



# RIGHT TO INFORMATION ACT, 2005 IS A TOOL FOR GOOD GOVERNANCE: AN

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## ANALYSIS

The right to information act is popularly known as RTI Act. It has become a very important law that was enacted by the Indian Parliament in recent years. It has been proved as a very powerful tool for common people and social activists to fight against corruption and to have a better control upon officers of various government departments and agencies and also to protect their legal and constitutional rights. The transparency of the public authority information has increased. The secrecy of various kinds of information from public authority has reduced largely and resulted in transparency and accountability for a better democracy.<sup>1</sup>

Freedom of speech and expression guaranteed by the Constitution of India, have been liberally construed by the Supreme Court of India from its inception of the right to life, liberty and equality. The right of freedom of speech and expression embraces within its scope the freedom of propagation, interchange of ideas and dissemination of information which would aid the citizen's understanding regarding working of their Government and its various organs in a democracy. The importance which the framers of our Constitution attached to this freedom is evident from the fact that restrictions could be placed on that right by law only on the limited grounds specified in Article 19 (2). Though on the one hand judiciary has treated the right to information under the concept of freedom of speech and expression but on the other hand, transparency that is the very basic ingredient of any democracy should be shown in the functioning of the authorities. Manifestation of transparency lies in the right access information held by public authorities. Since the concept of democracy emanates as the system of the people, meant for the people and governed by the people. So the access of the people to the public records was crying a need. Now the seed of the freedom of information has been planted but it requires careful nurturing by legislature and affective implementation by executive. The belief that access to information is a human right reflected in "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers."<sup>2</sup>

Government has three organs legislature, executive and judiciary. Legislature and judiciary conduct their business in

the open forums in the form of parliament and court. They discharge their responsibility without any fear and favour. They provide full opportunity to all concerned to join the debate and know the facts available with them but this concept is not with the executive branch of the government. Generally the decision on any matter is taken by this organ of the government in the closed dark room without consulting the concerns of the sovereign “we the people of India” by the servant “the government”. The symbolic relationship of sin and secrecy is now universally recognised. It has been observed that any government which operates in greater secrecy is more prone towards the corruption as compared to a government which operate in greater openness. That’s why, the information is considered as a significant step in empowering the people to combat the corruption. Officials often abuse their discretionary powers to suit various political or other vested interests or to misappropriate the funds. The right to information therefore is important tool to check the abuses of administrative discretion and to ensure fair process. This right is also necessary for protecting the civil liberties for example, by making it easier for civil society groups to monitor wrong doing such as encounter killing or abuse of preventive detention law. The Information helps strengthen the foundation of the democracy. Unlike autocratic government a democratic government needs to be based on the trust of the governed. It should, therefore perform function as much as possible keeping in view the public so that the citizen know its aims, policies programmes and help the government to accomplish them. On the contrary maximum secrecy in the government functioning would tend to promote more corruption, nepotism and misuse or abuse by the authority and thereby the government is alienated from the governed. Openness in the government functioning is regarded as an essential ingredient of the democracy and the right to information as a fundamental democratic right<sup>3</sup>

In order to be an effective and meaningful democracy, it should have a responsive administration which is a bilateral process. On the one hand administration is required to be citizen caustic which implies that it should be responsive towards the legitimate needs, aspiration and grievances of the citizens and on the other hand citizens also required to be co-operative and vigilant as it is the eternal vigilance of the enlightened citizens which facilitates accountability and prevents the arbitrariness in the public administration. Right to know is an effective tool or mean for the citizens enlightenment which provide them access to the government departments and documents and also enable them to acquire knowledge of what is happening in the government.<sup>4</sup>

As the governance in any democratic country implies the effectively participation of the people of the country in the process of the government but for that the citizens must have the necessary information that exactly shows how things are being done and also participate in planning processes and judgment of whether certain plans and schemes are useful for them or not. The concept of Right to Information not only helps in improving the quality of the decision-making process by removing unnecessary provisions of the secrecy but also facilitate the process of the policy formulation on the issues of their concern<sup>5</sup>

In any democratic system of governance the government runs for the benefit of the public at large and not for the benefit of one or a few persons therefore the Government from the village to the central level has to be accountable towards the people and the People should have a right to know what their Government is doing. A right to information will ensure that people can hold public bodies accountable on a regular basis, without having to lay the

entire burden on their elected representatives who are themselves often unable to get the information sought in spite of all the resources at their command. The right to information is primitive of a culture of accountability by providing accessibility to information pertaining to finances, proceedings and decisions of all the social actors whose activities impact the public. It can provide a check on mismanagement, abuse of discretion, bribery, other forms of corruption and malpractices. This shall bring a degree of regularity in the process.<sup>6</sup>

There is a presumption that everything done by the government is done for the public welfare and done honestly with optimum benefits from the funds available. However, as we all know, in recent times, this presumption has been eroded to a great extent by making misuse, misappropriation and also careless use of public funds. To counter this, it is indispensable that there should be a complete transparency in all the public dealings. The concept of Right to Information bounds the concern officials for careful utilization and application of funds. Transparency will also help people to hold the officials accountable for their mishandling of public time and money<sup>7</sup>.

### MEANING OF RIGHT TO INFORMATION

The Right to Information means a right to information accessible under the Act which is held by or under the control of any public authority including a right to:

- Inspection of works, documents, records.
- Taking notes, extract or certified copies of documents or records.
- Take certified sample of material and
- Obtain information in the form of diskettes, floppies, tapes, video or any other
- electronic mode or through print outs where such information is stored in a computer or any other devices.

It is generally very misunderstood by the people that right to information means only the right to seek information, this misconception is to be reduced by the Right to Information Act, 2005 up to a great extent by providing a comprehensive definition that clarifies the position, dispels the misunderstanding and makes clear that right to information includes<sup>8</sup>:

- The right to seek information.
- The right to obtain information.
- The right to store information

### CONSTITUTIONAL PROVISIONS AND RIGHT TO INFORMATION ACT

India has a democratic Constitution, which is one of the most unique constitutions in the world. The strength of our Constitution is its basic features, which can never be changed. The Fundamental Rights are one such feature that prescribes citizens their natural rights as also the judicial remedy in case of any violation by the State. The Right to Information derives from the democratic framework established by the Constitution and rests on the basic premise that since Government is 'of the people and for the people' it should be open and accountable and should have nothing to conceal from the people it purports to represent.<sup>9</sup> The right to impart and receive information is species

of the right to freedom of speech and expression guaranteed by article 19(1) of the constitution of India. The state is not only under an obligation to respect the Fundamental Rights of the citizens but also equally under an obligation to ensure conditions under which those rights can be meaningfully and effectively be enjoyed by one and all.<sup>10</sup>

Democratic society survives by accepting new ideas, experimenting with them, and rejecting them if found unimportant. Therefore it is necessary that whatever ideas the Government or its other members hold must be freely put before the public. The free flow of information is must for a democratic society in particular because it helps the society to grow and flourish. It is now recognized that the right to information is vital to democracy for ensuring transparency and accountability in governance. It therefore ensures that governance is more participatory being a vital component of successful democracy .<sup>11</sup> In our modern world, we just cannot imagine a true democracy where the citizens are deprived of information that is vital for their decision-making in matters relating to themselves and the common good of their societies<sup>12</sup>

The right of citizen's access to information is an important means of achieving an accountable, transparent and participatory Government.

### **OBJECTIVE OF THE ACT**

In order to ensure greater and more effective access to information, common people of the country have a fundamental right to know what is being done by their government in its own name. In any democratic country freedom of speech and free flow of information is considered as the lifeblood and safety valve that is also necessary for political growth as well as to checks the abuses of power held by public authorities. The present Act is to harmonize the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the government. <sup>13</sup>

### **SALIENT FEATURES OF RIGHT TO INFORMATION**

The RTI process involves reactive to disclosure of information by the authorities. Information including mode of information in any form of record, document, e-mail, circulars, press release, contract, sample of electronic data etc. The RTI Act also covers inspection of work, documents, record and its certified copy and information in form of diskettes, floppies, tapes, video, cassettes in any electronic mode or stored information in computers etc. Each public and partial public authority appoint Public Information officer (PIO) and Assistant Public Information officer (APIO) to serve information to public. Any individual may submit a written request/application to the PIO for required information. The PIO is responsible to provide the information on the applicant request with in time schedule. Applicants have submitted the application with Rs.10 fee. But application fee is exempted to the people of Bellow Poverty Line (BPL) SC and ST applicants. There is no prescribed application to file the RTI application but signed application must includes applicant name and address, required information and name and position of PIO. Suppose PIO is failed to dispose the RTI application within the stipulated time limit, the applicant have the right to file first appeal to first appellate authority in the same public authority. The first appellate authority is responsible to provide information within 30 days under the 19(1) of the RTI Act, but it is optional for the applicant. The first

appellate authority also failed to provide the required information within time limit, applicant have right to file second appellate appeal to Information Commission against the PIO. Information Commission is a quasi judicial authority under the act. The commission conduct enquires as a civil court. The Commission have right to impose penalty Rs. 250.00 per day and up to not excluding Rs.25000.00. The RTI act constitutes two tier Commissions to Centre and States.

This Act basically has two parts

(a) Substantive law; section 3 coupled with sections 8, 9, 18, 19 and 20 deal with substantive law

(b) Procedural law, section 6 along with section 7 deal with procedural law. Thus the present Act is a completed code in itself and contains the following features:

- The object of RTI Act is to promote the transparency, openness and accountability in the functioning of every public authority and simultaneously to strengthen the democratic republic. Transparency of information and an informed citizenry are needed and required for any democratic country, simultaneously considered not only vital to its functioning and but also essential to stop the corruption and to hold the government and their instrumentalities accountable towards the common people. It was, therefore, considered convenient to provide the information to the citizens who desire to have it.

- Section 2 of the RTI Act comprises the definition clause. It is a very well settled principle of the interpretation of statutes that whenever the definition clause is added to any Act, the definitions of the words given therein simply define the meaning of that words in order to make the terms specific in the sense in which that word are used in the different sections of the Act. If in any definition, the word 'means' is used, it indicates the exhaustive definition of the word and in case the word 'includes' is used, it indicates that it includes definite matters which an normal or common definition of the word might not have included. It is understandable and reasonable to presume that the meaning as expressed in the definition shall be used in the samesense in every part of the Act.<sup>14</sup>

- Section 3 of the current RTI Act comprises that every citizen of India has been provided a right to information.<sup>15</sup> This is indeed very necessary for promoting the transparency, openness and accountability in the working and functioning of every public authority. Without having adequate information relating to any matter, a citizen cannot form any conversant opinion. It is a very well settled principal that any Democracy cannot survive or carry on until the citizens are free and fairly informed. In this regard the honorable Supreme Court of India has also held that the right to information is a fundamental right, covered under 'freedom of speech and expression'.<sup>16</sup>

- Section 4 of the current Act comprises that in order to provide the information to the citizens, it is compulsory for every public authority to uphold and preserve all its records appropriately catalogued and indexed in a manner and in a form which facilitates the right to information under this Act simultaneously all records should be computerized and connected through a network all over the country on different systems, subject to the availability of the resources so that any citizen can access to such records from any place in the country. It shall be a continuous endeavor of every public authority to provide as much as possible information to the public suo motu at regular



intervals through different means of communications, including internet, so that the common public need a minimum use of this Act for obtaining any information.<sup>17</sup>

- Section 5 of the RTI Act comprises that in order to provide the information to all those, request for information every public authority shall designate as many officers either as central or state public information officers and central or state assistant public information officers as the case may be in all executive offices or units within the time period specified for the same. Every such central or state public information officer shall deal for providing the information to the persons seeking information and also provide practical assistance to such persons, may also seek the assistance of others officers for the same purpose.<sup>18</sup>

- Section 6 of the current Act comprises that in order to receive any information from any public authority; a request is to be made through electronic means or in writing, in Hindi or English or in the official language of the area concerned to the central or state public information officer or to the state or central assistant public information officer as the case may be by specifying the details of the information sought by him along with such fee as may prescribed for such purpose.<sup>19</sup> Different fees and different modes of payment have been prescribed by the center and the states respectively.<sup>20</sup>

- Section 7 of the RTI Act comprises that on receipt of any application, the central or state information officer as early as possible within a time period of thirty days either deliver the information sought on payment of prescribed fee as for the same or reject the application on the grounds specified in the Act.<sup>21</sup>

- Section 8 and 9 of the RTI Act comprises the exemption clauses that provide, there shall be no compulsion for providing any citizen such information, disclosure of which would prejudicially affect the relation with foreign state, economic or scientific interests of the State, strategic, security, integrity and sovereignty of the country, or lead to incitement of any offence.<sup>22</sup>

- Section 10 of the current Act comprises that where any request made for information is rejected on the ground that information requested is exempted from disclosure, then access may be provided to that part of the record which does not contain any information which is exempted from disclosure and which can reasonably be severed from any part that contains exempted information.<sup>23</sup>

- Section 11 of the RTI Act comprises that where the information requested is related with any third party that has treated it as confidential and the central or state public information officer as the case may be intends to disclose any information or record, or part thereof, he may, within five days of such request, give a written notice and invite to the concerned third party for making a submission in writing or orally, regarding whether the information should be disclosed, and such submission shall be kept in view while taking a decision about disclosure of information.<sup>24</sup>

- Section 12 and 15 of the RTI Act comprises that the general superintendence, direction and management of the affairs of citizen's right to information have been assigned to the central or state information commission as the case may be, which shall exercise all the powers conferred on, and shall perform the functions assigned to it under this Act. The concerned commission shall consist of the chief information commissioner and such number of central

information commissioners as may be necessary.

- Section 18 of the RTI Act comprises the powers and functions of the state or central information commission as the case may be.
- Section 19 of the RTI Act comprises the appeal against the decision of the central or state public information officer, within thirty days from the expiry of such period or from the receipt of such a decision to the officer senior in rank to such information officer in same office in each public authority. A second appeal against the decision of first appellate authority shall lie within ninety days from the date on which the decision should have been made or was actually received, with the central or the state information commission
- Section 20 of the RTI Act comprises the penalties against the public information officer who has without any reasonable cause, destroyed the subject of the request, knowingly given misleading, incomplete or incorrect information, mala fide denied the request, not furnishing the information within the time specified or refused to receive an application by the information commission while deciding any complaint or appeal, a penalty of two hundred and fifty rupees each day till either application is received or information is furnished, however, the total amount of penalty imposed shall not exceed twenty five thousand rupees.<sup>25</sup>
- Section 23 of the RTI Act comprises that any application, complaint or even appeal cannot lie into any civil court and this Act makes a bar of jurisdiction of civil court and states clearly that no prosecution, suit or other legal proceeding shall be laid against any person who does anything relating to information.<sup>26</sup>
- Section 24 of the RTI Act comprises that public authority almost covers the entire departments upon which this Act is applicable even then there are certain departments which are beyond the limits of this Act provided under the second schedule as intelligence bureau, research and analysis wing of the cabinet secretariat etc., being intelligence and security organisations established by the central or state government or any information furnished by such organisations to the concerned government but any information pertaining to the allegations of corruption and human rights violations shall not be excluded.<sup>27</sup>
- Section 25 of the RTI Act comprises that to ensure whether the Act is being implemented in the true sense or not, the responsibility is on the Central or State Information Commission to prepare a report about it after the end of each year and forward a copy to the appropriate Government containing: the number of request made to each public authority; or decisions where applicants were not entitled to access to the documents; or appeals referred to the central or state information commission; particulars of any disciplinary action taken and amount collected by each public authority.<sup>28</sup>
- Section 26 of the current Act comprises that until and unless the people of the country are not aware about the provisions of any law, the purpose of making that particular law will not be succeed, with this view the duty is cast on the appropriate Government to develop and organize educational programmes to make the people aware about their rights specially to the disadvantaged community and to encourage public authority to participate into such programme and to provide the required information on time for that to train their information officers.<sup>29</sup>

The above mentioned features are sufficient in order to indicate that the current RTI Act 2005 has in place all the essential elements necessary for a sound access to information law. Now it is on the citizens as well as the administration to ensure that the Act is used responsibly by all the various stakeholders.

## IMPACT OF RIGHT TO INFORMATION ON ADMINISTRATION

The Right to Information is one of the friendliest legislation. Large number of people has been benefited from it. But it is true that more than a decade after Indian Government enacted the act in 2005, the road to accessing information remains arduous. This act has made both tangible and intangible impact on the system and the people. People are using this act as a tool to get their passport, ration card, pension, birth and death certificate and income tax returns. Several people like disabled, old and young people below the poverty line have utilised this act to get benefits. The RTI act influence on people and impact on Indian Administration in greater Transparency in functioning of public authorities: disclosure of information regarding government rules, regulations and decisions, every public authority is mandated to 'maintain all records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act'. The public authorities are required to make pro-active disclosures through publication of relevant documents. Besides, the public authorities are also required to 'provide as much information 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'.<sup>30</sup>

- **Improvement in accountability and performance of the Government:** The RTI provides people with the mechanism to access information. In addition, every public authority is required to provide reasons for its administrative or quasijudicial decisions to the affected persons. Until the implementation of the RTI Act, it was not possible to an ordinary persons to seek the details of a decision making process, which was found most often, as ineffective in terms of its outcome. It was, therefore, not possible to hold a free and frank discussion on issues of common concern of people. Promotion of partnership between citizens and the Government in decision making process: The RTI Act provides a framework for promotion of citizen government partnership in carrying out the programmes for welfare of the people. The partnership is derived from the fact that people are not only the ultimate beneficiaries of development and also the agents of development.<sup>31</sup>

- **Reduces in corruption in the Government departments:** In absence of transparency and accountability encourage the government officials to corruption practices. Which result in lower investments due to misuse of power and authority or diversion of funds for private purpose. It creates an environment of distrust between the people and the government, which strike upon the development of democratic governance.<sup>32</sup>

## CONCLUSION

The recognition of openness and transparency in any one part of government functioning lay the road towards complete transparency in all the functioning and effective legislation creates certain legal spaces. The right to information not only helps in controlling the corruption and the arbitrary power but also strengthen the aspirations of people for participatory democracy. Theoretically speaking, there can be no disagreement about participatory



democracy being a purer form of democratic practice. On the basis of above discussion it seems safely to said that the right to information is considered as a tool for promoting the participatory, development and to strengthening any democratic governance as well as facilitating effective delivery of socio-economic services. In the sort of society, in which we live today, acquisition and gaining of information and new knowledge along with its application have passionate and invasive impact on the processes of taking informed decisions that results into overall productivity. People having access to information and understanding the use of such acquired information in the processes of exercising their political, economic and legal rights become empowered. By following such view, almost every society has made endeavors for putting in place a mechanism of free flow of information and ideas to make the common people known without asking government functionaries for every little bit of information. Disseminating the information and knowledge through communication technologies such as print media, radio, televisions as well as internet have yielded positive results and made significant contributions to the well-being of the poor people. In this backdrop, the Right to Information Act, 2005, was passed by the Indian parliament to dismantle the culture of secrecy and to change the mindset of the bureaucrats and political leaders as well as to create conditions for taking an informed decision. A key objective of the Right to Information Act, 2005 is the greater probity and honesty to promote transparency and accountability in the working of every public authority in the country and hold the scourge of corruption, which are critical for ensuring good governance and development. The Act mandates a legal-institutional framework for setting out the practical regime of right to information for every citizen to secure access to information held by or under the control of public authorities. It prescribes mandatory disclosure of certain information to citizens and designation of Public Information Officers in all public authorities to attend to requests from citizens for information within stipulated time limits. It provides for appeal to designated appellate officers against the decisions of public information officers. It also mandates the constitution of a central information commission and state information commissions to enquire into complaints, hear second appeals, and guide implementation of the Act. It was also observed that there are numerous ways in which government information is accessible to the public where the concerned person need not to file an application for being informed regarding procedure and provisions of any particular law affecting them, containing into the different laws and provides the provisions of information such as criminal law, business law, intellectual property law, service laws and other allied laws