

Understanding The Right to Information Act: Implementation and Its Impact

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ABSTRACT

The Right to Information Act 2005 was passed by the UPA (United Progressive Alliance) Government with a sense of pride. It flaunted the Act as a milestone in India's democratic journey. It's been few years since the RTI was passed; the performance on the implementation front is far from perfect. Consequently, the impact on the attitude, mindset and behavior patterns of the public authorities and the people is not as it was expected to be. Among those who are aware, a major chunk either does not know how to wield it or lacks the guts and gumption to invoke the RTI. A little more stimulation by the Government, NGOs and other enlightened and empowered citizens can augment the benefits of this Act manifold. RTI will help mitigating corruption in public life by bringing about the required transparency.

INTRODUCTION

India always took pride in being the largest democracy, but with the passing of the Right to Information Act in 2005, it has also become an accountable, interactive and participatory democracy. This right has catapulted the Indian citizen on a pedestal from where he can take stock of administrative decisions and actions and make sure that his interests are protected and promoted by the Government. The Right to Information Act is an important landmark for Indian democracy. By this Act the citizen of India has been empowered like never before. He can now question, audit, review, examine, and assess government acts and decisions to ensure that these are consistent with the principles of public interests, good governance and justice. This act promotes transparency and accountability in administration by making the government more open to public scrutiny.

Before this Act, the accountability of public authority was practically minimal. The people who voted for the formation of democratically elected governments and paid taxes to

finance public activities had no legal rights to know as to what process has been followed in framing the policies affecting them, how the programmes have been implemented, who are the concerned officials associated with the decision making process and execution of the schemes and why the promises made for delivery of essential goods and services to the poor have not been fulfilled? Not surprisingly, the culture of secrecy beginning from the colonial rule till the first six decades of independence fuelled rampant corruption. Lack of openness and accountability in the functioning of the government not only bred inefficiency but perpetuated all forms of poverty, including nutritional, health and educational. In order to rectify the deficiencies in the mechanism, which denied the reach of entitlements to the intended beneficiaries, the people in general and civil society groups and non-governmental organizations (NGOs) in particular, demanded for greater access to the information held by the public bodies, which were acceded to by the Government in 2005. Information can empower poor communities to battle the circumstances in which they find themselves and help balance the unequal power dynamic that exists between people marginalized through poverty and their governments. (Puddephatt, McCall, Wilde, 2006)

Salient Features of the RTI Act 2005:

The Right to Information is a well-formulated Act. The Act is based on the premise that democracy requires an informed citizenry and transparency of information.

The Right to Information Act contains six chapters and two schedules. Chapter 1 is entitled 'preliminary' and explains the various terms like appropriate government, public authority, information, record, third party etc. Chapter 2 contains obligations of public authorities. Chapter 3 deals with the Central Information Commission while Chapter 4 describes State Information Commissions. Chapter 5 is about the powers and functions of the Information Commissions, appeals and penalties and Chapter 6 has all the miscellaneous things. Schedule 1 contains the oath to be taken by various levels of Information Commissioners. Schedule 2 contains a list of intelligence and security organizations established by the Central Government. RTI is for the right of any citizen of India to request access to

information and the corresponding duty of Government to meet the request except the exempted information (Sec.8/9).

Some of the important terms explained in the Act are as follows:

("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;) "public authority" 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 the State legislature;
- (d) by notification issued or order made by the appropriate Government and includes any –
 - (1) body owned, controlled or substantially financed;
 - (2) non Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

"Right to information" means the right to information accessible under this Act which is held by right under the control of any public authority and includes the right to –

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records
- (iii) taking certified samples of material

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.

There are some obligations for the public authority given in S4 (1). According to it every public authority shall 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 computerized are, within a reasonable time and subject to

availability of resources, computerized and connected through a network all over the country on different systems so that access to such record is facilitated.

Process

Application has to be submitted in writing with prescribed fee to Public Information Officer (PIO). PIOs will be there in each department/agency to receive requests and provide information. Assistant PIOs will be at sub- district levels to receive applications/appeals/complaints.

Information has to be provided within 30 days, 48 hours where life or liberty is involved, 35 days where request is given to Asst. PIOs, 40 days where third party is involved and 45 days for human rights violation information from listed security/ intelligence agencies. No action on application for 30 days is a deemed refusal. (There is no fee for delayed response.)

Every PIO will be liable for fine of Rs. 250 per day, up to a maximum of Rs. 25,000/-, for -

- i. not accepting an application;
- ii. delaying information release without reasonable cause;
- iii. malafidely denying information;
- iv. knowingly giving incomplete, incorrect, misleading information;
- v. destroying information that has been requested and
- vi. obstructing furnishing of information in any manner.

The Information Commission (IC) at the Centre and the State levels will have the power to impose this penalty. The Information Commission can also recommend disciplinary action for violation of the law against an erring PIO. (S.20). The Information Commissions have the power of Courts.

The Act establishes a two-tier mechanism for appeal. The first appeal lies to an officer within the organization who is senior in rank to PIO. The second appeal lies in the Information commission. The jurisdiction of the local court is barred under sec 20 of the

Act The Central/State Information Commission has a major role in enforcing the implementation of the provisions of the Act as well as for educating the parties mainly information seekers and providers. The powers vested with the Information Commissioners who are appointed by the President of India/Governor of a State, ensure effective implementation of the Act.

Role of the Central and State Governments:

The role of the Central/ State governments include interalia the following:

- 1 Develop educational programmes for the public especially disadvantaged communities on RTI.
- 2 Encourage Public Authorities to participate in the development and organization of such programmes.
- 3 Train officers and develop training materials.
- 4 Compile and disseminate a User Guide for the public in the respective official language.
- 5 Publish names, designation, postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc. (S.26)

Exemptions:

The following organizations are exempt from the RTI Act [S.8]

Nineteen government organisations are exempt from the RTI Act. These include intelligence agencies like the Intelligence Bureau, Research and Analysis Wing, Directorate of Revenue Intelligence, and Central Economic Intelligence Bureau etc. Research bodies working with the country's security apparatus are also immune to the law, as are paramilitary forces.

The Directorate of Enforcement, Narcotics Control Bureau, Special Service Bureau, special branch of the police in the Andaman and Nicobar, Lakshadweep and Dadra and Nagar Haveli are excluded from the Act. These organisations are, however, required to provide information under the Act if the panel believes the appellant's query relates to a case of corruption or abuse of human rights.

Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure

outweighs the harm to the protected interests. The categories of information exempted from disclosure in this Act are kept to a bare minimum.

Reasons for seeking information are not required to be given. People belonging to below poverty line do not have to pay any fees for seeking information.

The Right to Information is a product of both institutions and culture. Institutions are shaped by laws and the structure of Government. Culture is rooted in the history and practice of Government as well as in the broader traditional understandings of the accountability of leaders and of what constitutes representation. Culture is often more powerful than formal arrangements, particularly in societies that are undergoing a process of democratic transition and /or whose political systems still reflect traditional social methods of interaction. (Puddephatt, et. al.:10)

Implementation:

A perusal of its salient features makes it clear that its implementation requires the formation of Information Commissions, appointment of Information Commissioners and PIOs at the Centre and in the States, the training of PIOs, punishment of the erring officials, obligation on the part of the government to bring departmental information in public domain, and creating awareness among the public especially the disadvantaged

groups. The record of the Central and various State Governments and Information Commissions and PIOs on the above-expected roles has been mixed so far. There is variance in performance between and within states explained largely by the commitment of the state government and the quality of the officials concerned.

It is unconscionable that the very body created to bring about greater transparency in the working of public bodies is itself unable to furnish any information about its own operations. The Central Information Commission, which oversees the right to information, has failed to provide even basic information about its own, like the number and status of cases and appeals pending with it. It has been accused of not keeping any records of judgments and orders passed on RTI application or of pending cases.

The team of RTI activists found that several issues were in need of urgent attention e.g,

1. Ambiguous orders
2. Lack of proper procedure for recording orders.
3. Total lack of accountability as to when written orders will be given.
4. No penalties imposed even on PIOs who have denied information without any justification.
5. Arbitrary refusal of information for reasons not justified by the RTI Act.
6. Information Commissioners arguing on behalf of public authority, manufacturing imaginary justifications for denial of information when PIOs are not present to represent their own case. (Gandhi, 2008).

Despite claims of massive training programs for PIOs in the states, there is no evidence to suggest that they have made more people avail the Act or take up any follow up action. The schedule and organization of training programmes hardly give a picture of seriousness and strategic approach.

One year after the implementation of RTI a study using the state education ministries as a test case, found that only 12 states and union territories' education departments released over 35% of the information required. Madhya Pradesh, Uttaranchal, Chandigarh, Punjab

and Delhi -- in that order -- were the top five states in the country to provide information on the education department. Madhya Pradesh made public 87% of the information sought, while the figures for Uttaranchal and Chandigarh were 70% and 64% respectively. Delhi provided 54% of information sought, says the study.

Some PIOs have implemented the Act in right earnest and people have benefited a lot. Moreover several NGOs like Parivartan are contributing a lot in popularizing the Act and optimizing its impact.

Impact

RTI Act is one of the most people friendly legislation ever. Thousands have benefited from it. But it is true that more than five years after Parliament passed the Act in June 2005, the road to accessing the information remains arduous. RTI has made both tangible and intangible impact on the system and its people. People have used the RTI tool to get their ration cards, passports, pension funds, birth certificates, income tax refunds et. al. There have been cases when people as old as ninety years and as young as nine years have taken recourse to RTI to get their work done. People below the poverty line, disabled and blind people also have used it to their advantage. Big scams have been averted by the use of RTI. e.g., when information revealed by RTI exposed that 87% of wheat and 94% of rice meant for the poor were siphoned of by the shopkeepers and foodgrain officers, steps were taken to streamline the system. (Kejriwal, 2006) In 2007, data obtained under RTI inspired citizens to question elected representatives to stop a scam worth over Rs. 6,000 crores in the Crawford Market redevelopment issues in Mumbai. (Gandhi, 2007)

RTI Act has been incorporated in the National Rural Employment Guarantee Act (NREGA). RTI has been judiciously used to expedite NREGA. For example, the villagers of Elengabalsa village of Bandhugaon Gram Panchayat of Koraput district filed an RTI application to know the number of job cards issued in the village; why all the households, who by this time should have got the cards, had not received them; who were the officers guilty of violating the provisions of the Act, etc. The RTI Act worked as a miracle. The Panchayat authorities issued 40 job cards within seven days of the RTI application; promised to deliver the rest within some days. In a similar case in the Tumudibandh block of Kandhamal district, the Block Development Officer, responding to an RTI appeal, immediately released 500 job cards promising to give the rest eventually. Keeping aloft the

spirit of RTI, section 17 of NREGA clearly dictates that the Gram Panchayat must make available all relevant documents of the works done to the Gram Sabha for social audit. (Baisakh, 2007) NREGA has brought thousands of people above the family poverty line of Rs.28, 000.

The impact of the RTI can very well be gauged by a study by Rachna Sharma. It is based on the action taken by her for release and payment of salary arrear from a Public Institution under RTI 2005. The salary arrear of the employee for the period from 01.04.2002 to 18.12.2002 was not released and paid by the employer in spite of several verbal and written reminders made during three and a half years period. An application was submitted to PIO concerned on 26 May 2006 to get information under RTI Act 2005 but very little information was provided. When an appeal was submitted to Appellate Authority on 3 July 2006 some more responses were received and the salary arrear payment was made to the appellant on 11 Aug. 2006. The impact of RTI application in concerned division of the public institution was as follows:

Before RTI Act	After RTI Act
The staff was lethargic	The staff became active
The Staff did not have any fear	The staff had fear of RTI Act
The staff was not regular and punctual in their duties	The staff became regular and punctual
The staff was not feeling responsibility	The staff had started feeling responsibility
Proper action was not being taken by the staff on the complaints	All concerned officials became serious about each and every complaint
Proper files were not maintained	All concerned officers and officials had been asked to maintain proper files
The staff members were not conscious about their duties	They became conscious about their duties.
The staff members were engaged in corrupt practices	The corruption in the division reduced
The authorities were not alert	The authorities became alert to avoid such cases in future.

Thus the impact of RTI is palpable. People do feel more empowered. Their bargaining power vis a vis public officials has increased manifold.

Right to information has definitely resulted in greater transparency in governance. All the levels of the Government – The Centre, states and local bodies, including village level panchayats- have put their records in public domain, through publications as well as internet in the regional languages. RTI applications have annually increased by 8 to 10 times.

The implementation of RTI has been better in states that adopted RTI Act before 2005. This means that with time its implementation and use would definitely pick up. The impact includes its use by the general public and by the marginalized groups, change in the mindset and attitude of people as well as the authorities.

On the flipside, there have been cases where information seekers were bullied, intimidated and charged exorbitant money to get the information. When a social activist filed a simple RTI query on the distribution of food grain and kerosene under the Public Distribution System (PDS) in his district in Bihar, the supply officer sought a whopping Rs. 78,21,252 for providing him the information. A person was even jailed in Bihar when he sought some information from a district magistrate. Ordinary citizens fear physical retaliation in invoking RTI against powerful people. This can, therefore, be attempted only by strong NGOs with an established reputation and wide mass support or politicians with countervailing muscle power, and not by ordinary citizens however patriotic and public-minded they might be. An ordinary citizen just cannot muster the courage to walk into a police station and demand factual information on the

detenus, duration of custody, prescribed documentation, etc. There are numerous cases of torture and harassment against those seeking to invoke RTI. This ruins the spirit of RTI.

The fate of any law depends on the quality of those in charge of its implementation, the socio-political culture of the system and the vigilance and participation level of the citizens.

A look on the RTI applications filed so far makes it evident that over 75% applications have been filed by men. People in power or in system have used it more. Similarly people living in metros have taken recourse to RTI more. Majority RTI applications are for personal reason or advantage, many of them pertain to service matters. Most of the applications are by the same people.

There is better response from authorities when innocuous information is sought. But when information meant to expose some wrongdoing is sought, information is difficult to come by and those in power collude to torture the information seeker. But it cannot be denied that the RTI has given a boost to the freedom of speech and expression. RTI's role in corruption reduction is impacting although in poverty alleviation it has not been felt as yet.

Recommendations and Suggestions:

Recommendations and suggestions to optimize the benefits from RTI have been pouring in from various quarters. The report of the second Administrative Reforms Commission entitled, "Right to Information – Master Key to Good Governance" recommends that the Official Secrets Act, 1923, should be repealed, as it is incongruous with the regime of transparency in a democratic society. Other key recommendations include total reorganisation of public records for effective implementation of the Right to Information Act. An office should be set up in each State as a repository of expertise, to monitor all records. One per cent of the funds for all flagship government programmes should be earmarked for five years for updating records and building infrastructure. At least half the members of the Information Commission (IC) should be drawn from a non-civil service background. Thus the members will represent variety and experience in society.

Real change begins with small groups of people who are strong enough to take the lead. At some point it reaches critical mass. This is when the balance tips over, and change spreads rapidly right through society. The catalytic role of the government and the NGOs in implementing RTI needs to be appreciated and supported by the people at large. NGOs,

whistle blowers and media should be more active. We need a strong law to provide protection for whistle blowers. In the state of Jharkhand, 8 social auditors were killed when they wanted to know about NREGA implementation.

Solutions are required to make the Act function better. Campaigns must be conducted in rural areas through multimedia and kiosks. The government should also create infrastructure like more buildings and provisions to send complaints directly from rural areas through e-mails. Information on the RTI should be included in school syllabi to improve awareness. Government should come out with a special postage stamp of Rs. 10 towards payment of RTI fee nationwide. The amount collected through the stamp and information cost can be used to create awareness programme. Only about 10% of our 300 million populations of the poor are aware of the RTI, as a tool for reaping the benefits of assured entitlements. It therefore calls for making concerted efforts by the Governments, NGOs and media for creating mass awareness among the people, particularly to educate them, as to how to seek the information and how to make the best use of such acquisition of wealth of knowledge in everyday life.

It has also been suggested that the State Information Commissioners should be posted in different district towns instead of being grouped together in the capital.

The process of moving an RTI application has to be simplified. The phone-in system has been instituted in Bihar, and should now be replicated in the rest of the country. It is not as though there will be reduced accountability with a phone-in system. Not only can an application be phoned in, but first and second appeals can be made over phone as well. It will then be the responsibility of the information commission to see and route the complainant's query to officials for correct answers. It is not just illiterate persons, but all persons unfamiliar with the nitty-gritty of government functioning who can benefit from putting RTI on phone. The Manual

for public authorities should include the procedure for appearing for hearings before the Information Commission while dealing with information cases.

It is highly recommended that the appellate authority should also be included within the penalizing provisions and not to put the PIO alone in the frame.

The jurisdiction of the Act should be made clear. There should be no doubt that the act extends to all the three organs of the government including the judiciary. The Court must be the most accountable institution in any democracy because of its vital role as a watchdog. Confusion arose when in April 2008 the Chief Justice KG Balakrishnan declared that the Act does not extend to SC functionaries, as they are constitutional authorities.

Training of PIOs should be more structured. In the appraisal report of government officers their performance on response to RTI cases should also be included. Honest officers should be appointed as information commissioners and public information officers. Women Commissioners should also be appointed.

Although conscientious officials have honored RTI but there are hordes of others who have flagrantly violated it and resorted to all sorts of excuses to stymie its use. The impact as a result has not been as salutary as desired. The goals are achievable but it will take concerted, creative and decisive action from the government as well as the community at large. If the Government fine tunes RTI on the above lines it will definitely change people – government interface and Indian democracy would then benchmark with the best.

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