

Right to Information Act, 2005: An Analysis

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Information constitutes as one of the seven specific aspects of good governance identified by the World Bank Report, 1992 entitled “Governance and Development”. Information and knowledge are the instruments of transformation because they enable public to engage their representatives and the bureaucracy on an ongoing basis and to participate effectively in the formulation and implementation of policies and activities purportedly for their benefit. An empowered citizenry in relation to the state tends to make administration more accountable and participatory as well as ensuring greater transparency and acting as a deterrent against the arbitrary exercise of official power.¹

Consequently, the citizens’ right to information has now been universally recognized as a mean for securing transparent and accountable public administration. As a matter of fact, the traditional concept of invisible government has become absolute in this age of liberalization and globalization. Today, the administration is made accountable and transparent enough and legally responsible for providing adequate information about their aims, policies, programmes and expenditures.²

The Right to Information open up government’s records to public scrutiny, thereby arming citizens with a vital tool, to get information about what the government does and how effectively, thus making the government more accountable and transparent in its functioning. Transparency in government organizations makes them function more objectively. Information

¹ Rajvir S. Dhaka, “Right to Information Act and Good Governance: Operational Problems and Road Ahead”, in *Indian Journal of Public Administration*, Vol. LV, No.3, New Delhi, Indian Institute of Public Administration, July-September, 2009, pp.534-535.

² Jaytilak Guha Roy, “Second Administrative Reforms Commission on Right to Information: A Critical Review”, in *Indian Journal of Public Administration*, Vol. LIII, No.3, New Delhi, Indian Institute of Public Administration, July-September, 2007, p.560.

about functioning of government also enables citizens to participate in the governance process effectively. In a fundamental sense, right to information is a basic necessity for running good governance³.

RIGHT TO INFORMATION: INDIAN SCENARIO

Indian Constitution does not expressly provide any right to freedom of information as such. Part III of the Constitution dealing with Fundamental Rights and Part IV dealing with Directive Principles of State Policy are totally silent on this subject. However, Article 19 (1) (a) of the Constitution, which confers the right to freedom of speech and expression, includes the right to information when read with Article 19 of the Universal Declaration of Human Rights, which has been ratified by India also. It may however be mentioned that the Supreme Court through its progressive interpretation read this valuable right as part of Article 19 (1) (a)⁴. Further, Article 21 of the constitution guarantees to every citizen the right to life and personal liberty. The citizens cannot exercise this right to protect their lives unless they are informed about threats to their lives and the protective measures available to them. Without this information, right to life becomes totally meaningless. Bhopal gas tragedy is a living example wherein many lives could have been saved if the people living near the plant site were provided adequate information about the hazards of the plant and how can they protect themselves from the MIC gas.⁵

Article 51 (A) (g) imposes a duty on every citizen to protect and improve environment. It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

Again this duty becomes meaningless if the citizens are denied information on important aspects of natural environment, various projects being taken up by the government which are going to effect the environment and the policies of the government on environment issues.

In India there are a number of laws to curb free flow and access to information. One such legislation is Official Secrets Act, 1923 that is a replica of the Official Secrets Act of Britain and

³ Government of India, Second Administrative Reforms Commission, First Report on Right to Information: A Master Key to Good Governance, June 2006, para. 1.1.1.1 p.1.

⁴ Sapna Chadah, "Right to Information Regime in India: A Critical Appraisal", in *Indian Journal of Public Administration*, Vol. LII, No.1, New Delhi, Indian Institute of Public Administration, January- March, 2006, p.5.

⁵ Faizan Mustafa, *Constitutional Issues in Freedom of Information: International and National Perspective*, New Delhi, Kanishka Publishers, Distributors, 2003, p.119.

is still being used by the government to suppress the freedom of the press and voices of the poor and marginalized sections of the society⁶.

DEMAND FOR RIGHT TO INFORMATION IN INDIA

In addition to recognition to Right to Information by Supreme Court, Mathew Commission in 1982 in its report while recommending amendment to Section 5 of the Official Secrets Act, 1923 and emphasized the need of right to know. In 1989, V.P. Singh's National Government came into power and declared its decision to make right to information as a Fundamental Right. By this time, the demand for Right to Information got intensified and took the shape of mass movement. In 1995, the Press Council of India drew up the first blue print for the Information Bill. It asserted that information, which could not be denied to Parliament or State Legislature should not be denied to a citizen. In 1997, the Government of India decided to introduce the Freedom of Information Bill. It suggested that each State should also provide access to information in areas within its jurisdiction. As a result several States including Punjab enacted Right to Information Act. In 1997, a Working Group under the chairmanship of Shri H.D. Shourie, a consumer activist was constituted which presented another draft. In July, 2000 Freedom of Information Bill was finally introduced in Parliament keeping in view the growing recognition and demand for Right to Information. Freedom of Information Act, 2002 was enacted, but never notified⁷.

RIGHT TO INFORMATION ACT, 2005

Right to Information Act, 2005 was passed by both Houses in summer session of the Parliament and received assent of President on June 15, 2005. The Bill was passed after 150 amendments were introduced in the original draft. The legislation confers on all citizens a right to seek information and correspondingly makes it the duty of the public authorities to disseminate information for better governance and accountability. The law has widest possible reach covering Central and State Governments, Panchayati Raj Institutions (PRI), Local Bodies

⁶ Joyti Rattan, "Genesis of Right to Information under International and National Laws with Special Reference to India: A Critical Analysis", in *Indian Journal of Public Administration*, Vol. LV, No. 3, New Delhi, Indian Institute of Public Administration, July- September, 2009, p. 688.

⁷ Sapna Chadah, "Implementing Right to Information: A Practical Approach", in *Indian Journal of Public Administration*, Vol. LV, No. 3, New Delhi, Indian Institute of Public Administration, July- September, 2009, p. 465.

and recipient of government grants, but would not apply to the intelligence security organizations expect if the information relates to the allegations of corruption⁸.

Purpose of the Act

- to provide the citizen right to information which will enable them to have access to information under control of the public authorities which will promote transparency and accountability in the working of every public authority;
- to provide for the constitution of a Central Information Commission and State Information Commission.

This act will extend to whole of India except the State of Jammu and Kashmir⁹.

This Act gives every citizen of India a Right to Information¹⁰.

Definition of Right to Information

Right to Information under the Act means as the right to information accessible under this Act, which is held by or under the control of any public authority and includes the right to;

- (i) inspection of the work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified sample 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 any device¹¹.

Authorities under the Act

For providing information, it has been made incumbent on every public authority to designate within a period of 100 days of the enactment of this Act, Central Public Information Officers or State Public Information offices as the case may be in all its administrative wings for the purpose of providing information to person so requesting and Central Assistant Public Information Officer or a State Assistant Information Officer at each sub-divisional level or other sub-district level to receive the applications or appeals and forward them to the Central Public

⁸ Sapna Chadah, "Empowering People with Right to Information", in *The Pioneer*, Delhi, May 13, 2005.p.17.

⁹ Right to Information Act, 2005, Section 1 (1).

¹⁰ *Ibid*, Section 2 (1).

¹¹ *Ibid*, Section 2 (j).

Information Officer or State Public Information Officer or Central Information Commission or State Information Commission as the case may be¹².

Procedure for Supply of Information

A person who desire to obtain information has to make a request for the same in writing or through electronic means¹³. It can be in English, Hindi or in the official language of the area in which the application is being made. Such application shall be accompanied with prescribed fee. The application is to be made to the Central Public Information Officer or State Public Information Officer of the concerned public authority or Central Assistant Public Information Officer or State Assistant Public Information Officer as the case may be. The particulars of the information required must be specified in the application. No reasons or personal details expect for that required for contacting are required to be given for seeking information. The application must either be decided within a period of 30 days or the request be rejected for the reasons as specified under the Act. Where the information sought concerns the life and liberty of a person the same shall be provided within 48 hours of the receipt of the request¹⁴.

Restrictions on Right to Information

The information under the Act can be denied if:

- Disclosure would prejudicially effects sovereignty and integrity of India, security, strategic, scientific or economic interest of the state, relation with the foreign state or lead to incitement of an offence;
- Publication of the information is expressly forbidden by court of law or tribunal and disclosure may constitute contempt of court;
- Information would cause breach of privilege of the Parliament or the State Legislature;
- Information includes commercial confidence, trade secrets or intellectual property and disclosure would harm competitive position of the third party unless the competent authority is satisfied that the public interest warrants disclosure of such information;
- Information available to the person in his fiduciary relationship unless the competent authority is sissified that larger public interest requires disclosure of such information;
- Information received in confidence from the foreign government;

¹² *Ibid*, Section 5 (10) & (2).

¹³ *Ibid*, Section. 6 (1).

¹⁴ *Ibid*, Section 7.

- Information whose disclosure would endanger the life or physical safety of any person or identify the source or assistance given in confidence for enforcement of law or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders; cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers. However the decisions of the Council of Minister and the reasons and material on which the decisions has been taken provided it is not covered under any of the exemption clauses mentioned;
- Any information which is personal and has no correlation to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual unless larger public interest justifies the disclosure of such information;
- Providing information involves an infringement of copyright subsisting in a person other than state¹⁵.

Central and State Information Commission

A Central Information Commission (CIC) has been set up by Central Government and State Information Commissions have been set up by the respective State Government, as provided in the Act.

Each of such Commission includes one Chief Information Commissioner and not more than 10 Information Commissioners. The Central Information Commissioners will have salaries, allowances, terms and conditions of service are similar to what the Chief Election Commissioner and the Election Commissioner respectively have and their service conditions cannot be varied¹⁶. Similarly, every state government shall constitute the State Information Commission, which shall consist of the State Chief Information Commissioner and not more than 10 State Information Commissioners. The appointment of the State Chief Information Commissioner and State Information Commissioners shall be made by the Governor of the state on the recommendation of the committee consisting of the Chief Minister, the Leader of Opposition in the Legislative Assembly and a Cabinet Minister to be nominated by the Chief Minister. Whereas the State Information Commissioner shall have salaries, allowances, terms and conditions are similar to

¹⁵ *Ibid*, Section 8 & 9.

¹⁶ *Ibid*, Section 12 & 13.

that of an Election Commissioner, the other State Information Commissioner shall have the same salaries and allowances as given to the Chief Secretary of the state government¹⁷.

The Information Commissions have the duty to receive complaint from any person who has been refused information that was required; or who has got no response to his request for information within the specified period; or who believes that the information provided is incomplete, misleading or false. The Information Commissioners have the power of the Civil Court for summoning and enforcing the attendance of person; for requiring the presentation and inspection of documents and for receiving evidence on affidavit or for issuing summons¹⁸.

The Information Commissions also have power to impose a penalty of Rs. 250 each day, if the information is not furnished by the concerned Public Information Officers. There is, however, a limit of Rs. 25000 on such penalty¹⁹. They also have the power to recommend disciplinary action against the Public Information Officers, if they find the PIO has obstructed in any manner in furnishing the information or knowingly given incomplete, incorrect or misleading information or has destroyed the information²⁰.

The Information Commissions have also prepare annual report on the implementation of the provision of the Act and presented to the concerned governments who will cause a copy of the report to be laid before the House of Parliament, or as the case may be, before each House of a State Legislature. The Information Commissioners may also give recommendations to any public authority requiring it to take steps which ought its opinion to be taken in relation to the exercise of its functions under this Act²¹.

The Act has exempted certain organizations, namely certain Intelligence and Security Organizations from the provisions of this Act. However, even in such organizations, which have been so specified in the Second Schedule of the Act, if there is any information pertaining to allegations of corruption and human rights violation, that information is not exempted. The concerned government can also add or delete any organization in the Second Schedule²².

¹⁷ *Ibid*, Section 15 & 16.

¹⁸ *Ibid*, Section 18 (3).

¹⁹ *Ibid*, Section 20(1).

²⁰ *Ibid*, Section 20(2).

²¹ *Ibid*, Section 19 (8) (a).

²² *Ibid*, Section 24 (1).

The Right to Information Act, 2005 also enjoins upon the appropriate Government to develop and organize educational programmes for the dissemination of contents of the Act²³.

To be conclude that Right to information Act, 2005 ushered a new era of performance and transparency to benefit the common man in the complex modern world and empowered the people to judge the government functioning is in public interest or not. The Right to Information gave the citizens an instrument to prevent misuse of public power and funds.

²³ *Ibid*, Section 1 (a).