



Right to Information as a Procedural Justice

SALKESH KORI

1. Introduction

“In Government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.”- Justice K.K. Mathew

Access to information held by a public authority was not possible until 2005. Lack of information precluded a person to realize his socio – economic aspirations, because he had no basis to participate in the debate or question the decision making process even if it was harming him. Official Secret Act, 1923 acted as a remnant of colonial rule shrouding everything in secrecy. The common did not have any legal right to know about the public policies and expenditures. It was quite ironical that people who voted the persons responsible for policy formation to power and contributed towards the financing of huge costs of public activities were denied access to the relevant information.

This culture of secrecy resulted in prolific growth of corruption abuse of power and unscrupulous diversion of the public money was the order of the day. Under such conditions, public and various NGOs demanding greater access to the information held by public authorities. The Government acceded to their demand held by public authorities. The Government acceded to their demand by enacting RTI Act, 2005.

The “Right to Information” statutorily refers to 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:

1. Inspection of work, documents, records,
2. Taking notes, extracts, certified copies of documents and records,
3. Taking separate samples of material,
4. Obtaining information in the form of diskettes, floppies, tapes, videos cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

2. Evolution of Right to Information

2.1 Movement for Right to Information in India

Campaign for the Right to Information in India began with the Mazdoor Kisan Shakti Sangathan (MKSS) movement for transparency in the accounts of people around the implementation of minimum wages in rural India. Spirit of entries to collect the manuscripts has been a sign of rampant corruption in the system, causing MKSS to demand official information on file with the government. The movement quickly spread throughout India. From very modest start in the villages of Rajasthan, the success of MKSS was an inspiration for activists in India and worldwide. This led to the genesis of a broader discourse on the Right to Information in India.

This enticed them to demand their legal entitlement. In response they got an answer that the official documents are not consonant with the necessary work that ought to be done by them. Such official documents were wrapped in the walls of bureaucratic ‘secrecy’ unavailable even to the persons, to which they were related. However, some clues by the sympathetic officer indicated towards enormous

anomalies. Tackling these discrepancies required some unique medium to sensitize the people directly and easily for this purpose, MKSS adopted the means of placing the disclosed information (whatever could be elicited) in the public domain through live wire village based public hearing colloquially referred as jan sunwais. This movement raised famous slogans like hamara paisa, hamara hisaab (our money, our accounts) and hum janenge, hum jiyenge (we will know, we will live). Overall it can be safely asserted that transparency and accountability were the two pronged demands of the movement, which they wanted to be instilled in the system as whole.

Dawn of the RTI ushered with this movement, which made people realize that secrecy enabled corrupt officials to siphon off minimum wages and other entitlements of the poor. A movement demanding the RTI was thus born and its first champions were the disempowered rural workers in the remote rural area of Rajasthan

Movements for RTI cannot be seen as isolated events. They are coextensive with a movement to make democracy real and functional. RTI was demanded as the right to work, the right to obtain famine relief, or the right to receive minimum wages. Secrecy and national interest were some excuses which were heavily used by the power wielders to wrap information insulating it from reach of the masses. Corruption, therefore, was breeding prolifically in face of lack of accountability and an open government. Importance of open government was observed by eminent juristic mind of the nation, Bhagwati, J. in the following words: "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".

Loksatta, NGOs One of Andhra Pradesh has taken a place in massive awareness campaigns Statewide Through the representations made paragraph message campaigned Card Prime Minister of India enacted the law requires a law-style information . Experience Rajasthan to demand law-style echoed information from other States.

In response to the pressure of the grassroots movements as well as to satisfy the international money lending institutions to borrow the loans, some of the State Governments such as Goa (1997), Tamil Nadu (1997), Rajasthan (2000), Karnataka, (2000), Delhi (2001), Assam (2002), Maharashtra (2003), Madhya Pradesh (2003) and Jammu, Kashmir (2003) introduced the Right to Information Act. Among all these Acts, Maharashtra Right to Information Act was considered as the model act in promoting transparency, accountability and responsiveness in all the Institutes of the State as well as the private organizations which are getting financial support from the Government. Tamil Nadu Act was considered as the most innovative one in how to refuse the information to the seekers.

The growing demand for a right to public information from various sections of the society, led by civil society organisations in these States could no longer be ignored. The need to enact a law on right to information was recognised unanimously by the Chief Ministers Conference on "Effective and Responsive Government", held on 24th May, 1997 at New Delhi. The Government of India, Department of Personnel, decided to set-up a 'Working Group' (on the 'Right to Information and Promotion of Open and Transparent Government') in January 1997 under the chairmanship of Mr. H. D. Shouri, which submitted its comprehensive and detailed report and the draft Bill on Freedom of Information in May 1997. The Press Council of India, the Press Institute of India, the 'National Campaign for People's Right to Information' and the Forum for Right to Information unanimously submitted a resolution to the Government of India to amend the proposed Bill in February, 2000.

The Government of India introduced the Freedom of Information Bill, 2000 (Bill No.98 of 2000) in the Lok Sabha on 25th July, 2000. The Bill, which cast an obligation upon public authorities to furnish such information wherever asked for, was passed by the Parliament as the Freedom of Information (FoI) Act, 2002. However, the Act could not be brought into force because the date from which the Act could come into force, was not notified in the official Gazette.

Prime Minister of India, emphasizing on the importance of RTI in the governance of country, reflected the culmination of what was a sporadically vehement movement initiated by the otherwise disempowered masses. He said, "Four years ago I said to you that an important challenge we face is the challenge of providing good governance. We have taken several steps to make Government transparent, efficient and responsive. The Right to Information Act was one major step. We have initiated reform and modernization of Government."

3. Analysis of RTI

3.1 Important provisions of the Right to Information Act, 2005

Meaning of 'Information'

Section 2 (f) of the Act defines information as any material in any form, including the records, documents, memos, e-mails, opinions, advices, press releases, 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 law for the time being in force.

Definition of 'Right to Information' The "right to information" statutorily refers to 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, certified copies of documents and 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.

Maintenance and Publication of Records: Proactive disclosure of information by the public authorities has been provided under s.4 (1) of the Act. This provision casts a duty on public authorities to maintain records for easy access, and to publish, within 120 days of enactment of the statute. For this purpose, s. 4 (3) states that for the performance of subsection (1), all information shall be disseminated widely and in such form and manner which is easily accessible to the public.

Request for Information: S.6 permits persons to obtain information in English or Hindi or in the official language of the area from the designated officers. The person requesting for information is not required to give any reason for the request and personal details.

Disposal of Request: Section 7 of the Act requires the request to be disposed of within 30 days provided that where information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours. Before any decision is taken for furnishing the information, the designated officer shall take into consideration the representation, if any, made by a third party under s. 11.

3.2 Salient features of the right to information Act, 2005

Specifically, the main objectives of the law on RTI are: to operationalise the fundamental right to information; to set up systems and mechanisms that facilitate people's easy access to information; to promote transparency and accountability in governance; to minimize corruption and inefficiency in public offices and to ensure people's participation in governance and decision making.

RTI can be said to be based on two main concepts:

- 1.The right of the public to access the information and the corresponding duty of the Government to meet the request, unless specifically defined exemptions apply;
- 2.The duty of the Government to proactively provide certain key information even in absence of a request.
3. The RTI Act, 2005 basically has two parts- (a) substantive law, and (b) procedural law. Section 3 coupled with some other provisions like ss. 8, 9, 18, 19 and 20 of the Act deal with substantive law

while s.6 along with some other provisions like s.7 of the Act deal with procedural law. Thus the Act is a code in itself.

4. These are some of the main features which make this legislation a positive step towards the realization of tenets that have been conceived by the founding fathers of the Constitution.

4. Performance of RTI

C.1 RTI as Good Governance

The success of a democratic framework depends on good governance. It can be achieved by the efficient and effective administration. According to a document prepared by the Initiative for Human rights, good governance has eight major facets. It is participatory, consensus oriented, accountable, transparent, accountable, effective and efficient, equitable, inclusive and respects the rule of law. RTI is one of the most important methods of good governance, which is necessary to ensure sustainable human development.

Corruption is major hindrance in the growth of any system. Dangers are more in a democratic system, where development of people who have reposed their faith by electing the government to power does not takes place. Conditions become more aggravated when basic information related to the people is not disclosed in the garb of maintenance of secrecy. In fact this culture of secrecy breeds nepotism and increases corruption to an obnoxious level. Information therefore is an antidote to corruption. It limits the abuse of discretion and protects civil liberties.

The whole relation of RTI and “good governance” finds its mention in the address of the Prime Minister of India, who, while piloting the Bill for its passage by the National Parliament, stated as under, on May 11, 2005.

“I believe that the passage of this Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which will ensure that benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man’s concern to the heart of all processes of governance, an era which will truly fulfil the hopes of the founding fathers of our Republic.”

The passage of RTI Act has up to a certain extent infused transparency and accountability in the working of public departments. This has increased the efficiency of decision making process. This has led to reduction in corruption in the country as evident from the following:

1. The Transparency International (TI) has reported that perceived corruption in India (a score of 3.5 out of 10) has declined at the rate of about 15-20 per cent per year, due mainly to the implementation of the RTI Act.
2. The Centre for Media Studies in collaboration with TI has recently accomplished an all India survey study (un-published) of the poor below the poverty line. The views of the poor have been elicited in respect of all the flagship programmes that have been implemented for alleviation of poverty. At least 40 per cent of the respondents have reported that corruption has declined.

The progress of RTI Act has been studied by PRIA (Society for Participatory Research in Asia) in August 2006. In order to track the progress of RTI Act in 12 states (Himachal Pradesh, Haryana Rajasthan, Jharkhand, Madhya Pradesh, Uttar Pradesh, Uttaranchal, Chhattisgarh, Andhra Pradesh, Kerala, Gujarat and Bihar), PRIA decided to conduct a study on a set of indicators namely the constitution of State Information Commission and its role, role of Nodal agencies, appointment of PIOs, experience of seeking information from PIOs, mandatory disclosure under section IV of RTI Act and role of government in educating people under Section 26 of the Act. The study indicated the following results, which are discussed in very brief manner as following:-

5. People belonging to rural areas feel that appeal process is very expensive.

Public Information Officers have been appointed in most public authorities in the states. The process of accessing information by people has started slowly through Right to Information Act. However, there exist great confusion in definition of public authority. Most of the PIOs at state level and district level are not cooperative and they sometimes threaten applicants to withdraw applications. PIOs should be given more training so that they are sensitive to people's need and PIOs who are guilty of deliberate denial of information should be penalized. It is quite striking that unawareness about RTI in rural areas is very high. The applications within the Act are mostly filed by the educated classes and urban people. The percentage of people still oblivious about provisions of the Act and more importantly about their right is very high.

6. Conclusion

"The Right to know is not meant for gratifying idle curiosity or mere inquisitiveness but is essential for the effective functioning of democracy. Transparency and accountability are sine qua non in a genuine democracy."

A popular government without popular information or the means of obtaining it is but a prologue to a force or tragedy or perhaps both. India can now say with pride that the citizens have been awarded to RTI, which will surely lead us to the path of development. Although there are still some gaps, but not be allowed to dominate the development of a healthy democracy, especially in a country that seems to be the largest democracy in the world.

Harsh Mander and Abha Joshi in their study titled "The Movement For Right To Information In India: People's Power for the Control of Corruption" opined that "information is power, and that the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and pro-active dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption. Combating corruption which has been a major concern for our country for decades has a solution potentially in the hands of RTI. It is therefore, quite safe to assert that RTI is a means as well as end to achieve democracy in its truest meaning.

This can be achieved by development of a comprehensive information management system and by the promotion of information literacy among the masses. This will positively lead to ultimate realization of the objectives of RTI viz. transparency and accountability. An informed citizenry is a condition precedent to democracy.

7. Bibliography

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