

Right to Information Act 2005: Operational Issues and Major Concerns

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Abstract

The participants in a democratic system have a right to know what, how and why of any decision, change or continuity, regarding or of its functioning. The right is inherent in citizens by virtue of their owning the system. Therefore, citizen's right to information follows, as a natural corollary in a democracy and any attempt to wide information or to create opacity cannot augur well for its health. Some conscious citizens and civil society organization have constantly raised the demand for an effective provision for the right to information. Dwelling on the relation of constitutional right to freedom of expression and the right to life, various judicial pronouncements endorsed its legal justification. It is expedient to provide for furnishing certain information to citizen who desires to have it. In a government where all the agencies of the public must be responsible for their conduct, there cannot but few secrets. The people have a right to know every public act, everything that is done in a public way, by their public functionaries. The present research work is based on the theoretical study of the topic. The theoretical work will deal with the literature relating to right to information of the citizen from their 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: Democracy, Freedom of expression, Transparency in government, Decision-making process, bureaucracy, Local Government, Implementation, Constitutional right.

Keywords: Right to Information, Democratic Accountability, Freedom of Expression, Government Transparency

The Real 'Swaraj' will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused- Mahatma Gandhi

1. Introduction

The participants in a democratic system have a right to know what, how and why of any decision is made or change by the government and its functioning. This right is inherent in citizens by virtue of their owning the system. Therefore, citizen's right to information follows, as a natural corollary in a democracy and any attempt to wide information or to create opacity cannot augur well for its health. Some conscious citizens and civil society organization have constantly raised the demand for an effective provision for the right to information. Dwelling on the relation of Constitutional right to freedom of expression and the right to life, various judicial pronouncements endorsed its legal justification. It is expedient to provide for furnishing certain information to citizen who desires to have it.

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not to justify, their acts is the chief safeguard against oppression and corruption.

2. International Perspective

According to information provided by Wikipedia over 85 countries around the world have implemented some form of such legislation. Sweden's Freedom of the Press Act of 1766 is the oldest. The Research, Reference and Training Division of the National Documentation Centre on Mass Communication (under Ministry of Information and Broadcasting) add value to this information. According to them, Sweden has been enjoying the right to know since 1810. It was replaced in 1949 by a new Act that enjoyed the sanctity of being a part of the country's Constitution itself. The principle is that every Swedish citizen should have access to virtually all documents kept by the State or municipal agencies. In USA, the first amendment to the Constitution provided for the freedom of speech and expression. The country had already passed the Freedom of Information Reform Act 1986, which seeks to amend and extend the provisions of previous legislation on the

same subject. In Australia, the Freedom of Information Act was enacted in December 1982. It gave citizens more access to the Federal Government's documents. With this, manuals used for making decisions were also made available. However, of particular interest to us in this case is the British system of providing information to the public. India has followed the British system of administration so far and one will not be wrong in inferring that India has not changed course on this information issue. In Great Britain, Official Secrets Act, 1911 and 1989 are intended to defend national security by rendering inaccessible to the public certain categories of official information. However, laws like Local Government (Access to Information) Act, 1985; the Environment and Safety Information Act, 1988, and the Access to Health Records Act 1990 have reflected the British government's recognition that access to information is an essential part of its accountability. Russia came on board on Wednesday, January 21, 2009 when the Russian Dumas passed on the third reading Russia's Freedom of Information Act .

In South Asia it might be natural to expect that India's democratic traditions will put her ahead of all other neighbours in respect of enacting laws for public access to information. However, a surprise revelation came up in a recent workshop held in New Delhi. The workshop on 'Towards more Open and Transparent Governance in South Asia,' first of its kind at the regional level, saw participants from Pakistan, Bangladesh, Nepal, Sri Lanka, Afghanistan, Bhutan and Maldives. Participants came to know that Pakistan was ahead of India by three years in framing an RTI law. Pakistan first promulgated a freedom of information ordinance in 1997, which, however, lapsed for want of interest. In 2002, General Pervez Musharraf pushed the idea, resulting in a fresh presidential ordinance in 2002. It has since become part of the 17th Amendment to the Constitution and enjoys the status of law. In February 2004, the Pakistan government promulgated the Freedom of Information Rules, 2004, which now applies to all public bodies. But some observed that this temporal advantage notwithstanding India had a much better track record in this regard. For example, Sameer Hamid Dhondy of a Karachi-based advocacy group said though Pakistan had a head start on RTI, the Indian law was far more comprehensive and deserved praise for allowing access to file notings and including a penal provision to deter delay in providing information. The consensus from the conference was that there is very little RTI awareness in this region.

3. National Perspective

The Right to Information Act (henceforth RTI) was notified in the Gazette of India on 21st June, 2005 and it became fully operational from 12th October, 2005. Since its operation, the RTI Act has proved to be the most path-breaking and historic piece of legislation. It has generated tremendous impact in matters of citizens' democratic

rights, monitoring public good, curtailing corruption and improving governance. With increasing levels of education and awareness among the rural and urban public, RTI Act has proved to be a potent weapon for solving a number of problems. Citizens are now using their statutory right to be informed to get any sort of information which lies in public domain. Be it may be regarding utilisation of public funds, progress in ongoing projects, state of civic services, distribution under public distribution system, access to answer sheets, disclosure of cut off, disclosure of question-wise marks, patient's right to his treatment records, for obtaining driving licence and passport and the list goes on. Moreover, the Right to Information Act is a very potential tool for strengthening democracy. This new law empowers Indian citizens to seek any accessible information from a Public Authority and makes the Government and its functionaries more accountable and responsible. Logically therefore, RTI has helped to increase transparency in government or public dealings.

4. Major Concerns on the Subject Matter

Some of the major concerns in relation to implementation of RTI Act as expressed from various quarters may be considered as below:

(i) Disclosure of file notings

One of the most debatable and important concerns raised in respect of RTI Act from the very beginning is regarding disclosure of file notings. The government and bureaucracy are concerned over the exposure of file notings to the public that "It will act adversely against the requirement of free and frank opinion by the public officials in decision making process" In this context it would be appropriate to mention that file notings are ad hoc written notes added to file by officials and thus can give a critical insight into the government decision-making process. The exclusion of file notings would undermine the spirit of bureaucratic openness and accountability, which the law embodies. The purpose of the Act is to open government's decision-making process to public scrutiny. In this context it would be appropriate to consider what record is. Section 2(i) (a) of the Act defines 'record' to include any document, manuscript and file. The Manual of Office Procedure defines 'file' to cover 'notes' and 'appendices to notes'. Further under Public Records Rules, 1997 'file' means 'a Collection of papers relating to public records on a specific subject matter consisting of correspondence, notes and appendices thereto'. Thus from a legal and technical point of view the term file as understood in Section 2(i)(a) of the RTI Act includes file notings and it can legally be disclosed as per the requirement of the law. In addition the disclosure of notings will certainly ensure application of mind of the decision-maker to the issues involved and thereby enhance the quality of decisional process. It may also be

mentioned that compulsion of disclosure of file notings will reduce to a great extent the administrative culture of putting something as part of record on dictation or in a mechanical manner. Disclosure of file notings may also be considered from the point of view of the promoting the overall culture of good administrative practice. It would be appropriate to mention the decision of the Central Information Commission that the "file notings" were an integral part of a file. It was further held by the two-member bench of the Commission that a citizen has the right to seek the information in file notings unless covered by the usual exceptions under Section 8 of the RTI Act.

(ii) Cost of Implementation

Another major concern has been the cost of implementing RTI Act. Such concerns keeping in view the actual facts viz; the savings to the government through reduction in the level of corruption and maladministration by implementation of the Act would be more than the cost on its implementation. Additionally, it may also be mentioned that the total cost on administration of nation certainly comes from the taxes, which the citizens pay to the government and the cost on implementation of RTI would be negligible as compared to the total cost on administration. This may also be said other way round that the taxpayers have all the right to know that how their government is making expenditure of their money. Thus, the concern relating to cost on implementation of RTI Act has been blown out of proportion and ill-founded.

(iii) Misuse of Information

With the passing of Right to information Act, 2005 any citizen of India can ask for any information from public authority, any information about public servant etc. This is a marvelous step in the direction of transparency. However, what to do of dummy RTI applications i.e. after filing the application all correspondence are returning undelivered than what could be the rationale of this Act. Therefore a good law like Right to Information (RTI) was being misused to ask irrelevant and intrusive questions seriously impeding the working of the concerned authorities. There has also been the apprehension that the information sought under the RTI Act would be misused or used to blackmail officials or organisations. In this context it should be remembered that this law can be used to access the truth, therefore, it may be said that how one can misuse the truth. The situation of blackmailing the officials or organisations will only emerge when the official is placed in a privileged position to maintain secrecy of sensitive information. It is the situation of secrecy coupled with unguided discretion of authority, which creates a situation of blackmailing in favour of official position and not the other way round. It

may further be said that the scope of misuse or blackmail will be reduced or minimised to a great extent in a situation of transparency and free access to information. In this way transparency regime is a sure guarantee against chances of misuse or abuse of public office. Transparent exercise of public power by public bureaucracy is, therefore, a guarantee against the misfeasance, non-feasance and late-feasance of public power.

(iv) Choice of Information Commissioners

This is yet another major concern that the majority of Information Commissioners appointed at both the Centre and the state levels have been retired high-ranking members of the bureaucracy. One of the major concerns is that it is they who were part of the secrecy regime in the functioning of public administration system for a long period of their career, therefore, their mindset may not be in favour of promoting transparency. Yet another strong reason, which may go against such appointments, is the requirement of the Act itself. The Act requires that the Commissioners may be appointed from the category of persons having "eminence in public life with wide knowledge and experience in law, science and technology, social science, management, journalism, mass media or administration and governance". In view of this the appointment of retired bureaucrats in majority may not be justified rather goes against the express provision of the Act. In addition, this may also give an impression that all those who are responsible for administrative culture of secrecy are now trying to ensure transparency. According to a study 58 per cent Information Commissioners are from administration and governance sector. Out of 60 Information Commissioners 27 were retired IAS officers.

(v) Judiciary and Government threat to RTI

The government and Judiciary is not very keen on the RTI Act and may try to amend it in order to render it toothless. The government and judiciary pose a serious threat to Right to Information Act. The widely prevalent and dangerous trend of resistance to transparency in their functioning by those in power will gradually kill Right to Information Act. Government across the country, irrespective of which party they belong to, follow a pattern of mis-governance and are opposed to transparency. The judiciary on the other side has been granting stays on the orders of the Information Commissions; this will eventually kill the Act. Government departments are rushing to courts to get stay orders against the decisions of Information Commissions to provide information to common man. Delays in finally deciding the matters destroy the spirit of the Act. Further, the government is flouting all norms in the appointment of Information Commissioners. There is no transparency in the appointment of Information Commissioners. No

norms are being followed and Information Commissions are being turned into parking lots for favourites of the government of the day. As a result the four year old law to provide information to the common man is under threat of being weakened by the government mindset of amending it for its convenience. Now the Cabinet has cleared the Law Ministry's controversial draft Bill, which while making it mandatory for judges, their wives and children to declare their assets annually, also lays down that all such details will be kept confidential. It was this confidentiality that the judiciary has been lobbying for to remain outside the ambit of the RTI Act. This Bill will soon be introduced in the Parliament. Justice J. Verrna, Former CJI who had made the asset declaration for the judges mandatory in 1997, called the new Bill 'a joke'. Former Supreme Court Judge Justice V. R. Krishna Iyer said the government lacked the political will to reform the judiciary. He said that it is shameful that judges want secrecy and the government is abetting it.

5. Operational Issues on the Subject Matter

The passing of a law is no doubt one of an extremely important part of securing the right to information but it is not the ultimate step. It is the effective implementation of the law, which makes the statute a success and the right to information meaningful. There are a number of aspects, which are required to be taken into consideration for effective implementation and operationalisation of the right to information legislation. Building public awareness, promoting an informed civil service, encouraging cultural change within the civil service, developing an efficient and well-organised information management system are some of important facets, which require immediate focus to realise the right to information. As regards creating public awareness is concerned, it is incumbent on the government to educate and make aware the public of their right of access to information, especially how they can apply, as part of promoting a culture of openness and responsiveness within government. The government supported public information campaigns are extremely important tools to achieve the goals of right to information. Campaigns need to employ a variety of communication mechanisms including print and electronic media and all other available modes of communication to reach the widest possible segments of the public, including those in rural areas and those who are illiterate. Governments should also produce and distribute literature in a variety of forms including governmental websites on how citizens can use their rights under the legislation. Effective national information and communication strategies to make information available are an essential part of open and transparent government. The media also has an important role to play in raising awareness on the right to information.

To have an informed civil service, provision of training on right to information for employees is an important

requirement. Such training should deal with why access to information is important, the scope of any law, the procedures by which people request information and how requests should be responded to, how to maintain and access records. Such training programmes will develop a positive mind set among the officials and the law will be seen as a positive benefit to officials, rather than burden. There is a need to develop cultural change among the civil servants and public officials. Governments with a long history of secrecy will tend to resist releasing information. Public officials weaned on secrecy tend to regard information as power and are reluctant to give it up. They therefore, delay the processing of information. In the administrative set-up public officials tend to regard the files they hold as their own personal property. Within traditionally secretive bureaucracies, information itself is a form of power and officials are reluctant to share it with other officials and most rarely with the public. They lack transparency in regard to the information they hold. This is a formidable challenge to change the mindset of the bureaucracy. The training programmes to certain extent can be important in tackling the ingrained mindset that may go back for several generations. For right to information law to be effective, institutional supports both at national and local levels are required. Processing of requests for information must be facilitated through effective decentralised structures and mechanisms. The chaotic nature of the information and public records system, the lack of proper archives and the lack of any consistent system for managing information across the government are major institutional problems. Strengthening information and records management systems is thus need of the hour to make the right to information more meaningful.

Concluding Remarks

The Right to Information Act 2005 has ushered in a new era of transparency and people's access to information in India. The implementation of the Act is gathering momentum with each passing day. Government, civil societies and the media have generally lent their might to the realization of citizens' right to information through the revolutionary Act. But the exemptions contained in the Act needs a fresh look. Exemptions need to be kept at a minimum to ensure effectiveness of the Act. Again, private enterprises cannot be allowed to remain out of the ambit of the Act as they are handling public money and have been involved in scams that have a direct bearing on public life. The long tradition of secrecy in our administrative culture influenced by the colonial hangover and feudal mindset, to break these negative influences, more stringent penal provision is needed to ensure personal liability of the official concerned in the case of colourable refusal of Information. What is most important at present juncture is to give honest chance to the Act to operate without negative stumbling blocks and bottlenecks. There is a special duty cast upon the

organizations of the civil society and probonopublico to be vigilant so that the objectives of the Act should not be frustrated by the bureaucratic manipulations. The heart and soul of any beneficial legislative enactment always lie in its implementations. The success of the Right to Information in India is an open challenge in our administrative culture, public service ability of adjustment and public services' commitment to the public cause. Let us hope positive response from our bureaucracy in the successful operationalisation of the Right to Information.

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