Pros & Cons of RTI Act, 2005

Submitted by
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ACKNOWLEDGEMENT

The author owes deep gratitude to Hon’ble Information Commissioner of India, Shri. Bimal Julka who, with his guidance and support, allowed me to witness the practical application of the RTI Act, 2005 through hearings and enhanced discussions.

The author is also extremely grateful to the Legal Consultants- Mr. Aditya and Ms. Bhumika who furthered my understanding of RTI Act and clarified every important facet of the Act and the procedure thereunder. Special gratitude to the registry staff- Mr. K L Das, Ms. Sonali, Mr. Deepak and Mrs. Sunita for their support and cooperation. Each member of the team not only provided a thoughtful and insightful working of the commission but also the right ambience to work and learn. The time spent at CIC as an intern provided a wealth of experience and learning, which the author feels privileged to have and shall be indebted to all who have helped during the internship.

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ABSTRACT

The participants of this democratic system of India i.e. citizens have a right to know what, how and why of any decision, changes or continuity regarding or of its functioning. Right to Information is a Fundamental Right and is guaranteed as per Article 19 and 21 of the Constitution of India and was enacted by Parliament of India in 2005. With the changing time and laws people are becoming more aware of their rights; and with more awareness of Right to Information people have started questioning on more number of aspects; so this research paper discusses about all such issues which is raised in due to RTI.

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.
INTRODUCTION

“The real Swaraj will come not by the acquisition of authority by a few, but by the acquisition of capacity by all to resist authority when abused”. When Mahatma Gandhi said this, he may not have imagined that one day India will have to make a law to empower people for something as basic as seeking information about the development of the country.

The date of 12th October 2005 shall be remembered as a new era of empowerment for the common man in India. It is applicable everywhere except the state of Jammu and Kashmir. This law was passed by Parliament on 15th June 2005 and came fully into force on 12th October 2005. Information disclosure in India was restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act now relaxes.

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

RTI act 2005 is a law enacted by the parliament of India, giving citizens of India access to records of the central government and state governments. The Act applies to all States and Union Territories of India, except the state of Jammu and Kashmir – which is covered under a State-level law. Under the provisions of the Act, any citizen (including the citizens within J&K) may request information from a “public authority” (a body of government) which is required to reply within thirty days.

The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. Thus, the Right to Information Act is a codification of the important fundamental right (Article 19) of citizens. The Act and its rules define a format for requisitioning information, a time period within which information must be provided, the method of giving the information, some charges for applying, and list of organizations exempted from giving information.
The Right to Information Act 2005 (RTI) is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is an Act of the Parliament of India “to provide for setting out the practical regime of right to information for citizens.” Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009.

The formal recognition of a legal Right to Information in India occurred more than two decades before legislation was finally enacted, when the Supreme Court of India ruled in *State of U.P. v Raj Narain* that the Right to Information is implicit in the right to freedom of speech and expression explicitly guaranteed in Article 19 of the Indian Constitution. Subsequently, the Court has affirmed this decision in numerous cases and has even linked the Right to Information with the right to life enshrined in Article 21 of the Constitution.

On 16th December 2002, the Bill for Freedom of Information was passed after several changes were made for its improvement. The Bill is in accord with both Article 19 of the Constitution as well as Article 19 of the Universal Declaration of Human Rights. Regarding the penalty for those officials who refuse information, as per the Bill’s provisions, that the CCS Conduct Rules would be amended for disciplinary action against such officials. Out of 200 countries, only 20 have laws for Freedom to Information. Bill will enable the citizens to have an access to information on a statutory basis. The Bill specifies that every citizen shall have the right to freedom of information. An obligation is cast upon every public authority to provide information and to maintain all records consistent with its operational requirements duly. The Bill provides for the appointment of one or more officers as Public Information Officers to deal with requests for information.

The primary stakeholders in RTI are –

- Citizens;
- Public Authorities comprising of Public Information Officers and the Appellate; and
- Central and State Information Commissions.

One important task of the State both at center as well as at the state level is to appoint the Chief Information Commissioners and other Commissioners and it is clearly stated in the act that those people who will be appointed for these
Advantages of RTI:

Maintenance and Publication of Records

Sec. 4 makes it a duty of public authorities to maintain records for easy access and to publish within 120 days the name of the particular officers who should give the information and in regard to the framing of the rules, regulations etc. Subsection (3) of sec. 4 states that for the performance of subsection (1), all information shall be disseminated widely and in such form and manner, which is easily accessible to public.

Sec. 6 permits persons to obtain information in English or Hindi or in the official language of the area from the designated officers. The person need not give any reason for the request or any personal details. Sec. 7 requires the request to be disposed of within 30 days provided that where information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours. Under sec. 7(7) before any decision is taken for furnishing the information, the designated officer shall take into consideration the representation, if any, made by a third party under sec. 11.

A request rejected shall be communicated under sec. 7(8) giving reasons and specifying the procedure for appeal and the designation of the appellate authority. Sec. 7(9) exempts granting information where it would disproportionatelty divert the resources of the public authority or would be detrimental to the safety and preservation of the record in question.

Transparency: It ensures the right of the citizens to acquire as much information they want regarding the governmental activities, rules and regulations, etc. This creates a room for better communication between the public authorities and the citizens.
Citizen-centric approach: Due to the enforcement of this Act, the authorities are sure to let out information as asked for by the citizens and this made the authorities to think more before taking any random step.

Availability of Information: RTI created an easy form of letting out information to the person concerned thus resulting in accessibility of information relating to governmental activity to the person who seeks for such information. Moreover, the application for information is to be responded by the public servants within 30 days of application.

Reduction in Corruption: As all the information is accessible, the graph to that of corruption has taken a down-curve.

Government-public relation: The Act also ensures the strengthening of government-public relation due to the increase in communication.

Greater Accountability: Various government policies like National Rural Employment Guarantee Scheme, Sarwa Shiksha Abhiyan, Mid-day Meal Scheme, National Rural Health Mission and many others are being launched by the Government.

A person can obtain information in any manner, even in disks, floppies, tapes, cassettes, or by any other means.

Constraints Faced While Implementing RTI Act

Some of the negative sides are:

RIGHT TO PRIVACY CONFLICT WITH RIGHT TO INFORMATION

The right to privacy and the right to information are both essential human rights in the Modern information society. For the most part, these two rights complement each other in holding governments accountable to individuals. But there is a potential conflict between these rights when there is a demand for access to personal information held by government bodies. Where the two rights overlap, states need to develop mechanisms for identifying core issues to limit conflicts and for balancing the rights.

Laws provide a fundamental right for any person to access information held by government bodies. At the same time, right to privacy laws grant individuals a
fundamental right to control the collection of, access to, and use of personal information about them that is held by governments and private bodies. However, the reality is more complex.

Privacy and RTI are often described as “two sides of the same coin”—mainly acting as complementary rights that promote individuals’ rights to protect themselves and to promote government accountability.

Privacy is increasingly being challenged by new technologies and practices. The technologies facilitate the growing collection and sharing of personal information. Sensitive personal data (including biometrics and DNA makeup) are now collected and used routinely. Public records are being disclosed over the Internet. In response to this set of circumstances, more than 60 countries have adopted comprehensive laws that give individuals some control over the collection and use of these data by public and private bodies.

The main conflict between RTI and Right To Privacy is that nowadays people used to file RTI to seeks someone personal information also but for that there is Section 11 of the RTI Act which deals with 3rd Party Information.

Many Sections are there which used to protect the right of privacy of others in the Act like Section 8,9, and 24, 11 etc. but there is a proviso also that if a information can be given to a Parliament also then that same information can be given to ordinary people also. If it is a third party information then a authorization letter should be provided in the same time. Thus we can say that though there is a conflict between both of the rights but there are some provisions and rules also to protect the rights of the other person.

It also has been reported that various ministries and departments of the government are insisting that they will only accept the specific forms that they have designed. The law, however, does not provide for a form or does not authorize the public authorities to prescribe forms. Therefore, whereas they can have recommendatory formats, they must accept all requests even if they are on plain paper.

Due to overburdened applications for information, sometimes, wrong information is given out. Sometimes, the authorities fail to respond to the applications even at the expiry of 30 days within which information was supposed to be communicated.
Also, the Public Information Officers are penalized, in case they do not or fail to respond to the RTI applicants or knowingly give incorrect information or refrain from accepting the applications, with a sum of Rs. 250 each day till is let out on a condition that the total sum for penalty shall not exceed Rs. 25,000. The PIO shall be given a reasonable opportunity to be heard before penalty is imposed on him.

Thus, RTI has helped the people with transparency of the functions of public authorities. It has reached the people of remote villages too enabling them to seek information on different matters and also to redress their grievances.

However, the efficacy of law does not depend on its content but on its proper implementation. Governance has to be an open book and officials should be conscious of the fact that they are liable for omissions and commissions during their tenure for just and systematic work rather than doing things at their whims and fancies arbitrarily and getting away with it—after all, the affected people are the country’s common masses who bear the brunt of mismanagement.
Conclusion

Until the introduction of the Right to Information Act, information was the property of those people who are in the ruling side and secrecy was maintained. But at the same time it require a lot of awareness campaign among the people in order to utilize the act to combat the corruption and get the services of the State.

The RTI Act has been lauded by democracy advocates all over the world, since it is at par (or even better) than similar laws enacted in countries in the West. For instance, in the US and UK, the respective information disclosure acts require the applicant to disclose his personal details, whereas in India, no such details are required. The RTI Act is one of the legislation that is indeed the pride of Indian democracy.

The RTI Act, as it stands today, is a strong tool to uphold the spirit of democracy. The need of the hour is that the RTI Act should be implemented to ensure that the objects of the RTI Act are fulfilled. Any attempt to dilute the provisions of the RTI Act will only quell its success. Since the first step in cleansing any system is to expose its malaise, the same method needs to be followed in RTI as well.

By enacting the Right to Information Act India has moved from an opaque and arbitrary system of government to the beginning of an era where there will be greater transparency and to a system where the citizen will be empowered and the true center of power. Only by empowering the ordinary citizen can any nation progress towards greatness and by enacting the Right to Information Act 2005 India has taken a small but significant step towards that goal. The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused. Thus with the enactment of this Act India has taken a small step towards achieving real Swaraj.