

RTI : THE MARCH WHICH BROKE THE UNREVEALED SILENCE !!! - (CRITICAL ANALYSIS)

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“Rule of Law, Access to justice and financial transparency happen by design not accident.” Winnie Byanyima

Right to access information was a demand that resonated across the country in its principles, but the legal formulation and the tool it provided had to be understood. The facts that the state laws came before the central law made it possible to know where the fault lines existed in the different state laws formulated across the country.

By hiding the basic facts and figures from the public, which is their right to know is equal to making them *cryptomniacs* manually. Earlier, Section 123 of the Indian Evidence Act 1872 read as – “No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.” Oath by the Public Servant before joining duty was mandatory for a public servant to swear that the information is a state secret. Where democracy stands by the definition – “*to the people, by the people and for the people*” how can an officer or a department keep basic information, a secret. Every individual who elects a leader, a representative possesses the right to receive the basic information which can establish trust and transparency amongst the public. It is rightly said by the 44th President of USA Mr. Barrack Obama – “***If the people cannot trust their government to do the job for which it exists - to protect them and to promote their common welfare - all else is lost.***”

RTI has been through much ebb and flow, the march led by the activists wasn't that easy, the struggle to bring RTI in process started way back in 1977 under the guidance of Ex Prime Minister of India Lt. Morarji Desai and thus the vigorous struggle began.

THE TIMELINE :

In **1977** Janta Government headed by Morarji Desai constituted a working group to ascertain if the Official Secrets Act, 1923 could be modified so as to facilitate greater flow of information to the public. In 1986 the famous case of Mr. Kulwal v/s Jaipur Municipal Corporation the Supreme Court gave clear cut directive that Freedom of Speech and Expression provided under Article 19 of the Constitution clearly implies Right to Information as without information the freedom of speech and expression cannot be fully used by the citizens.

In **1990** Heading the National Front government, Prime Minister V.P Singh, first politician to lay emphasis on RTI, stressed on the importance of Right to Information as a legislated right. He tried to enact legislation in 1989-90. But, due to the political instability at the time, the idea did not materialize and, as his government lost the confidence vote in Lok Sabha, V P Singh was removed from office in 1990.

In **1994** Mazdoor Kisan Shakti Sanghatan (MKSS) started a grassroots campaign for Right to Information – demanding information concerning development works in rural Rajasthan. This movement grew and the campaign resulted in the government of Rajasthan enacting a law on Right to Information in 2000. Mazdoor Kissan Shakti Sanghatan Movement, Rajasthan directed by Mrs Aruna Roy ensured that minimum wages were paid to all the laborers on developmental works through a Jan Sunwai.

Draft Act was formulated in a meeting of social activists at the LBSNAA, Mussoorie, **1995**. National Campaign for People's Right to Information (NCPRI), one among several civil society groups, was founded with the objective of getting legislation on RTI passed. Due to the growing demand for right to information, the Press Council of India under guidance of its Chairman Justice P B Sawant drafted a law which was later updated and changed at a workshop and renamed. The Press Council–NIRD Freedom of Information Act, 1997.

Thereafter, Tamil Nadu became the first state to have passed the law on Right to Information. The Madhya Pradesh Government issued executive orders to 36 departments to implement Right to Information. When in 1998 the NDA came to power, Prime Minister A. B. Vajpayee assured the

nation that a Law on Right to Information shall be enacted soon. Freedom of Information Bill, 2000 was introduced in Parliament, and was referred to a Select Committee of Parliament. In 2003, Freedom of Information Bill received the assent of the President of India on 6th January, 2003, and became law, known as Freedom of Information Act, 2002 Act No. 5 of 2003. The Freedom of Information Act, 2002 has evoked lot of controversy on various issues such as the act exempts from disclosing the confidential information shared between the Central and the State governments or in between any of their agencies. It also did not provide for penalties against the officials who in violation, of the law, would either refuse to provide information or give false, misleading or incomplete information and many such lacunas. NCPRI formulated amendments to Freedom of Information Act, 2002 and forwarded to the NAC. NAC endorsed with minor changes and recommended to the Government (Prime Minister). There was reluctance among politicians and bureaucrats in adopting these changes. There was an attempt made to re-notify the earlier Freedom of Information Act; this move faced widespread protests by citizens and civil society. UPA Government tabled the RTI Bill 2004, applicable only to the Union Government. After heavy lobbying by NCPRI and other organizations the Right to Information Act, 2005 was passed with 150 amendments.

The citizens, the stake holders, the consumers of public services, the beneficiaries of development programmers, the civil society organizations, the business and commercial houses – now all get the information they require form the public authorities relating to their administration, operations or decisions. After 12 years of its applicability where does the Act stand? Is there any headway towards transparency and openness in our governmental functioning now?

CURRENT FOOTING OF THE APPLICATIONS OF RIGHT TO INFORMATION :

If we trace the history before the RTI was passed, the Supreme Court held, in a wide variety of cases that the right to information is a fundamental right. In *D.K. Basu v. State of West Bengal* , the Court laid down guidelines to protect the fundamental rights of arrested persons. Among other things this included his right to be informed of who is arresting and interrogating him and why and also his right to have a

friend or relative informed of the arrest, as soon as is practicable.¹ Thus, the right to information is implicit in Article 21 of the Constitution.

Now, the question arises whether this privilege of providing information to the Common public is crossing the calculated barriers too? One must remember that these barriers exist for a reason.

(I) USE OF BENEFICIAL PROVISIONS FOR PERSONAL USE

In actual practice, the unrestrained revelation of information can conflict with other public interests such as efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. The costs of compiling and providing information are huge. Moreover, certain operations of the Government, such as defense, cannot always be open to public scrutiny.

As per defined by section 2(f) of the Act “information” means ‘any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force’. Many applicants through their applications seek information regarding a private body, although undoubtedly information concerning a private body, also forms part of ‘information’ for the purpose of this enactment. Provided such information is liable or capable of being accessed by a public authority under any other law in force, for the time being

(II) FRICTION BETWEEN RIGHT TO INFORMATION AND RIGHT TO PRIVACY

Right to information can actually collide with Right to Privacy. The protection of privacy principle holds that that individuals should, generally speaking, have some control over the use made by others, especially government agencies, of information concerning them. Thus, when an applicant seeks access to government records that contain

¹ <https://www.lawteacher.net/free-law-essays/constitutional-law/indian-right-to-information-act-constitutional-law-essay.php>

personal information about certain identifiable individuals, these individual's right to privacy conflicts with the applicant's right to information. In a recent judgment by the Supreme Court in the case of Justice K.S.Puttaswamy vs. Union of India where questions were raised revolving around questioning the constitutional validity of Aadhar – Indians biometric identity scheme the one-page order signed by all nine judges declares:

“The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and as a part of the freedoms guaranteed by Part III of the Constitution.”

This protection of privacy has been maintained under Section 11 as

third party information. It can be concluded that only limited access to information can be provided. RTI is not a personal grievance clearance platform, it carries an objective for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities. Where it contains about seeking information about the applicant himself it wouldn't harm his privacy but about the third party , invasion of privacy could occur.

(III) NO PENALTY PROVISION UNDER THE RIGHT TO INFORMATION ACT AGAINST COMPLAINANT/APPELLANT

There are some who are genuinely fighting for a cause, and there are others who misuse the privileges given under the provisions. Often, applicants attempt to misuse the beneficial provisions of the RTI for personal gain, rather than public gain. As an example, in one application, the applicant, who was under suspension and had suffered a major penalty, had asked for voluminous information, including explanations, from his employer about their operations. The Commission held that his intention was to further his own personal gain and had *mens rea* for such authorities and therefore dismissed his application for further information.

BENEFICIAL PROVISIONS UNDER RTI WHICH PROVIDE ACCESS TO INFORMATION :

SECTION 2

The Definitions part is so vast in itself that each and every term has to be interpreted for its best usage. Sub sections 2(f) and 2(j), quoted above, jointly define “information” in terms of the RTI Act, thereby determining what can and what cannot be legitimately accessed under the act. In the case of ***Thalapallam Ser. Coop. Bank Ltd & others v. State of Kerela & others.***, while interpreting the term “Public Authority” drew a ‘clear distinction between a body which is created by a statute and a body which, after having come into existence, is governed in accordance with the provisions of the statute. Societies are of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but cannot be said that the state exercises any direct or indirect control over the affairs of the society which is deep and all pervasive.’²

The expression "right to information" has been defined under S. 2(j), in the following words :

"right to information" means 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 work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, electronic mode or through printouts where such information is stored in a computer or in any other device."

Control and substantial financing are the two most disputed qualifications for a body to be declared a public authority.

SECTION 3

Section 3 of the RTI Act is the fountainhead, which provides all citizens to have the right to information, in accordance with the **provisions of the RTI Act**. This section has thrown up at least 2 issues : first, regarding who can apply for information under the RTI Act, and second whether only a single “citizen” can apply, or can it be a group of “citizens”. Interestingly,

² *Thalapallam Ser. Coop. Bank Ltd. V. State of Kerela & others. CA No. 9074 of 2013*

the Supreme Court in *SC CIC Manipur 2011*, has observed that whereas section 3 talks about citizens, section 6 refers to persons, thereby the application of section 6, under which information is accessed, is wider.³ In *HC-P&H Ved Prakash 2012*, the Punjab & Haryana High Court holds that where two or more citizens join hands, they do not lose their identity as citizens. The HC further points out that section 13 of the General Clauses Act, 1897 specifies that ordinarily singular would include plural.⁴

Section 4 has thrust certain obligations on every public authority. It is the most critical sections of the RTI Act, **Section 4(1)(a)** exhorts a PA to computerize its records, thereby not only facilitating proactive disclosure but also making it easier to service requests for information. The SC in *SC Sakshi Vasu 2007*, holds that it is well settled that, once a statute gives a power to an authority to do something, it includes the implied power to use all reasonable means to achieve that objective. This would suggest that the IC could also directly impose a penalty on other officials, apart from PIOs, who are in violation of the RTI act.⁵ In terms of **S. 5**, every such public authority was required to designate such number of officers as may be necessary to provide information to persons requesting for the information under the said Act. **Section 6** requires every person, who desires to obtain any information under the Act, to make a request in writing or through electronic means, accompanied by such fee as may be prescribed to the Central Public Information Officer or State Public Information Officer, as the case may be, specifying the particulars of the information sought for by him. Sub-section (2) of **S. 6** made it clear that such applicant was under no obligation to furnish any reason for requesting the information. **Section 7**, required any application made under **S. 6** to be disposed of, as expeditiously as possible, in any case, within 30 days of the receipt of the request.

Section 8 is of considerable importance. The Parliament ensured that, notwithstanding anything contained in this Act, no obligation has been cast to give any citizen certain information, which will have serious consequences or repercussions on larger body of the State or public interest. Thus, paramount consideration has been bestowed to balance

³ *SC CIC Manipur 2011*

⁴ *HC-P&H Ved Prakash 2012*

⁵ *SC Sakshi Vasu 2007*

the right of every citizen to have information vis-a-vis the larger interest of the State or public authorities or of third parties.⁶

In ***Bhagat Singh v. Chief Information Commissioner, 2008 (1) RTI 384***

(Del) ambit and scope was expressed as – Citizen and information seekers have subject to a few exceptions an overriding right to be given information on matters in the possession of State and public Agencies that are covered by the Act 2005. As is reflected in its preambular paragraphs the enactment seeks to promote transparency, arrest corruption and to hold the Govt. and its instrumentalities accountable to the governed.

First and foremost, access to information is central to the idea of a democratic society. Governments have a vast amount of power, and power tends to corrupt. In a democratic society, the government should be accountable to the citizens and this is not possible if the citizens do not have information about the functioning of the government. The actions and policies of a government affect the economic interests and personal liberty of individuals that make up a nation. The government thus, should use this vast power to act for the public good and not for the private gain of the few individuals who hold such power. Therefore an open government allows the people keep a check on the abuse and misuse of power by the Government.⁷

CONCLUSION :

Governance is widely understood, when used with regard to government or the public sector, to refer to the institutional underpinnings of public authority and decision making. In this way, governance encompasses the institutions, systems, “rules of the game” and other factors that determine how political and economic interactions are structured and how decisions are made and resources allocated. Clearly implicit in the general concept is the notion that good governance is a positive feature of political systems and that bad governance is a problem that countries need to overcome. When we talk about rights and privileges a lot of other principles, limitations cluster them around these rights. Common public must be informed and well aware of the fact that public or any

⁶ <https://www.casemine.com/judgement/in/56b48d37607dba348fff1d20>

⁷ <https://www.lawteacher.net/free-law-essays/constitutional-law/indian-right-to-information-act-constitutional-law-essay.php#ftn13>

individual is not allowed to take any personal privilege of the given powers or rights.

Rightly said by **Edmund Bruke** -

'All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust and that they are to account for their conduct in that trust.'

For the Present scenario of RTI and its applications of moving the matter of personal privilege instead of public interest in front of the Commission we may produce certain guidelines or FAQs regarding 'WHAT' and 'HOW' should the person or public seeking the information under the purview of this platform shall apply.

- Unnecessary the Commission cannot be loaded with superfluous RTI applications,
- The people's right to obtain information comes the duty to use this information judicially and wisely,
- With regard to early precedents decided by the Commission, applicants must be acquainted with the facts and provisions under RTI Act, 2005
- There must be penalty provisions under the Act so that any individual with a *mala fide* intention won't apply before the Commission for piling up the cases instead the actual grieved audience must be entertained,
- Along with the Government, the citizen of a country too need to be responsible and conduct themselves with dignity.
- It must be a compulsory subject for middle and high school students to understand what RTI is and must be well aware of their rights.
- The Government offices must maintain the records where it is important to maintain
- The Act lead the country towards a digitally active Nation,
- It obliges the officials to serve the nation by keeping the records transparent and certified for further use
- The concerned authority must reply in proper time span so that such applications can be dealt with more flexibility
- This will ultimately maintain trust and good governance in the country

A system proving access to information gives society the chance to further the aim of democracy and lead to an open and fair society. India is amongst such powerful countries where Law is supreme and where people live, support and empower every community, caste,

race, religion irrespective of such diversity in the country. To maintain this vision of empowerment and growth individuals along with the Government must move in a direction where each and every citizen can live with dignity and without fear of any unnecessary defamation, the preamble and significance of RTI should be abided by each and every individual and Authority of this country.