



RIGHT TO INFORMATION ACT, 2005: A STUDY OF ITS SIGNIFICANCE, LOOPHOLES AND SUGGESTIONS

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The Right to Information Act, 2005 is one of the most important and revolutionary pieces of legislation enacted in independent India. It can be regarded as “the most Important”, as this Act has the potential to change the work-culture of practically the entire Indian society. Its impact is also the most widespread as it places an instrument of power in the hands of every citizen of the country irrespective of any category or classification¹.

Significance of Information

In every democratic country, government has three organs, legislature, judiciary and executive. The first two organs do not, normally, carry out their operations in secrecy. They function in the open e.g., the legislature functions through open debate amongst the representatives of the people to which both the press and people have access. Similarly, judiciary decides cases after giving a hearing to the parties in open court. But the executive transacts its business in the secret chambers to which people hardly have any access. Today, the executive, apart from discharging its traditional functions of executing laws, promulgates legislative function and adjudicates on controversies. In the *Meneka Gandhi v.s. Union of India*², Justice Krishna Iyer emphasized that a government which functions in secrecy not only acts against democratic decency, but also buries itself with its own making. The citizen, therefore, should be informed or kept informed about decisions taken and how effectively the executive discharge, civil political responsibilities. Informed public opinion is the most potent of all checks on maladministration³. Freedom of Information as a basic right is touchstone to all other freedoms. Therefore, it is fair to say that no nation state can ever attain true democracy, without openness and transparency in its governance.

Since power tends to corrupt and absolute power corrupts absolutely, there is an inherent danger that the wide power vested in the hands of executive may be used not for public good, but for personal gains and for corrupt motives. Selfish and unscrupulous politicians can always benefit from the real masters in democracy, must have as much information about government operations as possible.

Information is the resource which empowers people to act more meaningfully as ‘electors’ as well as ‘elected-representative’ of the people. If people are well informed, democracy is bound to be prosperous and vibrant. People can be well informed only if information or knowledge is freely made available to them⁴. Information is oxygen for any democratic society. Information is the national wealth. The Government and public officers are none else that the trustees to this national resource. Such a resource must be equitably accessible and distributed to the sub-serve the common good. It is the moral, legal and constitutional obligation of the government to furnish information⁵.

Many democratic governments- Sweden, United Kingdom, America- are providing information to their citizens about their activities. Many countries have adopted comprehensive, Freedom of information Act to facilitate access to records held by government bodies. Despite the constitutional provisions guaranteeing Fundamental Rights, we have not been able to create a culture and climate where value of right and democratic way of life is respected. Taking into account the importance of right to information, Right to Information Act was enacted and enforced in 2005.

Right to information is said to be the life blood of democracy. It makes government accountable to people and empower the people to fight against corruption and abuse of power by politicians and officials. This Act helps to improve quality of official decision-making concerning development works and enhance participatory nature of democracy, to maintain balance of power between citizens and state and strengthen power of individual in his dealing with government.

¹ O.P.Kejriwal, “Right to Information: Loopholes and Road A-Head”, *Economic and Political Weekly*, Vol.41 No. 11, Delhi, March 18-24, 2006, p.940.

² *The Judgment of Supreme Court in Meneka v.s. Union of India*, 1978, p.18

³ Dilip Kumar Upadhyay, “Right to Citizen for Obtaining the Information in Democratic Country”, in P.K. Saini & R.K. Gupta (ed.), *Right to Information Act, 2005: Implementation and Challenges*, Deep & Deep Publication Pvt. Ltd., New Delhi, 2009, p.122.

⁴ Sujathe Gothoskar, Vijay Kanhere, “Asserting Right to Information”, *Economic and Political Weekly*, Vol.27, No.26, New Delhi, June 27, 1992,p.1325.

⁵ Rodney.D. Ryder, *Right to Information Act, 2005:Law-Policy-Practice*, Bright Law House, New Delhi, 2005. p.123.



The enactment of the Right to Information Act, 2005 is the result of a long and weary struggle of man people and organizations. The contribution of the judiciary has been singular and the present legislation puts together the essence of various rulings of the Supreme Court.

Enactment of Right to Information Act, 2005 is an important step towards access to information. Much depends upon the members of Information Commissions. Election Commission has done a great service to the cause of democracy in India particularly the politicians who have criminal background.

Right to Information Act is the oxygen for the democratic development. It has rightly been pointed out the democracy is indispensable to India's survival as a pluralist state. Our democratic state has survived many onslaughts and strengthened its roots. But this indispensable and impressive system is today overrun by unprincipled and unimpressive operators. Corruption and criminalization have taken their toll on people's faith in our democracy. We have also seen the court cases of corruption against politicians, which, rarely result in conviction. Therefore, right to information becomes an effective and powerful tool in the hands of citizens to resuscitate their falling faith in democratic system.

The Right to Information Act, 2005 is a legislation passed after years of people's struggle for securing transparent, accountable and public participatory governance. The passing of this law by the parliament marks a milestone in the evolution of the Indian democracy.

Loopholes in the Implementation of Right to Information Act, 2005

There are some loopholes in the successful implementation of the Right to Information Act. The major loopholes in the implementation of the Right to Information Act are as under:

1. Our Indian Constitutional provision of the Official Secrets Act gave the officer's enough protection and excuse to deny even basic information to the people. Bureaucracy has typical colonial mind set and they have developed deep vested interest in guarding information and working in secrecy. By denying the information to the people, bureaucratic think that they are not bound to disclose the basic information to the citizens;
2. People are ignorant about their rights and the procedures to obtain the information under Right to Information Act.
3. Every bureaucracy seeks to establish his superiority because he has information which he wants to keep secret. Bureaucratic administration always tends to be an administration of 'secret success'; In so far as it can, it hides its knowledge and action from criticism;
4. 'Information Commissioners', who are to over see the implementation of the Act, have failed to implement the Right to Information Act effectively. Approximately all of the Chief Information Commissioners who constitute the Central Information Commission have reportedly been drawn from the IAS. Replacing a bureaucracy with super bureaucracy of access, would greatly diminish the scope of the law;
5. On paper, the process of getting the information appears to be very simple. But in actual fact, it is very difficult job to get information unless there are agencies at all local level that guide the citizens and interpret what could be unwieldy and inaccessible information in indecipherable language. Local civil society organization can play a meaningful role;
6. Political influence could stymie the efforts of conscientious officers to be more open and accountable. The Right to Information could not function on the integrity of just a few good officers. Our civil servants may not realize this now, but the RTI regime may actually give them some autonomy in dealing with more egregious demands of their political masters. This, however, would require them to take seriously the section 3 of the RTI Act, which makes it incumbent on public authorities to "maintain all records duly catalogued and indexed" and to provide "as much information *sue moto* to the public at regular intervals";
7. In a democracy, people are supreme, not the government and this is the truth that governing classes can not digest. They can not even imagine that their performance is being scrutinized by the people. The RTI Act was fuelled by the energy of the every poor and vulnerable people who created a movement out of their desperation for good governance. It was passed with the intent of creating accountability and putting power where it belongs in the hands of people. It was designed to reduce the discretions and bias that plague government decision making. To comprise these principles, would mean to dishonor the aspirations of the most vulnerable people;
8. Development of different set of rules for the Centre and States create problems for common people;
9. There is no time frame has been attached to the provision of second appeal.
10. There is no provision in the Central RTI Act, 2005 to pay the Rs. 10 application fee along with an application filed online.
11. No mode of evaluation of the information machinery is in place in the states, to inspect whether all actions as per Section 4(10) are taken.



Suggestions for Strengthening the RTI Act, 2005

In order to take care of the above anomalies and to make the Right to Information Act a meaningful and effective instrument of participatory democracy, some following suggestions must be taken into consideration:

1. It is suggested that all financial details must be displayed outside the Panchayat Officers and be given to all members, so that transparency is maintained. Besides, the auditing should also be transparent, i.e. at the preparatory stage itself, the objection raised by the auditors should be given to all the ward members, before the Panchayats and Municipalities prepare the reply. After this, the final report should be placed before Finance Committee of the Panchayat and the Gram Sabha as also the Municipal Council and Ward Sabha⁶.
2. So far as social audit is concerned, there is a need to have:
 - Proper procedure for raising questions;
 - Recoding of proceedings;
 - Complaining by the members, if required; and
 - Reporting to people about the taken action.

Apart from these, there should be a mechanism for arbitration in cases the action is not taken for rectification⁷.

3. It is further suggested that a People Watch Committee (PWC) should be constituted from among the senior citizens (non-political) at the district, block and village levels. It should play the role of an Ombudsman and its role should be advisory in nature. It should examine the procedural shortcomings and bottlenecks in the implementation of Panchayat and Municipal Acts.
4. Apart from this, a register containing the details of all development works should be maintained. It should contain information like assets created, work done, cost and dates of their completion, etc. this register should be made available to the members of Gram Sabha/Gram Panchayat on demand. This will help in scrutinizing the works completed and those found guilty should be punished.
5. The Centre/State Nodal Departments should carry out an annual self-assessment exercise to examine the initiatives taken by the State Governments for implementing the RTI Act.
6. A massive awareness campaign should be launched to educate the citizens about the RTI Act and encourage citizen involvement. The awareness program must especially target the vulnerable categories of citizens such as women, scheduled castes/scheduled tribes, farmers and backward classes, for whom most of the social benefit schemes had been framed by the government. For this purpose, RTI awareness and education needs to be aggressively pursued using the appropriate medium of communication. Adequate budget should also be allocated both by the Union and State Governments for this initiative. The main objectives of this campaign should be to:
 - Increase public knowledge and awareness;
 - Encourage citizen involvement and debate; and
 - Increase transparency within Government through informed citizenry
7. Facilitation Centers should be established for improving the usage of RTI. To contain growing corruption and to hold Governments and their instrumentalities accountable at a local level, it is imperative to create multiple channels within reach of a common citizen.
8. Provision for standardization of RTI fee payment channels should be created for making it convenient for a citizen to file request for seeking information from remote locations (even outside the State), which is not possible if the fee has to be paid in cash. The respective State Governments should issue instructions or amend rules (as the case may be) to the Public Authorities to include convenient payment channels for submission of RTI applications by the citizens
9. It is suggested that a Knowledge Resource Centre be created under the Department of Personnel and Training, which shall act as the centre for knowledge repository of all the information/best practices/ model rules & orders etc. concerned with RTI implementation in the Central and State Governments.
10. The composition of the Central Information Commission and State Information Commissions should be such that it should have people with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
11. The appointment of Central Information Commissioner should be made by President of India with the unanimous recommendation of Chief Justice of India, Prime Minister and Leader of Opposition. Similarly, the appointment of State Information Commissioners should be made by respective Governors of the States with the unanimous recommendation of Chief Justice of High Courts, Chief Ministers and Leaders of Opposition.

⁶ D.N.Gupta, *Decentralization Need for Reforms*, Concept Publication Company, New Delhi, 2004, pp.295-296.

⁷ Mohinder Singh, "Democratic Decentralization in India After 73rd Amendment", *Public Administration in the New Millennium*, Anamika Publishers, New Delhi, 2003, p.770.



12. To ensure better service delivery by authorities and officials, third party audits should be institutionalized to support the Information Commission in carrying out responsibilities under Section 19(8)(a), 25(1), 25(2), 25(3f), 25(3g) and 25(5). Institutionalizing regular audit would facilitate the Public Authorities to comply with the RTI Act. In this context, a third party audit (at least annually) is recommended to support the Information Commissions with regard to monitoring the performance of Public Authorities and taking appropriate action in case of any deviation.
13. The offices of all Public Authorities should display a standard board containing essential information about them under the RTI Act.
14. Decentralize the working of State Information Commissions by creating Regional Offices and Benches.
15. As the Central Departments are located in different parts of the country, the presence of the State Information Commissioners may provide necessary support to the Chief Information Commissioner for processing appeals and complaints for speedy disposal of cases by the Chief Information Commissioner. The modalities of cooperation between State Information Commissioners and Chief Information Commissioner may be worked out with mutual consultation. In effect, thus, the functioning of the Chief Information Commissioner could be decentralized with a view to facilitating faster resolution of disputes between the information seeker and provider. Support of State Information Commissioners for establishing such local offices is critical.
16. A directory of State Public Information Officers, Assistant Public Information Officers and First Appellate Authorities at the district level should be available with the public authorities to be made available to the information seeker at a fixed price.
17. The Central and State Governments should earmark a certain percentage of budgets in each department for implementation of RTI related programmes including publicity, creation of infrastructure, training programmes etc. The departments should be asked to distribute the budget to their district offices to give a push to the RTI related activities and programmes.
18. The Right to Information Act, 2005 should be amended to provide for protection to those seeking information under the Act. A separate chapter, "protection of those seeking information under the RTI Act", be inserted into the Act. Following protection measures should be included in the amended RTI Act:
 - i. Mandatory and immediate registration of complaint of threats, use of force or attacks on RTI activist as First Information Report and placing such FIR before the concerned magistrate/judge of the area within 24 hours for issuance of necessary directions for physical protection to those under threats or their family members, and review such protection measures from time to time;
 - ii. Conducting inquiry into the threats and attacks by a Police Officer not below the rank of Deputy Superintendent of Police/ Assistant Commissioner of Police and conclusion of such investigation within 90 days; and
 - iii. Trial of accused, if offences made out after investigation, within six months.
19. A module on RTI should be made mandatory (though without credits) in school curriculum for 10+1 and 10+2 classes, and for all undergraduate and postgraduate courses in India.

The above measures can have a direct impact on the citizens in the sense that they can keep a check on the functioning of the local authorities by asking for information on any works related to them. It is hoped that in near future, the local authorities will reconcile the ethical values of fair play and integrity, democratic values of rule of law, participation, representativeness and transparency and corporate values of providing services in an efficient manner⁸ and will ultimately achieve the goal of decentralized governance, which we have been striving for too long.

It would be apt to conclude in the word of M. Veerappa Moily, Chairman of Second Administrative Reforms Commission: "Right to Information has been seen as the key to strengthening participatory democracy and ushering in people-centered governance, access to information can empower the poor and the weaker section of the society to demand and get information about public policies and actions, thereby leading to their welfare. Therefore, Right to Information has been said to be the life blood of democracy⁹."

⁸ Buddhade Ghosh, "Accountability of Panchayats: Ends and Means", in L.C. Jain (ed.), *Decentralization and Local Governance*, Orient Longman Publishers, New Delhi, 2005, p.273.

⁹ Government of India, "Second Administrative Reforms Commission", *First Report on Right to Information: Master key to Good Governance*, June 2006, para.1.1.1,p.1.