

RIGHT TO INFORMATION ACT: AN ENDEAVOUR FOR DEEPENING DEMOCRACY

CHINTAMANI ROUT

Associate Professor, Department of Law, NEHU, Shillong, Meghalaya, India

ABSTRACT

The Right to Information Act, 2005 is a legislation passed after years of people's struggle for securing transparent, accountable and public participatory governance. The passing of this law by the parliament marks a notable milestone in the evolution of the Indian democracy. In this Act the authority mainly responsible for the dissemination of information and for responding to the request for information. The State Acts also facilitate access to information by making it obligatory for each public authority to maintain its records and make available all the basic information that a citizen may require about its organisation, functions and personnel.

The competent authority/public authority/every office of the State Government or In-Charge of Office, is under a statutory obligation to maintain and update all its records consistent with its operational requirements, duly catalogued and indexed, in accordance with the procedure laid down under the relevant law. Since the Supreme Court has held that the right to information was included within the right to freedom of speech guaranteed by Article 19 (1) (a) and since that right is guaranteed only to citizens, most of the state Laws on RTI have provided for citizens alone to be entitled to seek information. Rule of Law, equal participation, transparency, accountability and responsibility of public authorities are basic elements of good governance. Right to information has been said to be a powerful tool for strengthening democracy and enhancing good governance.

KEYWORDS: Information, Democracy, Competent Authority, Public Authority, Central Information Commission, Central Public Information Officer, Record

INTRODUCTION

The Constitution of India proclaims India to be a Sovereign, Democratic, Social, Secular, and Republic and secure to all its Citizens justice, social, economic and political, liberty of thought, expression, belief, faith and worship. The constitution confers fundamental rights on individuals such as the right to equality, the right not to be discriminated on grounds only of religion, race, caste, sex etc; the right to equal opportunities of public employment; the right not to be discriminated on the grounds only of religion, race, caste, sex or descent in respect of employment under the state; the right to six freedoms such as the freedom of speech and expression, the freedom of assembly, the freedom of association, the freedom of movement, the freedom to reside and settle in any part of the territory of India, and the freedom to practice any profession or to carry on any trade, business or occupation throughout the territory of India.

Article, 19(1) (a) protects and guarantees freedom of speech and expression to all citizens. But freedom of speech and expression so granted shall not affect the operation of any existing law or prevent the state from making any law putting reasonable restriction on freedom of speech and expression on any of the grounds given in Article 19(2). For example, for preserving sovereignty and integrity of India, in the interest of the security of State, friendly relations with

foreign states, public order, decency or morality, contempt of court, defamation or incitement to an offence. Freedom of speech is the mother of all liberties; rest of the other five are linked to it. 'Peaceable Assembly' is necessary for speech and expression, free movement, residence, profession and business are all species of freedom and expression.

Article 19(1) and (2) are the two clauses in which perfect balance in between individual and social interests is expected. It is law which balance one against the other. Clause (1) enumerates individuals, six freedoms Clause (2) to (6) provides that State can put reasonable restrictions on these freedoms but reasonable restrictions cannot be arbitrarily imposed. Freedom of 'expression' is more valuable and effective than even that of speech.

Right to propagate one's conviction, ideas or bent of mind with a view to create restrictions on the listener or recipient through any mode of speech or expression like words of mouth, writing, reading, painting, printing or any other communicable medium like radio, T.V, newspaper, book, Article or visible representation, such as gestures, sign are all included in freedom of expression. Giving smile, frowning in anger without speaking are expressions. Two are not the same. There may be expression without speech.

Right to Know and Right to Tell

In *Srinivas v State of Madras*, Air 1931 Mad 70, it was decided that the "freedom of speech and expression includes liberty to propagate not one's views only; it also includes the right to propagate or publish the views of other people." Otherwise this freedom would not include the freedom of the press. Freedom of expression has four broad special purposes to serve; (1) it helps an individual to attain self-fulfilment (2) it assist in the discovery of truth; (3) it strengthens the capacity of an individual in participating in decision making; and (4) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

All members of society should be able to form their own beliefs and communicate them freely to others. The fundamental principle involved here is the right to know In the case between *Indian Express Newspaper v Union of India*, (1985) 1 SCC 641, the Apex Court was of the opinion that freedom of speech and expression believe in the participation of people in the administration and the approach of the Government should be more cautious while levying taxes on matters of concerning news paper industry than while levying taxes on other matters.

Freedom of speech includes liberty and protection of law to both the speaker and also the audience. One has the right to speak, the other has to receive that what is spoken. It is this right which is guarded by law. Prior to Right to Information Act, 2005, Nine (9) states in India have already enacted identical laws. These states were; Goa, Tamil Nadu, Delhi, Karnataka, Madhya Pradesh, Rajasthan, Assam, Jammu & Kashmir and Maharashtra. *State of U.P. v Raj Narain*, is authority for the proposition that Article 19(1) (a) includes not only right to communicate, it includes right to receive the information communicated. Right to know is the basic right of the citizens of any free country and is guaranteed and protected by Article 19(1) (a).

Without adequate information, a person cannot form an informed opinion and democracy is mockery without informed citizenry. The Supreme Court was of the view that in a system like India, where Government is responsible to Parliament and to people, there is nothing like secrecy in public officer's conduct. The people have the right to know every public act, everything that is done in public way by their public functionaries. They are entitled to know particulars of every public transaction in all its bearings.

Right to Information Act, 2005 and its Object

This was an Act to provide for setting out 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 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 or incidental thereto. Whereas the Constitution of India has established democratic republic and democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and hold Governments and their instrumentalities accountable to the governed.

It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government. International Conventions like Universal Declaration of Human Rights of 1948 adopted on 10th December declares under Article 19 that, “everyone has the right to freedom of opinions and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” There are two other supporting provisions in the declaration. Article 20 confers the right of peaceful assembly and of association, and Article 21(a) gives the right to take part in the government of the country.

Development of RTI Law in India

Government around the world is providing information about their official activities to their citizens for better understanding and transparency of their day-today administration. In the last two-three decades, many of the countries have enacted formal statutes guaranteeing their citizen’s right to access the Government information. The United States of America was the first country among the leading democracies to enact the freedom of information Act, 1966. Australia, New Zealand and Canada 1982, and England also enacted, Freedom of Information Act, 2002. In India, several states have also passed laws to provide for the right to information.

Tamil Nadu and Goa became the first two states to legislate on the subject in 1997. Madhya Pradesh in 2003 and Rajasthan enacted the right to Information Act, in the year 2000. Then one by one, Karnataka in 2000, Maharashtra in 2003, Delhi and Assam also enacted Right to Information Acts by 2002. The Parliament of India has enacted the Right to Information Act (Act 22 of 2005) which was notified in the official Gazette on 21st June, 2005. The Bill in its preamble states that the Act is passed because ‘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 Government.’

Right to Information under the Act

The Right to Information has been enacted with intention to promote openness, transparency and accountability in administration. In order to analyse the Right to Information Act, 2005, the Act may be divided in the following manner. Definition to the term information section 2 (f) states “any material in any form, including records, documents, memories, e-mails, opinions, advices, press release, 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 other law for the time being in force.” Record includes any document, manuscript and file; any microfilm, microfiche, and facsimile copy of a document; any reproduction of image or images embodied in such microfilm; and any other material produced by a computer or any other device. The right to information means the right to access any material or record described above which is held by any public authority and includes the right to inspection of work, documents and records, taking notes, extracts or certified copies of documents or records; taking certified copies of materials; obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print outs where such information is stored in a computer or in any other device.

Responsibility of Public Authority

The Act does not merely oblige the public authority to give information on being asked for it by a citizen but requires it to suo moto make the information accessible. This is the most important provision which provides for an information regime.

Section 4 (1)(a) requires every public authority to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated. Section 4(1)(b) requires the public authority to publish within 120 days from the enactment of this Act; (ii) the powers and duties of its officers and employees; (iii) the procedure followed in the decision making process, including channels of supervision and accountability.

Section 4(2) says that the Public authority has a mandate to strive to provide suo moto as much information to the public at regular intervals through various means of communications, so that the public have minimum resort to the use of this Act to obtain information. Section 5 provides that every public authority at the central and state level has to designate Central/State Public Information Officers at the Sub-Division or Sub-District levels to discharge various functions in providing for access to information.

Procedure for Accessing Information

Procedure for accessing information under Right to Information is very simple and people friendly. Section 6(1) prescribes that an application to obtain information can be made in writing or through electronic means either in English or Hindi or in the official language of the area, accompanying fees. In case the applicant is not able to make a request in writing, the concerned Public Information Officer is required to accord all reasonable assistance to such applicant to get the oral request reduced to writing.

The Right to Information Act, 2005 also strikes to avoid undue delay in the disposal of applications seeking information. The public information officer has to either provide the information requested for or refuse the same on the ground provided for in the legislation, within a period of thirty days of making the request. Section 7 says, where the information sought concerns of the life and liberty of a person, then it must be provided within forty eight hours. Non-provision of the information or no reply within the time limits shall be deemed as refusal of the request. Section 8 deals with information that is exempted from the purview of this Act. Section 20 of the Act provides penalty for such an act of refusal or silent.

Mechanism for Redressing Complaints

Chapter III and IV of Right to Information Act provides for the constitution of Central and State level Information Commission to redress complaints and dispose of appeals (Sec.12(i) and 15. The Central or State Information officer as the case may be shall receive and inquire in to a complaint from any person. The Commission under section 18(2) on being satisfied on the reasonableness of grounds to inquire into the matter may invite an inquiry in to the complaints received by the office. Section 18(3) empowers the Commission, the power of Civil Court whiling trying a suit under Civil Procedure Code, 1908 in respect of the following matter.

- Summoning and forcing the attendance of persons and compelling them to give oral or written evidence on oath and to give oral or written evidence on oath and to produce the documents.
- Requiring the discovery and inspection of documents.
- Receiving evidence or affidavit.
- Requisitioning any public record or copies thereof from any court or office.
- Issuing summons or examination of witnesses or documents and
- Any other matter which may be prescribed.

Appeal and Supervision

Any person who does not receive a decision within the time limit specified for that purpose in various provisions of this Act (Section7) or is aggrieved by the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within 30 days from the expiry of the time limit specified for giving response or from the receipt of such a decision, prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer, as the case may be, in such public authority. Such officer may, however, admit appeal after the expiry of the above period if she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Where the Central Public Information Officer or the State Public Information Officer decides to disclose information relating to a third person, such third person shall also appeal to the officer senior in rank to the Central Public Information Officer, as the case may be, in the public authority within 30 days (Section 19).

Second Appeal to the Central Information Commission/State Information Commission

A second appeal against the decision given by the above senior officer in the public authority shall be made within such decision was received to the Central Information Commission or the State Information Commission, as the case may be [Section 19(3)]. The Central Information Commission or the State Information Commission may, however, entertain an appeal after the expiry of the above time limit if it is satisfied that the appellant was prevented from filing appeal within the stipulated time. If the decision of the CPIO or the SPIO, against which an appeal is preferred relates to information of a third party, the CIC or the SIC shall give a reasonable opportunity of being heard to the third party. In any appeal proceeding, the onus to prove that the information was refused rightly shall lie on the authority, which denied the request. An appeal shall be disposed of within 30 days of the receipt of the appeal This period may be extended to 45 days by the appellate authority after recording the reasons. The decision of the CIC or the SIC as the case may be, shall be binding [(Section 19(7)].

Penalties

Whether the CIC or the SIC while dealing with an appeal filed by a person seeking information arrives at an opinion that the CPIO or the SPIO has without any reasonable cause, refused to receive an application or has not furnished information within the time specified for that purpose, or has acted mala-fide in denying a request for information or has knowledge given incorrect, incomplete or misleading information or has destroyed information which was the subject of the request or has obstructed in any manner the furnishing of information, it shall impose a penalty of 350 rupees each day till the application is received or information is furnished. The total amount of such penalty shall, however, not exceed twenty-five thousand rupees (Section20).

Overriding Effect of the Act

It is provided that the provisions of this Act shall have effect notwithstanding any thing inconsistent contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than the Right to Information Act (Section22). This is indeed a very encouraging provision, which will help the Right to Information Act override all the secrecy protecting or secrecy enforcing laws in existence.

CONCLUSIONS

The Right to Information Act, 2005 is a unique and revolutionary piece of legislation. It is unique and revolutionary because it is the first legislation arising out of public campaign and public outcry. That is why it is said to be a beginning of a new era in the democratic history of our country and to most significant reform in public administration in India. It is expected to expand the democratic space available and empowers the ordinary citizen to exercise a far greater control over the corrupt and arbitrary exercise of State power, as it gives right to the citizen to ask question, examine audit, review and assess Government acts, decisions and to ensure that every act is consistent with the principle of public interest. In this new era the Right to information, the readers or viewers require all kinds of primary information.

They can identify the truth on the basis of their analysis and commonsense. The press being the fourth estate has to make the government accountable by publishing information about matters of public interest even if such information reveals abuses or crimes perpetrated by those in authority. The Supreme Court of India has long back recognised a citizen's access to government information as a fundamental right under article 19, but it has only been with the passage of the RTI Act in 2005 that Indians have had a way to exercise that right and force transparency and fairness onto a notoriously corrupt bureaucracy. Evaluation of public authorities and governance is impossible without factual, current/updated and primary information. The noble intention of the legislators to enact the law can be fruitful if public authorities became responsible, accountable to the need of citizenry.

All the State Government and Central Government should also earmark adequate budget provision for organising short duration training programmes for Public Information Officers, all over the country every year. Financial support must be given to all the Public Information Officers since expenses are incurred and facilities are needed (e.g. photocopies etc) to make information available on time. Thus the commissions can organize more public awareness programme and education on RTI Act.

It is also suggested for the introduction of RTI in the core curriculum of school education and more awareness campaigns, workshops and seminars should be conducted particularly in the rural areas. The people should therefore make

ample use of this right to help proper and honest functioning of public authorities. The purpose of the Act can be achieved only if the public has proper guidance as how to use the Right to Information. A nationwide movement is initiated to guide and motivate the public.

REFERENCES

1. Yavav, Abha Sing, Right to Information Act, 2005, Central Law Publications, Third edition, 2012.
2. Sathe, S. P., Right to Information, Lexis Nexis, Butterworhs, 1st edition, 2006.
3. Shrinkhal, R., J. Swapnil, The Emerging Dimensions of Right to Information as Human Rights in India, Bharat Book Centre, Lucknow, 2010.
4. Friedmann, W., Law in a Changing Society, Universal Law Publishing Co. Pvt Ltd, Delhi, 2003.
5. B. Panigrahi (2005), Right to information: Challenges and Perspectives, Kare Law Journal, Issue 1, pp-44-49.
6. S. Ali (2009), Right to Information Act, 2005 and its Ramification, Legal News and Views, Vol.23, No.3 pp-59-66.
7. Avneesh Arputham, Use of Right to Information for Investigative Journalism, Lawyers Update, Vol XVI, Part 8, pp-36-37, August, 2010.
8. V. Venkatesan, Right to Information, Built-in blocks, Front Line, August, 2010, pp-4-7.

