

The Right to Information Act, 2005: Perspectives-Practice-Issues

C.L.V. Sivakumar

VIT Business School, VIT University, Vellore, Tamil Nadu, India

Abstract

The Constitution of India in its propositions via Part III of the Constitution i.e., Fundamental Rights guaranteed the citizens of the country for Right to Information. Following to series of judgments of various High Courts and the Supreme Court of India as well as haunted need for a special enactment providing provisions relating to the procedure and nature of information that required by the information seekers, the Right to Information Act was evolved in the year 2005 with certain guidelines applicable for both Public Information Officers and Information Seekers. When such intricacies and constraints are taking place in the implementation of the Act thereby the very objective of the Act is remaining with a question mark, the present study is carried out with the objectives to trace the evolution of the people's movement for the emergence of Right to Information Act, to analyze the nature and scope of the application of the Act, to review intricacies and issues in the implementation of the Act thereby to recommend measures to bridge the gap between the legal position of the law and existing scenario for strengthening and improving the effective implementation of the RTI Act. Since, the entire study is qualitative one and case study method, no empirical data study was adopted.

Keywords

Empowered – Information – Democracy – Freedom – Transparency – Arbitrary action – Constraints - Governance - Accessibility - Fundamental

I. Introduction

The Right to Information is a fundamental right as enshrined under Art. 19 (1) (a) of the Constitution of India. Though the Constitution of India empowered citizens of this country with a power in seeking any relevant information from any institution or agency of the state, the movement for the right to information was started in early 90s by Mazdoor Kisaan Shakti Sangathan, an organization for the empowerment of workers and peasants hailing from a remote village Devadungr (Rajsamand District, Rajasthan). It was a movement to expose corruption in the famine relief work by demanding information related to copies of bills, vouchers and muster rolls for workers recorded in government files. Following a period of struggle, this particular organization succeeded in acquiring photocopies of the relevant documents in which the siphoning of funds was clearly evident. When villagers experienced the exposure to corruption while seeking information finally led to the demand of enactment of RTI law in Rajasthan. Government of Rajasthan yielded to pressure of movement and enacted the law in 2000. The recent enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs.

II. Objectives of the Study

In the wake of current scenario wherein the common citizens are forced to be a simple spectator of the arbitrary actions of the government through its administrative agencies it is considered

to look into the perspectives, practice and issues of the Right to Information available to all citizens under the provisions of the Indian Constitution with the following objectives:

- (a) To trace the evolution of people's movement in achieving the current Right to Information Act.
- (b) To study the nature and scope of the application of the Act.
- (c) To analyze the intricacies and issues in applying the provisions of Law in seeking Information under the Right to Information Act.
- (d) To recommend steps to fill the gaps for effective utilization in light of the impact of the Act.

III. Methodology

To achieve the intended objectives of the study, as the entire study is purely a qualitative and in depth case study method, no empirical data was adopted.

IV. Right to Information: Definition

According to Sec.2(j) of the RTI Act, Right to Information is defined as a right to information accessible under the Act which is held by or under the control of any public authority and includes a right to (i) inspection of work, documents, records, (ii) taking notes, extracts or certified copies of documents or records, (iii) taking separate samples of material, (iv) obtaining information in the form of diskettes, 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.

A. How to access the Information

The Right to Information Act gives the right to all the Indian citizens to access information from public institutions. The application procedure for seeking information is very simple and citizen friendly. The application can be written in English or Hindi or the official language of the state. Application should be accompanied by necessary application fees as prescribed under state rules. The application must be submitted to the Public Information Officer (PIO) in the public institution from where the information is sought. Section 4 of the RTI Act mandates every public institution to voluntarily disclose all their activities in a manual, so that citizens can get information about important functions of public institutions without filing application [1].

B. Features and Scope of the Right to Information Act

Right to Information Act, which came into force on 12th of October 2005, is one of the most significant legislations enacted by the Parliament of India. The Right to Information Act 2005 (RTI Act) recognizes that in a democracy like India, all information held by the Government ultimately belongs to people. Making information available to citizens is simply a part of normal government functioning because the public has a right to know what public officials do with their money. The Act seeks to establish that transparency is the norm and secrecy is an exception in the working of governance institutions. The Act applies both to Central and State Governments and all

public authorities. A public authority as defined under Sec. 2(h) is bound to furnish information means any authority or body or institution of self-government established or constituted (a) by or under the Constitution, (b) by any other law made by Parliament, (c) by any other law made by State Legislature, (d) by a notification issued or order made by the appropriate Government and includes any (i) body owned, controlled or substantially financed, (ii) non-government organization substantially financed - which, in clauses (a) to (d) are all, directly or indirectly funded by the appropriate government. It is important to note that the Act specifies that intelligence and security organizations are exempted from the application of the Act. However, it is provided that in case the demand for information pertains to allegations of corruption and human rights violations, the Act shall apply even to such institutions. In order to have balance in the implementation of the Act from the possibilities of misuse of the provisions under the law, exemptions are made from seeking information under Sec. 8 which exempts from disclosure certain information and contents as stated in Sub-clauses (a) to (j) thereof. Sub-clause (b) exempts information, which is expressly forbidden by any court of law or tribunal or the dispute of which may constitute contempt of court. Sub-clause (g) exempts information the disclosure of which would endanger life, or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose. Sub-clause (h) exempts information, which could impede the process of investigation or apprehension or prosecution of offenders. Sub-clause (i) exempts Cabinet papers [2].

C. The Supreme Court on the Right to Information

The right to information is a fundamental right flowing from Art. 19 (1) (a) of the Constitution is now a well-settled proposition. Over the years, the Supreme Court has consistently ruled in favor of the citizen's Right to Know. The nature of this right and the relevant restrictions thereto, has been discussed by the Supreme Court in a series of cases wherein in Bennett Coleman, the right to information was held to be included within the right to freedom of speech and expression guaranteed by Art.19 (1) (a) of the Indian Constitution. The apex court explicitly stated in the case of Raj Narayan [3] through Justice Mathew that it is not in the interest of the public to cover with a veil of secrecy the common routine business - the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption. Similarly, in S.P. Gupta [4], the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described.

D. Intricacies and Issues in the Implementation of the Act:

An attempt has been made to identify issues and intricacies in the implementation of the Act which can be approached from THREE dimensions as follows:

1. Demand Side

This dimension pertains to the information seeker side and follows the issues and constraints faced by the information seeker, while filing for information request. This dimension comprises a survey of (A) Citizens (irrespective of whether they have sought information under RTI or not) and (b) Past applicants.

2. Supply Side

This dimension pertains to the PIO, Nodal Department for RTI implementation and Administrative Training Institutes involved in imparting RTI training. This dimension may cover the issues and constraints faced by the Public Authority from the point of receipt of a RTI request to the point when information is delivered to the applicant.

3. Adjudicatory Side

Through this dimension one-to-one meetings with State Chief Information Commissioners, Survey of State Information Commission's Online Portal and this dimension also can be applied to Civil Society Organizations and social activists to study the experiences of citizens with the Information Commission [5].

Some of the intricacies and constraints in the implementation of the RTI Act are:

- Low awareness among rural mass, women and uneducated people about the application and benefits of the Act.
- Non availability of user guides for effective guidance for the benefit of information seekers.
- Information seekers are finding difficult in moving with such Information Officers as they are adopting non-friendly attitude while providing information.
- The Information Officers at times failing to provide the required information to the seekers within reasonable time as a result of which the information seeker is forced to knock the doors of Court of Law or Tribunal.
- Lack of technological awareness with the information seekers as they are always rely upon the services of the officers concerned through they can have direct access the information electronically [6].

E. RTI Act: Impact

Right to Information Act has been used by poor and marginalized across the country in spite of numerous constraints created by government departments, government officers and lack of awareness about the Act. They have used RTI to solve the problems related to services like water, electricity; roads etc. and get the entitlements like Below Poverty Line cards (BPL), pensions, scholarships, job cards under National Rural Employment Guarantee Scheme, houses in Indira Housing Schemes (Awas Yojana) and voters' identification card from electoral offices etc. In several locations, citizens have conducted public hearings and prepared citizens' report card for taking stock welfare programs, Monitoring the construction of roads, ponds, drains, schools and other public buildings. The data for hearings and report card e.g. budgets, muster rolls, sanctioned beneficiaries was obtained through RTI which otherwise would have been impossible to access from government institutions. Even media persons have accessed authentic information under the law and exposed malpractices, poor functioning, corruption etc. in governance institutions. RTI, thus, has created fear in the minds of government officers that any involvement in malpractices can be exposed; hence they are becoming reluctant to violate laws [7].

E. Recommendations

For the effective and purposeful implementation of the RTI Act, the appropriate authorities may consider to take in to account the following few recommendations thereby to bridge the gap between the legal provisions and the existing practice.

- In order to cause much awareness on the benefits of the Act in seeking information, the appropriate authorities

- shall plan and develop schemes to organize educational programs to enhance the awareness level in the public particularly women, rural mass etc.,
- b. Qualified persons or such corporate entities may be appointed or authorized to reach information seekers as user guides.
 - c. The government may maximum utilize the services of print media and electronic media including cinema theatres for effective propagation of the use of the RTI Act.
 - d. The government may introduce periodical reviews on effective utilization of the Act at least at District level thereby the information officers may discharge their duties to expectations.
 - e. Information seekers may be provided with an opportunity to inspect records in the Government offices when they come for seeking information.
 - f. Necessary policy reforms may be introduced i.e., monitoring the mechanism and the Administration nature of the Information Officers and proper audit by such competent authorities regarding the performance of information officers to avoid unwanted litigation in the appropriate forums and to avoid displeasure in the minds of information seekers.
 - g. Appropriate special forums or tribunals can be established to approach for speed relief in Seeking information.
 - h. Necessary infrastructure facilities may be updated in government offices in order to provide required information to seekers without any difficulty and to avoid delay.

CLV Sivakumar completed his B.Com. from Nagarjuna University, AP, India in 1989; B.L. from Nagarjuna University, AP, India in 1994; M.L. from Nagarjuna University, AP, India in 1996; M.A. from Algappa University, AP, India in 2004 and pursuing his Ph.D in Law from Nagarjuna University, AP, India. He has more than 15 years of teaching experience. Presently, he is working as a Senior Grade Asst. Professor of Law in VIT Business School, VIT University, Vellore, Tamilnadu, India.

V. Conclusion

The birth of the Right to Information Act, India moved from an opaque and arbitrary system of government to the beginning of an era where there will be greater transparency and to a system where the citizen will be empowered and the true center of power. The notions of this Law to achieve further more mile stones in the democratic country. Only by empowering the ordinary citizen can any nation progress towards greatness and by enacting the Right to Information Act 2005. India has taken a small but significant step towards that goal by bringing this Right to Information Act in to existence. The real and true governance can be achieved not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused.

References

- [1] Bindal, C.M., Anush Bindal, "Guide to the Right to Information Act, 2005", Snowwhite Publications, Mumbai, 2009.
- [2] Jain, H.K, "Right to Information: Concepts, Law and Practice", Saujanya Publications, Delhi, 2007.
- [3] Raghunatha Patnaik, "Hand Book on Right to Information Law", Kalinga Law House, Bhubaneswar, 2008.
- [4] Sruthi Desai, "The Right to Information Act", Snowwhite Publications, Mumbai, 2010.
- [5] State of Uttar Pradesh vs Raj Naraian, AIR 1975 SCR 333
- [6] Bennet Colamen & Others vs Union of India & Others, AIR SCC(2) 788
- [7] SP Gupta vs Union of India, AIR 1982 SC 149