

## RIGHT TO INFORMATION: ISSUES AND CHALLENGES

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The Right to Information was enacted in 2005 as an “ an act that provides for setting out the practical regime of Right to Information for citizens to secure access to information under control of public authorities, in order to promote transparency and accountability in the working of every Public authority”.

The Right to access to information held by government bodies provides that individuals have a basic human right to demand information held by government bodies. It derives from right to freedom of expression to seek and receive information and it is recognized worldwide as a human right. Under this right, any person may make a request to Public body, the body is legally required to respond and provide the information, unless there is legally compelling reason to refuse the request.

The RTI is a requisite for the very exercise of democracy. Democracy is based on the consent of the citizens and that consent turns on the government informing citizens about its activities and recognizing their right to participate. The collection of information by government is done on behalf of its citizens, and the public is only truly able to participate in the democratic process when it has information about the activities and policies of government. The RTI is also an important tool for countering abuses, mismanagement and corruption and for enforcing essential economic and social rights.<sup>1</sup>

### **The objectives of the RTI act include:**

- 1) To set out a practical regime of right to information for citizens;
- 2) To secure access to information under the control of public authorities;
- 3) To promote transparency and accountability in the working of every public authority ;
- 4) To contain corruption;
- 5) To increase citizens awareness and ability to exercise their other rights; and
- 6) To equip them to participate meaningfully in the development process.

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<sup>1</sup>David Banisar, 2011, The Right to Information and Privacy: Balancing Rights and managing conflicts. Washington. The World Bank, P-5

**Some of the important salient features of the act include:**

1. Every citizen has right to claim information from Public authorities.
2. Public authorities have an obligation to provide the sought information to all the applicants. However this is subject to certain restrictions, primarily relating to national security, personal information and third party information.
3. A large chunk of information has to be placed in the public domain by way of manuals prescribed under the Act.
4. Public authorities have to provide information as early as possible but not later than 30 days (in the matters of life and liberty information has to be provided within 48 hours).
5. In case of delay, the central information commission can impose a penalty of Rs 250/- per day subject to a maximum of Rs 25000. The commission can also recommend disciplinary proceedings against the officials guilty of not providing information.
6. Fee has been prescribed for seeking information. However, persons below poverty line have been exempted from payment of fee.
7. All the government departments along with a number of bodies which receive substantial funding from the government have been brought under RTI.
8. Information relating to a third party i.e other than person seeking information and public authority can be provided but this depends upon the view of public information officer. Third party has a right to represent or object to the disclosure of information.
9. In case of denial or not providing proper information an appellate structure has also been provided. First appeal lies with the first appellate authority nominated by the department while the second appeal lies with central information commission / state information commission.
10. Jurisdiction of local courts have been barred under the act i.e. appeal against decisions of CIC can only be filed in High court.

In the preamble to RTI act 2005, it is clearly mentioned that democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and hold government and their instrumentalities accountable to the governed. As per the RTI Act information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, 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. Records include:

- a) Any document, manuscript or file.
- b) Any micro-film, micro-file and facsimile copy of a document.
- c) Any reproduction of image or images embodied in such microfilm : and
- d) Any other material produced by a computer or any other device.

Right to Information means the right to information accessible under this act which is held by or under the control of any Public authority and includes the right to-

- 1- Inspection of work, documents, records

- 2- Taking notes, extracts or certified copies of documents or records,
- 3- Taking certified samples of material
- 4- Obtaining information in the form of discrete copies, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Section 4 of the RTI act has a provision for Suomoto declaration of Information. The act mentioned that “it shall be the constant endeavour of every public authority to provide as much information suomoto 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.

### **Exempted category from RTI**

Intelligence and security organizations like IB, RAW, BSF, SPG, CISF, DRDO, specified branch CID of Andaman and Nicobar, Directorate of revenue intelligence, Narcotics control bureau are exempted from RTI act. However the information pertaining to the allegations of corruption and human rights violations are not exempted from disclosure.

### **Issues of Right to Information**

#### **MISUSE OF RTI**

There was a frequent charge from the government that the RTI was being widely misused by the citizenry, especially by filing a large number of vexatious frivolous and otherwise objectionable applications.

Right to Information Act 2005 is a landmark legislation enabling the citizens to have access to information from the government and its departments much needed information that it had been denied to them. The RTI act allows citizens access to information that is necessary for removing their grievances and empowers them with up to date information about development that affect their lives. This process brings transparency to bureaucratic functioning- a sine quanon for any efficient public body and thereby helps eliminate corruption and enforces the principle of accountability of the government to those it governs. The right to information is not a new right; and it is enshrined in the constitution of India. Article 19 (1) states that every citizen has the freedom of speech and expression. The Supreme Court held that “The people of this country have a right to know every Public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing.”<sup>2</sup>

#### **Question of missing files or not traceable files can get exemptions under RTI act**

The Right to information Act is a progressive legislation aimed at providing to the citizens access to information. The intent behind enactment of the Act is to disclose the information to the maximum extent possible subject of course to certain safeguards and exemptions. It is not uncommon in the government departments to evade disclosure of the information taking the standard plea that information sought by the applicant is not available in the records of

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<sup>2</sup>State of Uttar Pradesh vs Raj Narain AIR 1975 SC 865

the government. Ordinarily, the information which at some point of time or the other was available in the records of the government should continue to be available with the concerned departments unless it has been destroyed in accordance with the rules framed by the department for destruction of old records. Therefore, whenever information is sought and it is not readily available, a thorough attempt needs to be made to search and locate the information whenever it may be available.

### **Harassment of RTI activists**

Harassment and murder of RTI applicants across the country is also a grave challenge and forcing the court to step in and ask authorities to give protection to RTI applicants. Many RTI activists have been harassed and even murdered for seeking information to promote transparency and accountability in the working of every Public authority.

Maharashtra ranks top in the number of attacks and murder of RTI activists. This indicates unholy nexus between corporates and politicians. No attacks were reported against RTI activists in Kerala and west Bengal.

### **Some of the major reasons behind the alleged murders of RTI activists are given below-**

- 1- Unearthing illegal mining in forest area.
- 2- Exposing sand mining mafia.
- 3- Targeting land mafia or raising ones voice against encroachment of Public/ private property by the rich and powerful.
- 4- Exposing illegal electricity connections of powerful private companies.
- 5- Exposing social security pension scam at the gram panchayat level.
- 6- Using the information obtained under the RTI act for tipping off the Lokayuktas about the disproportionate assets owned by municipal corporator.
- 7- Exposing bogus certificates presented by unqualified candidates appointed by the government as school teachers.
- 8- Exposing corruption and irregularities in the implementation of housing assistance schemes and Public distribution system.
- 9- Exposing corruption and irregularities in the implementation of MGNREGA.
- 10- Exposing the allegedly corrupt activities of Sarpanch.

Publicly available data suggests that most members of attacks including murder and also harassment of RTI activists occurred in Maharashtra, Gujarat comes a close second. Andhra Pradesh, Bihar, Delhi, Haryana, Karnataka and Uttar Pradesh have recorded more than 10 instances on attacks on RTI activists. Most cases of victimization involve information related to issues of larger Public interest and social welfare schemes. Registration of false cases, accusations of blackmailing and other means to harass RTI users are routinely exercised by the vested interests. Those living in rural area are easier targets due to physical proximity with the accused and remoteness from police, media and civil society groups.

The Second Administrative Commission headed by Veerappa Moily emphasized on protection of whistle blowers exposing false claims, fraud or corruption by ensuring confidentiality and anonymity, protection from victimization in career and other administrative measures to prevent bodily harm and harassment.

### **Requesting voluminous information**

Some of the RTI applications contain large number of questions and in one instance the applicant has sent a document containing 110 pages and the commission advised the applicant to keep RTI within 500 words according to RTI rules. In this context the commission had quoted the Hon'ble Supreme Court judgement in the case of CBSE VS AdityaBandopadhyay where in it was mentioned that:

The act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquillity and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of Public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI act and the pressure of the authorities under the RTI act should not lead to employees of public authorities prioritizing information furnishing at the cost of their normal and regular duties.

Indiscriminate and impractical demands or directions under RTI act for disclosure of all sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of administration and result in the executive getting bogged down to non-productive work of collecting and furnishing information.

As the Hon'ble Delhi High Court observed that the misuse of RTI act has to be appropriately dealt with, otherwise the public would lose faith and confidence in this “sunshine” act. A beneficent statute, when made a tool for mischief and abuse must be checked in accordance with law.

### **Misuse of the RTI act by the suspended employees**

It is generally observed that suspended employees will file large number of RTI applications to harass the authorities. The commission held that the accused employee does not have any moral or legal right to file plethora of RTI applications seeking information not related to allegation against him, but to harass the officers who he suspect to have complained or gave evidence or provided information or taken action against him, if done so it becomes misuse and that cannot be encouraged. If such multiple RTI actions are allowed the officers at higher level will lose moral authority to initiate action against erring employees and whole system of disciplined administration would crumble. In contrast, there is a huge public interest in taking action against the wrong doing employees. The RTI is not for these disgruntled employees facing disciplinary proceedings or selfish persons but for the people in general, only in public interest, and never for private vengeance at all.

### **Political Parties as Public Authorities**

Another issue that has come up is that some of the institutions have objected to being covered under the act claiming that they are not public authorities under the act. Most recently CIC has held that political parties are to be public authorities. While deciding an appeal the CIC has taken a stand that political parties are public authorities and hence are obliged to provide information to the applicants under the RTI act. While deciding the issue CIC has taken note of the fact that political parties are being substantially funded by the government in a number of ways which include granting of plots and accommodation at concessional rates , free air time at All India Radio and Doordarshan and take exemptions . Other factors which affected the decision of CIC were that the political parties are doing a public duty and also that various constitutional and legal provisions vest these parties with various rights and liabilities. Most of the parties are not comfortable with the decision.

### **RTI challenges and Gaps**

The Study conducted by society for participatory Research in Asia (PRIA) in ten selected districts of 10 states revealed that-

- a- a list of PIO's or a directory of PIO'S at the district level was simply not available in the majority of the states and therefore citizens have a difficult time in filling applications at the appropriate offices.
- b- Regarding processes involved in filling an application is concerned, 78% find the rate of application and additional fees reasonable, but the respondent found the mode of payment of fees restrictive.
- c- About 68 % of the respondent said that they were able to get the information only after facing a number of difficulties in filling the application.
- d- A significant percentage of RTI applicants do not go for first and second appeal as they feel it would not be of any help and they would be unnecessarily wasting their time and resources on the appeal process.<sup>3</sup>

RTI Assessment and Analysis Group (Raag) and National Campaign for People's Right to information: Peoples RTI assessment 2008" was conducted in 10 states and Delhi .The major findings of the study include:

- 1- Nearly 65 % state that access to information especially government information, significantly helps them solve many of their basic problems.
- 2- Government is not a major force in raising public awareness about the RTI act.
- 3- Over 40 % of the rural respondents and 15 % of the urban respondents stated that the most important constraint they faced in exercising their right to information was harassment and uncooperative officials.<sup>4</sup>

A national study commissioned by DOPT Govt. of India in 2009 made some startling revelations about the gaps in implementation of RTI act ; Only 3 % of the rural population

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<sup>3</sup>PRIA, Accessing Information under RTI: Citizens Experiences in ten states, New Delhi, 2009, P. 194

<sup>4</sup> RAAG & NCPRI, Study of safeguarding Right to Information: peoples RTI assessment 2008, New Delhi 2009.



and 33 % of urban population were aware of the RTI act ; more than 75 % of information seekers were dissatisfied with the quality of information provided ; more than 26 % of citizen seeking information had to pay more than three visits to submit applications ; approximately 89% of public information officers had not implemented the provision allowing inspection of records by citizens, which led to delays in providing information, more than 38% of PIO's stated that they possessed an ineffective record management system ; again delaying request processing; approximately 43 % of PIO's were unaware of record management guidelines , approximately 45% of PIO's said they had not been provided with training in the implementation of RTI provisions and approximately 43% PIO's were not aware of their public authorities duty to proactively disclose information.<sup>5</sup>

### **Achievements of RTI**

The RTI act has energised and empowered civil society organisations and activists across the country. It has given rise to anew brand of activism led by RTI activists who have used the provisions of the act at various levels of governance to unearth corrupt practices, embezzlement of funds, anomalies in plans and budgets, the poor quality of services and public works and other problems. Several RTI forums and online portals have emerged to spread awareness and assist people in using RTI.

As the second Administrative Reforms commission has rightly observed that the Right to Information Act is a path-breaking legislation which signals the march from darkness of secrecy to dawn of transparency. It lights up the mind-set of public authorities, which is clouded by suspicion and secrecy. To conclude, the RTI Act 2005 has brought the change of mind set of employee from maintenance of official information in secret to maximum voluntary disclosure of Information. The government employee is no longer a government servant. He has to transform to a public servant in letter and spirit. Though the RTI is necessary but it is not sufficient to improve the governance. A lot more needs to be done to usher in accountability in governance, including protection of whistle blowers, decentralization of power and fusion of authority with accountability at all levels.

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<sup>5</sup>Pricewaterhouse coopers, final report: understanding the key issues and constraints in implementing the RTI act 2009 <http://righttoinformation.gov.in/rticorner/study> by PWC/executive / 20 summary. Pdf