA Government to pass the bill and to enact a law. In response to these efforts the Parliament passed the bill and the President of India consented the Act on 15th June 2005 and implementation process of the Right to Information Act has started since 12th October 2005.

Right to Information Act 2005:

The basic object of the Right to Information ACT is to empower the citizen, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense.

The Act has created a practical regime through which the citizens of the country may have access to information under the control of public authorities.

The citizen of the country should know what is Right to Information under the Act. A citizen has a right to seek such information from a public authority which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; taking certified samples of material held by the public authority or held under the control of the public authority.

A citizen can ask for information which already exists with the public authority. The public authority under the RTI Act is not supposed to create information; or to interpret information; or solve the problems raised by the applicants; or to furnish replies to hypothetical questions and this needs to be clearly understood by the citizen.

The citizen shall ordinarily be provided information in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or may cause harm to the safety or preservation of the records, supply of information in that form may be denied.

Exemptions from Disclosure – Sections 8 and 9 of the Act enumerate the categories of information which are exempt from disclosure. At the same time Schedule II of the Act contains the name of the Intelligence and Security Organizations which are exempt from the purview of the Act. The applicants may abstain from seeking information which is exempt under Section 8 and 9, and also from organizations included in the Second Schedule, except information relating to allegations of corruption and human rights violations.

How to apply for information – Application for seeking information should be made to an officer of the public authority who is designated as Public Information Officer (PIO). There is no prescribed form of application should, however, contain the name of the applicant and his complete postal address. Application may be sent without specifying the name of the PIO at the address of the public authority.

If a citizen is unable to make a request in writing, he may seek the help of the PIO to write his application.

A citizen who desires to obtain any information under the Act, should make an application in writing in English or Hindi or in the official language of the area in which the application is made. The applicant can send his application by post or through electronic means or can even deliver it personally in the office of the public authority. The application can also be sent through a Central Assistant Public Information Officer appointed by the Department of Post at sub-divisional level or other sub-district level.

Most importantly, the applicant is not required to give reasons for seeking information.

Fee for procuring Information- The citizen, along with the application, should send application fee in the form of a demand draft or a banker's cheque or an Indian Postal Order of Rs.10/- (Rupees Ten), payable to the Accounts Officer of the public authority. The payment of fee can also be made by way of cash against a proper receipt.

The applicant may also be required to pay further fee towards the cost of providing the information, as intimate to the applicant by the PIO as prescribed by the Right to Information (Regulation of fee and cost) Rules, 2005. Rates of fee as prescribed in the Rules are given below:

- A. Rupees two (RS.2/-) for each page (in A-4 or A-3 size paper) created or copied;
- B. Actual charge of cost price of copy in larger size paper;
- C. Actual cost or price for samples of models;
- D. For inspection of records, no fee for the first hour; and a fee of rupees five (Rs.5/-) for each subsequent hour (or fraction thereof);
- E. For information provided in diskette or floppy rupees fifty (Rs.50/-) per diskette or floppy; and
- F. For information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication.

These rates may vary for public authorities under State Government.

If a citizen belongs to below poverty line (BPL) category, he is not required to pay any fee. The application not accompanied by the prescribed fee of Rs.10/- or proof of the applicant's belonging to below property line, as the case may be, shall not be a valid application under the Act and therefore, does not entitle the applicant to get information.

Disposal of Request- The PIO is required to provide information to the applicant within thirty days of the receipt of a valid application. If the information sought for concerns the life or liberty of a person, the information shall be provided within forty-eight hours of the receipt of the request. If the PIO is of the view that the information sought for cannot be supplied under the provisions of the Act, he would reject the application. However, while rejecting the application, he shall inform the applicant the reasons for such rejection and the particulars of the appellate authority. He would also inform the applicant the period within which appeal may be preferred.

If an applicant is required to make payment for obtaining information, in addition to the application fee, the Public Information Officer would inform the applicant about the details of further fees along with the calculation made to arrive at the amount payable by the applicant. The PIO is under no obligation to make available the information if the additional fee intimate by him is not deposited by the applicant.

If the PIO fails to convey decision on the request for information within the period of thirty days or forty-eight hours, as the case may be, the information may be deemed to have been refused.

First Appeal - If the citizen is not supplied information within the prescribes time of thirty days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. Such an appeal should be filed within a period of thirty days from the date on which the limit of 30 days of supply of information is expired or from the date on which the information or decision of the PIO is received. The appellate authority is required to dispose of the appeal with in a period of 30 days (or 45 days in exceptional cases) of the receipt of appeal.

Second Appeal - If the appellate authority fails to pass an order on the appeal within the prescribed period or if the appellant is not satisfied with the order of the first appellate authority, he may prefer a second appeal with the Information Commission within ninety days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

The rules framed under the Act details out the procedure for preferring the appeal and also the documents to accompany the appeal.

Lacunae in RTI :

RTI Act promotes transparency and accountability in functioning of government institutions which function more effectively and objectively. It gives information to the citizens and thereby enables them to participate in the democratic system. The law is very comprehensive and is applicable to the government at all levels i.e. Union, State and Local (Panchayats). It even includes NGOs which are financed by the government either directly or indirectly.

Despite of all its merits, RTI Act only confers rights but does not prescribe any duties. There have been demands that certain duties and responsibilities should also be incorporated in the Act. Also no additional resources, which include manpower, were being provided to the Central and the State agencies to implement the Act. There is no provision for to deal with discouraging annoying and vexatious demands which deprive genuine information seekers. There is an additional issue of large number of RTI cases pending at various levels and hence there is a need for reducing pendency of cases

at all levels lest the law seems to be ineffective and dead. The government spends a lot of money for disposal of a case and therefore there is also a requirement to evolve a cost effective strategy and capacity building to handle this increased load. The range and scope of exemptions under the Act is narrower. Access to information under the RTI Act is very extensive and with minimum exemptions. Also, the information may be released if the public interest in disclosure outweighs the harm to the protected interest and hence we find that there is an overriding effect to the Act.

The emerging problem of misuse of the Act also needs a serious check. This is done due to various reasons such as using abusive language in the applications, repeated applications on a single issue, applications seeking voluminous information and applications seeking old and complex information, false claims of public interest and risk to the life and liberty, misuse of BPL status and Blackmail which is often seen in such a process.

The RTI Act does not have any provisions for imposition of fine or penalty on the applicant for any misuse of the Act. This has been deliberately not provided as the current disposition and is strongly in favour of the establishment.

Apart from these issues, the Act has been criticized on various grounds. It provides for information on demand but does not stress on information related to the matters of food, water, environment and other survival needs that must be given sufficiently by the public authorities. Also, the Act does not greatly emphasize active involvement in educating people about their right to access information which is most vital in our country with high levels of illiteracy and poverty. That is to say that there is no promotion of a culture of openness within official areas. Therefore, if education is not fully widespread and people are not fully aware about the possibilities under the Act, it would just remain on paper and will not turn into actuality. There are restrictions on accessing information pertaining to security, foreign policy, defence, law enforcement and public safety which are quite standard but the RTI Act also excludes cabinet papers, including records of the council of ministers and other officials and thereby effectively shields the whole process of decision making from compulsory disclosure.

Another scornful criticism of the RTI Act is the recent amendment that was to be made allowing for file noting except relating to social and development projects to be given exemption from the purview of the Act. As we know that file noting are most crucial when it comes to the policy making of the government, it is these notes that hold the rationale behind the actions or the change in certain policy i.e. why a certain act was done or withheld to prosecute a corrupt official. Therefore, the government's intention to exempt the file noting from the purview of the Act has come in for stringent criticisms.

Now, pointing out some faults in the clauses itself:-

- Firstly, Clause 5 of the RTI Act gives an obligation to the public authority to designate Public Information Officer (P.I.O). Adding to that the Act has not prescribed any criteria or qualification for the P.I.O. to designate. As a result, there are so many public offices all over where the employees are working in a clerical cadre and thereby contributing to adding more lacunas to the Act.
- Secondly, Clause 6 of the RTI Act does not specify or limits the quantum of information to be gained by an individual or a group of people i.e. Association/Organization, nor its requirement or necessity.
- Section 4 says that there should be computerization of records which in actuality is not happening.
- Section 4(1) b talks about the Proactive Disclosure is not periodically updated and this make it mere paper formality.

- Section 4(6) of the RTI Act says that government authorities ought to voluntarily and suomotu disclose information. However, this provision is unclear as to who will be held accountable for disclosing of the information in case the government authorities do not act on the request.
- Section 8(d) and 8(j) are generally worded and are greatly misused due to their wide parameters and thus they need critical scrutinization.
- Section 19(3) provides for filing of a second appeal before the Central Information Commission (CIC) or the State Information Commission (SIC). However the RTI Act does not provide any time limit for the CIC or SIC to give the decision of the second appeal. Since the person requesting information is left with no choice but to approach the court if the decision is not received for an unreasonably long time. Other than that the person can only send reminders to the CIC or SIC and pray for an early decision.
- The section 20 of the Act, which deals with penalties, does not specify on how to recover the penalties imposed on ignorant officials who have acted malafides ways and the Act is also silent on the quantum of the penalties. This makes it difficult for the Chief Information Commissioner's to recover the penalties.
- Section 26 of the Act says that government should educate the masses about the RTI act but this isn't actually happening effectively.

Adding on to the open ended nature and vagueness of the Act there is lack of awareness among the citizens related to which public authority has the required information is the key problem with the Act. The government's move to exempt CBI from the RTI Act has met with widespread criticism from activists who have described it as a "retrograde" step. Dilution of the Act has been deliberately done. Most of the Information Commissioners are ex IAS, while the Act clearly states that information commissioners may be selected from diverse backgrounds like technology, law, journalism etc. Thus, the procedure for appointment should be carefully researched. There is a need for capacity enhancement in Public Authorities for handling RTI queries since ten information commissioners are too less for a country like ours with 2 billion population.

The weaker sections of society are hesitant in filing RTI applications because sometimes it involves submission of application fee in cash and the person has to be physically present in front of the PIO. Hence, usage of RTI is limited to middle class and social activists only. When an information request is transferred under (2f) to a private body, RTI does not provide any legal measures to seek compliance from a concerned private party.

Conclusion:

Hence, the solution lies in not only empowering the ordinary people of the country by which the nation can progress to its greatness. By the enactment of the RTI Act, the government has taken a small step but a significant one towards that goal. Thus, in the end, I would like to give my suggestions for better implementation of the RTI Act, though some of these might have been covered under the Right to Information (Amendment) Bill, 2013. Firstly, the government has to take keen interest for the proper implementation of the Act and strive towards creating awareness among the masses. Apart from this government should soften the tough procedures so that it becomes easy for the applicants to retrieve information. Most importantly, the government should think towards scrapping off the fees at the time of filing applications which was also recommended by a parliamentary committee and was welcomed by the then Central Information Commissioner Wajahat Habibullah when the Act was only two years old.

Therefore, the need of the hour is to make the Act accessible at the grass-root level as it has not reached the common man yet and is still utilized by the creamy layer of the society. Also, the accountability of the bureaucrats should be duly verified. The bureaucrats should make sure that the applications received should be precise and clear and try to minimize the misuse of the Act. Thus, the gap between government and citizens should be relined through effective implementation of RTI Act. Once this is done so that, the RTI Act would be viewed as being properly and fully utilized.

References:

1. Analysing the Right to Information Act in India –Briefing Paper -2010.
2. The Right to Information- An Intervention towards Participatory Governance –Mrudul Nile – Navvishnu Publication 2014.
3. A Handbook The Right to Information -2005 – YSHADA Pune -2011.
4. Right to Information: For Inclusion & Empowerment RTI FELLOWS'REPORTS Shobha S V, Shibani Ghosh, Sowmya Sivakumar, Nishikanta Mohapatra Edited by Sunil Dutt Indian Institute of Public Administration Anuradha S.Chagti & Sarita Nair Do PT. Government of India -2013.
5. www.rti.gov.in
6. www.cic.gov.in
7. www.righttoinformation.gov.in
8. www.humanrightsinitiatives.org
9. www.article19.org