

Right to Information in India

Dr. Tamanna Praveen*

Abstract

The paper contains information like meaning of Right to information, and procedure to apply RTI to make the clear understanding. Right to information empowers people and helps nation to develop.

Right to Information is everyone's fundamental right of expression under Article 19. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. All of us have to know that the freedom is an essential element for democracy to function. It is the Democracy revolves around the basic idea of Citizens being at the center of governance and a rule of the people. We need to understand the importance of the freedom which is everyone's fundamental right.

Key words: - Right to information, Constitution, Perspective, Accountability and Transparency.

Introduction:-

Right to Information

Information is the oxygen for the modern age. Access to information has become one of the most promising tools to combat corruption, increase people's participation in government. Right to information or right to know is closely linked with other fundamental rights such as freedom of speech and expression and right to education. Right to information act has an important economic dimension as it embraces not only political freedom to lead life with dignity, but also unfettered by domination and discrimination.

The right to information offers a key tool for ensuring institutions more effectively meet their goal of promoting participation and surround accountable government. The principle of democratic representation is an essential feature of self government.

It means the right of every citizen to seek information under the control of authorities. It also implies the public authorities have a corresponding obligation to organise and store all the information that they can legitimately collect and provide then to the citizens on request withholding it only when it is proven that it is in the public interest to do so. All public authorities have a duty to inform them about what they are doing for the people.

Right to Information in India : Origin

The need of Right to Information laws has been growing with time. While there have been some significant development at the state level, the central government has been dragging its feet on the issue. The strong evolution of RTI in India is primarily because of a group of villagers in central Rajasthan in 1994, the **Mazdoor Kisan Shakti Sangathan**, started a grassroots campaign. It is

*Assistant Professor, Department of Pol. Sc. Hawabagh Women's College, Jabalpur (M.P)

mostly for poor wage workers and land rights, asserted their RTI by responding against ghost entries in muster rolls, which was the sign of rampant corruption in the system, and demanding official information recorded in government rolls related to drought relief work. The movement resulted in the government of Rajasthan enacting a law on the right to information in 2000. The movement spread to various parts of Rajasthan, leading to a nationwide movement for the RTI and related state legislations. Thus, it was states that took the first step by enacting RTI laws. Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004). Goa Right to Information is the only one in India, which brings in private bodies under the obligations of the Right to Information to the public.¹

The demand for national laws started under the leadership of National Campaign on people's Right to Information. The FOI Bill 2000 was passed in the Parliament in 2002 but not notified, hence, never came into effect.

Right to Information Act 2005 in India: The Constitutional Perspective

*"We live in an age of information, in which the free flow of information and ideas determines pace of development and well being of the people. The implementation of RTI Act is, therefore, an important milestone in our quest for building an enlightened and at the same time, a prosperous society. Therefore, the exercise of the Right to information cannot be the privilege of only a few."*²

-Dr Manmohan Singh, Prime Minister of India

(Valedictory address at the National Convention on RTI, 15 Oct 2006)

India is a democratic country. In the present scenario, in democratic countries the accent is on open government and participation in government by people is regarded as an important aspect of democracy. The constitution of India guarantees seven fundamental rights to its citizens. The right to freedom of speech and expression are enshrined in Article 19 (1) (a) in India. Right to Information is the integral part of the freedom of speech and expression.

After series of long decisions the supreme court of India in 1973 has declared that the citizen's right to access information held by public authorities is a component of the basic rights to (a) life and liberty and (b) freedom of speech and expression guaranteed by the constitution.³

The introduction of Right to Information Act says- *"An Act to provide for setting out 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 authority, the constitution of a central Information Commission and state Information Commissions and for matters connected therewith or incidental thereto"*⁴

The right to information also implies a positive obligation placed upon governments to disseminate information to the people. Government held information is disclosed to the citizens in two ways (a) proactively and (b) upon request.

(a) **Prn request:** - Government bodies must put in place simple and cheap procedures to facilitate timely access to specific pieces of information upon request.

In Apex oactively: - Government bodies are required to actively publish key categories of information. The information can be disclosed for example by putting up notices, by publishing in the official gazette and newspapers etc.

(b) **UpoCourt, Bhagwati, J.** had endorsed, "Open government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception."⁵

On 16th December 2002, the bill for freedom of information was passed after several changes for its improvement. The bill is in accord with both Article 19 of the Constitution as well as Article 19 of the Universal Declaration of Human Rights. The Bill would help bring about a fuller participation of people in governance. In case of provisions of the Official Secrets Bill, which are inconsistent with the Right of Information Bill, the provisions of the latter would prevail. Out of 200 countries, only 20 have laws freedom to Information.

Right to information Act 2005 aimed on one privilege for legitimizing inordinate delay and denial of information. Right to information Act 2005 aimed on one hand to bridge the gap between the common man and the government and on the other, to strengthen service delivery mechanism, thereby making it more transparent and easy to access. It is the landmark legislation enacted for protecting the right of Indian citizen.

Under the official secret act 1923, the entire development process has thus been shrouded in secrecy. The people, who voted for the formation of democratically elected governments and contributed to the huge costs of financing public activities, had no legal rights to know. The Indian parliament had enacted the "Freedom of Information Act 2002" in order to promote transparency and accountability in administration but not notified, hence, never came into effect as the necessary notification was never issued by the then government. The Right of Information Act came in to force on 12th October 2005. The Supreme Court has taken a step head and has included RTI in the ambit of Article 19(1)(a) and Article 21 of the Constitution.

The main objective of providing information is not only to promote openness, transparency and accountability in administration, but also to ensure participation of the people in all matters related to governance. Sweden's Freedom of Press Act of 1766 is the oldest one. Over 85 countries have implemented such form of legislations

The major concern of the Act is to promote transparency and accountability in the working of the public bodies and contain the scourge. It is a path making law, which empowers ore democracy by putting information so far inaccessible, into the public domain. RTI made the government transparent and accountable by making the citizens aware of the ins and outs of the RTI act.

The Right to Information Act may be analysed in two different aspects:

- (a) It is the common constitutional and legal right of a person to obtain any type of the information regarding record, file registers, maps, blueprints etc.
- (b) It is the constructive duty of the government to provide information to the common man without waiting. Some information which may adversely affect the social peaceful environment and may be detrimental to the common man and these are:
 - Any information adversely affecting the security and sovereignty of the country
 - Any information adversely affecting the diplomatic relations of the states or countries
 - Any information hindering the investigation and position of law and order
 - Any information leaking the personal confidentially of a person and which may not be of common good
 - Any information, violating the communal, confidential relations etc
 - Any information executive the contempt of court

In the above cases, the information may however be restrained for the common good of people and country under section 8.1.

Right to Information: An International Perspective

- It was first introduced in 1810 in Sweden and was made a part of the constitution in 1949.
- UNO also accepted the same in December 1948 and freedom of expression under section 19.
- It was introduced in Australia in December 1982.
- It has been introduced in USA in 1986.
- Recently Canada, New Zealand and France have granted the right to their people.

Procedure to Access Information through RTI

A citizen, who desires to seek any information under the Act, should submit an application to the PIO of the concerned public authority. The application should be precise and specific with name and complete postal address of the applicant. The application has no specific format. The application need to be submitted along with an application fee as prescribed in the Fee Rules. If a public authority fails to comply with the specified time limit, the information to the concerned applicant would have to be provided free of charge.

Duty to Publish

The act requires every public authority to publish 16 categories of information. This includes the particulars of its organization, functions and duties, powers and duties of its officers and employees.

Exceptions

The Act enumerates the types of information that are exempted from disclosure. However, these exempted information or those exempted under the Officials Secrets Act can be disclosed if public interest in disclosure overweighs the harm to the protected interest. Also the exempted information would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates.

Procedure to Appeal

If an applicant is not supplied information within the prescribed time of 30 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he/ she may prefer appeal to officer senior in rank to the PIO. If still not satisfied, the applicant may appeal again with the Central Information Commission/ State Information Commission within 90 days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

Penalty

The PIO has without any reasonable cause, refused to receive an application for given incomplete, incorrect or misleading information it shall impose a penalty of Rs 250 each day till application is received or information is furnished subject to the condition that the total amount of such penalty shall not exceed Rs 25,000.

Provisions

- Section 2(h): Public authorities means all authorities and bodies under the Constitution or any other law, and inter alia includes all authorities under the Central, state governments and local bodies. The civil societies substantially funded, directly or indirectly, by the public funds also fall within the ambit.
- Section 4 1(b): Maintain and proactively disclose information.

- Section 6: Prescribes simple procedure for securing information.
- Section 7: Fixes time limit for providing information(s) by PIOs.
- Section 8: Only minimum information exempted from disclosure.
- Section 19: Two tier mechanism for appeal.
- Section 20: Provides penalties in case of failure to provide information on time, incorrect, incomplete or misleading or distorted information.
- Section 23: Lower courts are barred from entertaining suits or applications. However, the writ jurisdiction of the Supreme Court and high courts under Articles 32 and 225 of the Constitution remains unaffected.

The Impact of Right to Information : An Overview

In India, the Act has produced a better impact on the quality of the life of the poor and the marginalised. During the past Nine years, the Act has brought positive changes in the levels of corruption and accountability. There are quite a number of cases, where the Commission has ordered for providing the details of the decision making processes including file noting, cabinet papers, records of recruitment, selection and promotion of staff, documents pertaining to tender processes and procurement procedure, lists of beneficiaries of government subsidised schemes, such as food grains supplied through ration shops, water and electricity, domestic gas, educational and health facilities, shelter for poor, muster rolls under employment guarantee schemes, etc.

The disclosure of such vital information resulted in checking corrupt practices in delivery of services and ensuring the reach of entitlements to the poor. Concrete steps needs to be taken to make the filing of Right to Information applications more convenient.

Role of Government

Some of the recommendations regarding the role of the government as put forth by various studies:-

- Spell out specific responsibilities for implementation of specific provisions of the Act.
- The objective of the mass awareness campaign both at Central and state level is to increase public awareness, encourage citizen involvement and increase transparency within the government.
- Direct all public authorities and training institution to incorporate training module on RTI in all training programmes.
- Process of short-listing candidates for appointment to ICs must be participatory and transparent.

The laws that are being enacted are a far cry from the demands of civil society in India. To be a strong law on the right to inform, the following elements must be present:-

Inclusion of private bodies: -

Apart from the government and public bodies, there are strong argument for the inclusion of private bodies as well. Today the private bodies also influence and affect public life in a great number of ways. The Bhopal Gas Tragedy is example of the havoc the activities of a private body can play on the lives of common people.

The law must complain a mandatory procedure for publicising its contents. The right to information law must also contain a strong aspect of training and orientation of public servants of all levels, in order to bring about a effective change in the culture of secrecy and un willingness to part

with information. There are no provisions in any of the RTI laws in the country, which provide for suitable publication and awareness building amongst the people regarding the law.

The enactment of law and implementation of right to information does not mean government will start implementing it in an effective manner. NGO's, civil society organization and other have a responsibility to ensure effective implementation in using the law for the benefit of the people disseminating and analysis information and to carry the voices of voiceless to policy makers.

Conclusion

The right to information is a basic right that underpins good governance, democracy, poverty eradication and the practical realisation of human rights. Good governance is not achieved only by having efficient governance or even a democratically elected government, it can be achieved by the active participation of citizens in public affairs, active civil society are essential which develop a culture of human rights and accountability.

Nine years of implementation of RTI Act has set the road to success and brought forth many issues- challenges and opportunities. Citizens, poor or rich, have applied for and obtained information under this law. Every governmental department and state-owned firm, including banks are obliged to have PIOs to handle RTI requests. With this openness of the government processes before the public, awareness among the masses has increased which, in turn, has brought accountability on part of the government, thus reducing corruption.

One of the purposes of making laws like the right to information, which is primarily a human right, is to help create this culture. Hence RTI must be guaranteed by a strong legislation and the process of law- making itself must be participatory. RTI has played a crucial role to educate and aware the society because in India the most citizens are illiterate, exploited, ignorant and unaware with their rights.

Right to Information is a weapon in the hand of people by which people can share their views, ideas and promote participation of common man in legal affairs which helps to stop corruption. Access to information can empower the poor and weaker sections of society to demand and get information about public policies and actions, thereby leading to their welfare. Though the RTI act is working effectively in almost all the states of India, it is yet to be made more effective due to certain hurdle in its way.

References:-

1. The new promotion of access to information act, 2000 in south Africa dedicates an entire segment of the act to access to information (in certain cases) held by private bodies in detail for a person to approach any private body and request for information.
2. Article 21 and 19(1) (a) respectively of the constitution of India.
3. Singh, Dr Manmohan, Prime Minister of India (*Valedictory address at the National Convention on RTI, 15 Oct 2006*).
4. Received the assent of the President of India on 15th June 2005, published in the Gazette of India Extraordinary, Part II, Section 1, dated 21st June, 2005.
5. Gupta, S.P., v. Union of India, AIR 1982 SC149 1985.