

IMPORTANCE OF RIGHT TO INFORMATION FOR GOOD GOVERNANCE IN INDIA

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Abstract

Transparency and accountability in administration is the sine qua non of participatory democracy. Information is the oxygen that any citizen needs to live in the social structure of the society and maintain its democratic balance. Right to Information (RTI) in India was developed through Judicial pronouncements thereby distinguishing itself as a Fundamental Right under Article 19 (1) (a). After a gradual period of time, realizing the importance of this right to know, this right was established in 2005 as a full-fledged statute in the name of "The Right to Information Act, 2005". This RTI Act became a pioneer tool to the citizens of India for promoting, protecting and defending their Right to know.

Good Governance may be termed as a synonym for the work carried out by a Government where the maximum benefit is given to the maximum number of people. India being a huge democracy needs participation from every front to implement the objective of good governance. The scenario often turns that laws of public interest and benefit is mostly used by the elite section of the society. However, this piece of legislation stands as an exception as it has reached its extent to the remote corner of the country. The paper will study the implementation and extent of this prominent law to the grass root level of India through the participation and activeness of common people who thrive to promote good governance through their extra ordinary works. In addition, the paper also highlights the need to amend the Act so as to protect the activists who often risk their lives for public interest.

Keywords: Right to Information, Participatory Democracy, grass root level, Fundamental Right Implementation, Good governance, RTI Activists.

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Introduction

"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing."
-Justice P N Bhagwati

Right to Information (RTI) is an index to measure the growth and development of a country. In India, till 2005, the citizens had no access to any information which was dealt by a Public Authority. Matters effecting public interest was not easy for a common man to get accessibility. Thus, without getting relevant information it was difficult for a citizen to participate in any social, political or economical debate concerning the issues or interest of the country.

However, with the growing consciousness of participatory democracy, the inbuilt desire to know and participate in the matters concerning the country or own self, reached a new height that paved the way in which it could be ascertained and ensured was through bringing the objective of transparency and accountability in the administration. In the International arena, the need to disseminate information was hugely felt and the first ever RTI law was enacted by Sweden in 1766, largely motivated by the parliament's interest in access to information held by the King. The Swedish example was later followed by the US, which enacted its first law in 1966 and then by Norway in 1970. Similarly, several western democracies enacted their own laws (France and Netherlands 1978, Australia, New Zealand and Canada 1982, Denmark 1985, Greece 1986, Austria 1987, Italy 1990).¹

By 1990, the number of countries with Freedom of Information (FOI) laws climbed to thirteen. A big step forward was the European Union Charter of Fundamental Rights in 2000, which included both freedom of expression and the right of access to documents. By 2010, more than eighty five countries had national-level RTI laws or regulations. In Asia so far almost 20 nations have adopted FOI laws like Kazakhstan, Afghanistan, Bhutan, Maldives etc. In India, though Article 19(1) (a) of the Constitution indirectly guaranteed the right to know but this right was overshadowed by the Official Secrets Act, 1923. Thus the entire process of Government functioning was shielded in secrecy.

¹ Briefing Paper, Analyzing the Right to Information Act in India, CUTS International, (24/08/2016, 2.02pm), http://www.cuts-international.org/cart/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf

In such circumstances, the Indian judiciary played a vital role to strengthen the spirit of democracy. The Supreme Court in *S.P. Gupta v. Union of India*² endorsed the view that under a democratic set up, the people have right to know about the functioning of the Government. Again in *Prabhu Dutt v. Union of India*³, the Supreme Court held that the right to know news and information regarding administration of the Government is included in the freedom of press. There were many more such decisions that reiterated the fundamental right to know and access information.

All these judicial pronouncements led the Government to enact The Freedom of Information Act, 2002. But major restrictions in the Act became a hindrance to achieve the objective of transparency and accountability. So, this 2002 Act was repealed by the Right to Information Act, 2005. This legislation entitles every citizen to have access to information controlled by public authorities. Under the Act, it is obligatory upon the authority to provide information and maintain records consistent with its operational needs. These records would have to be duly catalogued, indexed and published at such intervals as may be prescribed by the appropriate Government or the competent authority.⁴

RTI is inherent in democratic functioning and a precondition to good governance and realization of all other human rights. The main objectives of the law on RTI are:

- a. To operationalise the fundamental right to information;
- b. To set up systems and mechanisms that facilitate people's easy access to information; to promote transparency, and
- c. Accountability in governance; to minimize corruption and inefficiency in public offices and to ensure people's participation in governance and decision making.⁵

Important Features of the Right to Information Act, 2005:

- Every citizen possesses the right to information.
- The term information includes any mode of information in any form of record, document, email, circular, press release, contract sample or electronic data etc.

² (1993) 4 SCC 441

³ AIR 1982 SC 6

⁴ J. N. Pandey, *The Constitutional Law of India*, 175 (46th ed. 2009)

⁵ M. M. Ansari, *Impact of Right to Information on Development: A Perspective on India's Recent Experiences*, (24/08/2016; 1.35 pm), cic.gov.in/CIC-IntlEvents/IC-MA-LectureAtUNESCO-15052008.pdf

- Right to information covers inspection of work, document, record and its certified copy and information in any other electronic mode.
- Applicant can obtain information within 30 days from the date of request in a normal case.
- Information can be obtained within 48 hours from time of filing the request if it is a matter of life or liberty of a person.
- Every public authority is under obligation to provide information on written request or request by electronic means.
- Certain information is prohibited for security reasons.
- Penalty for not providing information is Rs. 250/ per day but the total amount of penalty should not exceed Rs. 25,000.
- Central Information Commission and State Information Commission are to be constituted by the Central Government and the respective State Governments.
- No Court can entertain any suit, application or other proceedings in respect of any order made under the Act.

Corruption is an evil which is eating the vitality of the administrative system in India resulting in various social, political and economical degradations. It is a fact that corruption is a crime that is done under the veil protection of administration and governance. But this Act somehow became the barrier of such corrupt barter system. RTI Act brings the two most important tools 'transparency and accountability' together for eradicating the evil that becomes hindrance to good governance. The Act envisages the harmonization of public interests with the right to information. However, there are some areas where the public interest demands some element of secrecy. Where it has been felt that certain area of governance have to be kept outside the purview of the RTI Act, the same have been exempted under the specific provisions envisaged under the Act. Thus, a harmonious balance has been tried between the two.⁶

RTI thus became a tool for promoting participatory development, strengthening democratic governance and facilitating effective delivery of socio-economic services. In the knowledge society, in which we live today, acquisition of information and new knowledge and its application have intense and pervasive impact on processes of taking informed decisions, resulting in overall

⁶ Dr. Abhe Singh Yadav, Right to Information Act, 2005-An Analysis, 3-4 (3rd ed. 2012)

productivity gains.⁷ Therefore, in one word, the purpose of the Act is to promote openness, transparency and accountability in administration.

The Need of RTI for Good Governance

The enactment of the Right to Information (RTI) Act, 2005 was a landmark in the history of public administration in India. The new legislation brought sensitivity, responsibility and accountability to the development process especially in the rural areas. RTI Act is path breaking in controlling corruption and delays in the implementation of Government-sponsored programs and in the functioning of public authorities.

Information and knowledge are critical for realizing all the human aspirations, such as, improvement in quality of life. 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 programs 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.⁸

Good governance basically has four elements: Transparency, Accountability, Predictability and Participation. These criterions refer to the availability of information to the general public and clarity about functioning of Governmental institutions. Right to information helps in fulfilling these objectives. Good governance and right to information are complimentary to each other. Good governance is characterized by- political accountability, availability of freedom, bureaucratic accountability, availability of information, effectiveness, efficiency, law abiding citizen and cooperation between Government and society. Therefore, we can

⁷ M. M. Ansari, Right to Information and its Relationship to Good Governance and Development, (24/08/2016; 1.45 pm), cic.gov.in/CIC-IntlEvents/IC-MA-LectureAtUNESCO-04122008.pdf

⁸ Smita Srivastava, The Right to Information in India: Implementation and Impact, Volume 1, No. 1 Quarter IV, Afro Asian Journal of Social Sciences, 2010.

say that the Right to information is a natural corollary of good governance.

Impact of RTI in Rural India:

Information is the currency that every citizen requires to participate in democracy. The greater the access of the citizen to information, the greater would be the responsiveness of Government towards its people.

Despite launching various schemes and measures for empowering and developing rural India, the majority of rural India is still recognized by high incidence of poverty and illiteracy, widespread disease, considerable unemployment, prevalent malnutrition level among children, miserable rural infrastructure like roads, electricity, primary health, drinking water, traditional way of farming, lack of irrigation facilities and many other such socio-political problems.

It is a non deniable fact that the rural people are less aware in knowing and exercising their right that results in growing corruption rate of public works in the rural area. It is at this juncture that a tool like RTI can make the path breaking impact in combating corruption and giving the people their share of interest which the Government assures them.

The most important feature that distinguishes the Right to information from other rights is that it is deeply rooted in the struggles and concerns for survival and justice of most disadvantaged rural people. The Act is influencing rural people to come forward and question the progress on various welfare schemes, creating a positive change in the most backward areas of Rajasthan, Uttar Pradesh, Bihar, Jharkhand, Madhya Pradesh, Karnataka, Assam and in Maharashtra. Let's study some cases where the RTI became a major tool for achieving good governance in India.

1. Rajasthan

The first remarkable battle to fight corruption by accessing information from public authorities started in the Devdungri village, Rajasthan. Aruna Roy, an IAS officer who left her job to work for the betterment of the village people who were often cheated in their wages because of their illiteracy. Observing the plight of the rural people, Aruna Roy, in 1987, along with Nikhil Dey and Shankar Singh founded the Mazdoor Kisan Shakti Sangathan (MKSS).

For years, in that area, the people have been habitual victims of unremitting tradition of acts of corruption by state authorities like extortion, nepotism, arbitrariness, yet they have been mostly silent sufferers trapped in settled despair and cynicism⁹. In 1994, MKSS entered a new phase, breaking new ground with experiments in fighting corruption through the methodology of 'Jan Sunwais' or public hearings. This movement, despite its local character, had state-wide reverberations that shook the very foundations of the traditional monopoly, arbitrariness and corruption of the state bureaucracy¹⁰. It was because of this RTI Act that made access to official records available which helped in organizing the Jan Sunwais.

2. Delhi

Hunger, malnutrition and occasional cases of starvation deaths in the rural areas of our country are a major cause of concern. In order to ensure the food security and to maintain the appropriate nutritional level among the citizens the Government has put in place the Public Distribution System (PDS), which is supposed to make available the monthly rations to the people in subsidised rate to the below poverty line (BPL) and the poorest of the poor section of population. But due to the existence of unholy nexus between the licensees of the fair price shops (FPS) and the officers of food supply department, substantial portion of the money is siphoned off through black marketing, as a result of which the whole PDS system is in shambles.¹¹ But, the fact that the use of RTI can change the whole PDS system was proved by the people of Sunder Nagri area of Delhi. The information gathered through RTI showed the massive corruption in the system and immediate action regarding this was taken.

3. Uttar Pradesh

In a Pre-Middle School in Panchampur village, situated 70 kilometers away from the District Headquarters of Banda, Uttar Pradesh, a teacher was appointed for the school. However, the teacher was absent for most of the times. The workers and

⁹ Supra Note 8

¹⁰ Harsh Mander and Abha Joshi, The Movement for Right to Information in India, (21/08/2016, 11.32 pm), <http://www.humanrightsinitiative.org/programs/ai/rti/india/articles/The%20Movement%20for%20RTI%20in%20India.pdf>

¹¹ Pradeep Baisakh, Right To Information and Rural Development, (24/08/2016, 12.09 pm), <http://pradeepbaisakh.blogspot.in/2009/02/right-to-information-and-rural.html>

volunteers from the Delhi based organisations like Kabir and Parivartan, along with the local workers from the Chingari Sangathan under the 'Action Research Villages' Campaign, propagated the use of the Right to Information. Finally, the villagers witnessed a ray of hope when they learned that they could question the Government and ask for information related to the attendance records, leave records and medical records of the absconding village school teacher.

4. Punjab

The life of a spy is really dangerous as it consist risk at every point. And no one knows better than Kishorilal Sharma, alias Amarik Singh, alias Saleem, who spied for India in Pakistan. He put his life into danger relying on the Indian Military Intelligence (IMI) who made promises to him, that they would help him and his family as and when needed. Though he was expecting a warm welcome after his release from a Pakistani prison on September 18, 1974, yet no one turned up at the border to receive him. Even the IMI refused to recognise him, and this is a common tendency in the intelligence system of any country. However, the state Government assured that it would provide financial aid for people like Sharma. He fought for a long time yet nothing materialized. On September 2005, he filed an RTI application regarding this matter. When this case came into light, over 50 other complaints were also received pertaining to the malpractices in District Commissioner office, Police department, Income Tax department, Chief Secretary, Punjab and many other departments. This single complaint led the way to expose major corrupt practices in the Government departments of the State.

5. Assam

Krishak Mukti Sangram Samiti (KMSS) is a prominent organisation based in the state of Assam formed by RTI activist Akhil Gogoi. The organisation works on diverse range of issues ranging from corruption in public distribution system, non-implementation of National Rural Employment Guarantee Scheme (NREGA), land rights, Governmental and corporate corruption, construction of big dams in fragile seismic territories of North East India etc. The most prominent work of the Krishak Mukti Sangram Samiti was in 2007 when they filed an RTI application that revealed irregularities in the distribution of food meant for people below the poverty line. The allegations of corruption were probed and several high profile Government officials were

arrested. They are still going through suspension because of their corrupt activities.

Important Judicial Pronouncements Relating to RTI

In order to understand the effectiveness of a Fundamental Right it is important to analyse the various aspects in which the right has been given effect by the Judiciary. A few landmark cases have been taken to highlight the various facets relating to Right to Information:

- In *Bennett Coleman v. Union of India*¹², for the first time, right to know as a Fundamental right was realized and consequently the Supreme Court ruled that the right to freedom of speech and expression guaranteed by Art. 19(1) (a) included the right to information.
- In *State of UP v. Raj Narain*¹³, Justice Mathew thoroughly stated, "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."
- In *Secretary, Ministry of I&B, Government of India v Cricket Association of Bengal*¹⁴, the Supreme Court held that the right to impart and receive information from electronic media was included in the freedom of speech.
- In *S.P. Gupta v. Union of India*¹⁵, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was illustrated by the Apex Court of India.
- In *People's Union for Civil Liberties v. Union of India*¹⁶, the right to information was further elevated to the status of a human right, necessary for making governance transparent and accountable.

Landmark Decisions by the Chief Election Commission:

- In the case of *Paramveer Singh v. Punjab University*¹⁷, the applicant applied for information regarding the merit list for selection of candidates to a particular post in the university. However, no proper information was provided. The Commission held that every public authority, must take all

¹² AIR 1973 SC 106

¹³ 1975 (004) SCC 0428 SC

¹⁴ 1995(002) SCC 0161 SC

¹⁵ AIR 1982 SC 149

¹⁶ 2003(001)SCW 2353 SC

¹⁷ (CIC/OK/A/2006/000669, 15/6/2006).

measures in pursuance of Section 4(1) (a) to implement efficient record management systems in their offices so that the requests for information can be dealt promptly and accurately.

- In the case of *Shyam Yadav v. Department of Personnel Training*¹⁸, the applicant had sought details of property statements filed by bureaucrats. The Commission held that property statements filed by civil servants are not confidential and information can be disclosed after taking the views of concerned officials as per the provisions of the RTI Act.
- In case of *Ram Bhaj v. Delhi Government*¹⁹, the appellant sought information about the guidelines issued by the Department of Personnel and Training regarding the disposal of public grievances within a specified time frame. The CIC directed the Delhi Government to inform the common man about the timeframe required to redress their grievances.

RTI Activists: Threatened Group of the Society

Though the RTI Act is helping in promoting good governance, yet it has major lacunae when it comes to the safety and security of the activists who risk their lives for public good. The RTI activists are the risk takers who often put their life into danger for the benefit of others. Yet it is a bitter truth that the risk that they take to expose corrupt practices many times end with the end of their lives. Since 2011, there has been a huge rise in the number of attacks done at RTI activists. There have been several media reports about incidents of harassment, threat, coercion and violence against RTI users and their family members by both state and the non-state actors. Media and civil society organisations have particularly been instrumental in raising the issue of protection of the RTI users with the policy makers. The issue has gained great prominence and has been frequently discussed in the Parliament, courts and the executive meetings. It has now been widely accepted that RTI users are prone to victimisation by those with vested interests and a protective mechanism needs to be in place to curb such a practice.²⁰

Ms. Shehla Masood, a prominent name in the field of RTI, Madhya Pradesh, was brutally murdered. She was an activist working primarily on wildlife conservation, and also supported other

¹⁸ (CIC/WB/A/2009/000669, 17/6/2009).

¹⁹ (CIC/SG/A/2010/000537+000538/7492, 19/4/2010).

²⁰ Manu Moudgil, Analysing victimisation of RTI applicants and strategies for their protection, (22/08/2016, 12.17pm), http://rti.gov.in/manu_moudgil_rti_fellowship_report.pdf

causes like good governance, Police reforms, environment, women's rights etc. The recent killings of Vyapam whistle blowers, Mumbai based activist Satish Shetty, etc. are instances that justifies that RTI activists are extremely vulnerable as they live in the same areas as the corrupt public authorities, political leaders and mafia who do not want information about their illegal activities to be disclosed. The sad part is that these mishaps get media attention only when there is a killing, maiming or someone is battling for life. When complaints are made by RTI activists, the law enforcement personnel, who are usually hand in glove with those threatening the RTI activists, do not take necessary action. The Right to Information Act, 2005 provides no protection. The Central Information Commission and the State Information Commissions are not mandated either to deal with such threats or attacks or to provide protection when needed.²¹

The issue to protect the whistleblowers caught the attention of the entire nation when National Highways Authority of India engineer Satyendra Dubey was killed after he wrote a letter to the office of the then Prime Minister detailing corruption in the construction of highways. His confidential letter was leaked out and after a few days he was murdered. This led to a national outcry regarding the safety of RTI activists. The Supreme Court taking the notice of this issue pressed the Government to take notice of this matter and give immediate effect to the cause. Many times the issue has been raised in the parliament yet no permanent solution is achieved.

Even The National Human Rights Commission (NHRC), mandated to protect the Human Rights of citizens have also reported that they get ample of complaints about attacks on RTI activists and have begun to take cognizance of these attacks.

Because of all these reasons there is an urgent need for amendment of the Right to Information Act, 2005 so as to provide protection for those seeking information under the Act. The Asian Centre for Human Rights recommended that a separate chapter, "Protection of those seeking information under the (RTI) Act" be inserted in the Act.

The Indian RTI Act does not specifically address the issue of protection, however the NCPRI-RaaG²² study recommends that Information Commissions (ICs) should receive complaints of

²¹ *Ibid.*

²² Report Published on 2009 available at <http://timesofindia.indiatimes.com/articleshow/4791397.cms> (23/08/2016, 12.17pm)

threats and attacks as complaints received under Section 18(1) (f) of the RTI Act and, where prima facie merit is found in the complaint, the IC should institute an inquiry under Section 18(2)²³ read along with Section 18(3) which grants IC the powers of civil court and Section 18 (4)²⁴. The report goes on to suggest that such intimidation, threat or attack can also qualify as obstruction and falls within the gamut of Section 20(1) as an offence liable for penalty.

It is not that the Government is not concerned with the growing attack on the RTI Activists. The Public Interest Disclosure (Protection of Informers) Bill 2010 was introduced in the Lok Sabha on August 26, 2010. The Bill seeks to establish a mechanism to register complaints on any allegations of corruption, willful misuse of power or discretion against any public servant. The Bill also provides safeguards against the victimisation of the person who makes the complaint. However, the Bill has not been passed yet.

Much water has flown down the rivers across the country because of no prominent legislative measure to protect the RTI activists. The process of fighting the atrocities, attack or torture without any strong legislative back up indicates that the victims or their families often do not get justice. With public memory being proverbially short, it is difficult to ascertain the outcome of the criminal cases launched in such matters, especially when the media does not follow up with the incident.

Conclusion and Suggestions

RTI – the significant instrument to access public information is a unique legislation that puts a common man in the same footing as that of an MP, MLA or any other member within the authority to seek accountability and appropriation of the functioning of the Government.

Though the RTI is a remarkable piece of legislation yet it has issues and challenges in its execution and implementation especially in the downtrodden areas. For the effective application of the Act, the following suggestions are put forward:

1. The technicalities of filing an RTI application should be more simplified. The literacy rate of rural India is quite low and thus they find it quite difficult to comply with the procedural

²³ Reasonable ground for inquiry

²⁴ Power to examine any record

formalities. In response to this, the state of Bihar has set a new example by their phone in system of filing an RTI complaint. Even an illiterate can then avail access to RTI through this means. This system needs to be followed throughout the whole country.

2. The report of the second Administrative Reforms Commission²⁵ 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. This recommendation should be adhered to.
3. RTI gives twin effect of good governance and inclusive development. Thus, the usability and effect of the RTI should be publicized by awareness campaigns to the general people especially for the poor and marginalized people who are more victimized when compared to the rest. In this aspect, the role of NGO'S and the media is highly anticipated.
4. There is an urgent need to protect the whistle blowers who are targeted or attacked so easily. The impending bill should be passed or else an ancillary strict measure should be taken in this regard.
5. The disposal rate of RTI application is quite low. Unless and until the pendency rate is curtailed, the objective of the Act would not be met. Thus, the Information Commission needs to be more active in their functioning.

The stricter implementation of this law not only depends on the political will but also active civil societies. Currently, the RTI Act in India is passing through a decisive phase, much more needs to be done to facilitate its growth and development. Mere protest against the lack of implementation of this law alone is not sufficient, one needs to encourage this initiative taken, for the law to grow and mature.

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