

## RTI ACT :AN EMPOWERING LEGISLATION

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**ABSTRACT:** The Right to Information Act empowers people and ensure transparency of administration. It has already proved to be an effective weapon for combating corruption in public services. Citizens have the right to legally seek any information from public authorities, so long as the information does not belong to the exempt category like defense affairs. Before the enactment of the RTI Act. Secrecy and confidentiality was considered a norm associated with government machinery due to the presence of the Official Secrets Act, 1923. But in Independent, democratic republic India it became imperative that all the citizens of the country will enjoy the information regarding public policy and governance so to facilitate their participation and utilization This Act has made it obligatory for every public authority to designate an office responsible, within 100 days, With the advent of the RTI Act, the sense of accountability and responsibility of public authorities has increased. However, following aspect should be taken care of for maximum effectiveness of the Act. Better record maintenance, complete and update records, disclosure redress, threat perception, unification of rules, protection to whistleblowers curtailment of delaying along with effective promotional activities are required for the same to truly empower the citizen of the country.

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**Introduction:** The Right to Information is a sine qua none of democratic policy. Information empowers people and ensure transparency of administration .However people's access to information is often limited because there is no effective mechanism for dissemination particularly among the illiterate and rural mass. The Right to Information Act 2005 an empowering legislation and is blessing for a country like India which is in the midst of corruption, lack of public accountability and bureaucratic callousness.

The important role people can fulfil in a democracy if it is an open government where there is full access to information with regard to the functioning of the government.<sup>1</sup>

Since the concept of democratic republic State or Welfare State has gained global importance which can be established only with the transparency and openness. Secrecy gives birth to corruption, . Secrecy is always associated with hiding the truth, indulging in something of personal interest. Well planned programmers, schemes and policies for economic development as well as social upliftment policies of government may not achieve their objective due to ignorance and so non participation of country's citizen .Lack of information is the root cause among citizen .Again due to lack of authenticity and delayed dissemination, people are unable to perceive and utilise the benefits. They are intentionally suppressed and often compelled to take recourse to corrupt means the behest of touts and other undesirable elements to know and derive benefits from such programmers.<sup>2</sup>

**Evolution:** - Before the enactment of the RTI Act. Secrecy and confidentiality was considered a norm associated with government machinery due to the presence of the Official Secrets Act, 1923. It was the British policy to keep the Indian public away from administration for their dominance and continuity. Any deviation in the form of unauthorized disclosure of information was a punishable.

For instance, Section 5 of the 1923 Act lays down that "if any person having in his possession or control any secret official code, or password or any sketch or plan, model, article, note, document or information which has been entrusted in confidence to him or to which he has access owing to his position or as a person who holds or has held office under His Majesty, willfully communicates the note, document or information to any person other than to whom he is authorized to communicate, he shall be guilty of an offence under this section". Indian public were devoid of any information regarding official information and. The offence was punishable with imprisonment and fine.

But in Independent, democratic republic India it became imperative that all the citizens of the country will enjoy the information regarding public policy and governance so to facilitate their participation and utilisation. All information should be shared with them. Even to improve the utilization, citizen chatter is provided. However corruption, misuse of power, underutilization of the public service was evolved as the by-product of this democratic governance. For this reason, public demand for a more transparent and open government led to the passage of the RTI Act.

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<sup>1</sup> . S.P. Gupta vs President of India and others AIR 1982 SC 149, 1981 Supp (1) SCC 87, 1982 2 SCR 365

<sup>2</sup> U.C. Agarwal, "The Official Secret Act to the Right to Information Act Dawn of Glasnost", *The Indian Journal of Public Administration*, Vol. 55, No. 3, July- September 2009, pp. 336-345, at p. 339.

As the Indian Constitution has not provided any right to the citizens under 'Right to Information', the Indian Judiciary acted cleverly and interpreted Article 19 (1)(a) and 21 of the Indian Constitution to the effect that the Right to Information is indirectly included in these Articles, on the ground that freedom of thought and expression, and freedom to life and personal liberties indirectly includes the right to information and the bill was compelled to be passed in the year 2005."<sup>3</sup>

The RTI Act, 2005 was compelled to be created by the Parliament in view of the judicial activism which has been keenly observing the changes in society and emphasized the need of openness in the government.

The RTI Act is a recent one; therefore, some eminent writers expressed some doubts in its implementation, as below:

(A) According to Justice *A. H. Saikia*, though RTI Act has been enacted aiming to bring transparency, accountability and openness in the administration, there are still certain hindrances to be faced in its enforcement. Amongst those required to be borne in mind are: (i) bureaucratic tendency in withholding information, (ii) lack of awareness of the mass of people, (iii) ineffective and improper record keeping, (iv) limited trained officials, (v) lack of training officials and (vi) exemption contained in RTI Act.<sup>4</sup>

(B) According to Justice P.B. Sawant, the access to information itself may also be abused for corrupt considerations. Depending upon the nature of the information received, the Journalists may indulge in all sorts of malpractices ranging from black-mailing to the illegal gains in financial markets.<sup>5</sup>

No doubt, there are some hindrances in its implementation but it can be concluded that the right to information and underlies all fundamental rights whether it be equality, liberty or any of the six freedoms guaranteed to citizens under the Constitution as also social, economic and political justice referred to in the Preamble to the Constitution because it can act as a check against the misuse of power by those who are constitutionally bound to ensure the realization of those rights. It is now for the public to be alert and watchful of their right to such information and compel disclosure because ultimately it is for them to use this weapon against all public functionaries across the board by ferreting out the truth and fixing accountability.<sup>6</sup> It has been rightly pointed out that the right to information as a newly

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<sup>3</sup> . Dr. Y. Padmaja Rant, "Right to Information: Judicial Approach" *Andhra Law Times* 2010 (Journal) p. 26.

<sup>4</sup> . Justice *A.H. Saikia*, "The Right to Information Act, 2005- An Instrument to Strengthen Democracy" *AIR* 2007 (Journal) p. 119.

<sup>5</sup> Justice *P.B. Sawant*, "Right to Information" *Press Council of India Review* 1997 May-July: 18: pp 16 at 6.

<sup>6</sup> Justice *Ruma Pal*, *Supra* note 12 at 59

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acquired weapon in the hands of the people has yet to sharpen its edges to cut into larches and lags of the administrative procedures and public policy making.<sup>7</sup>

Under the Indian Right to Information Act, 2005, the exemptions mentioned in Section 8(1) are subject to a public interest, contained in Section 8(2) which provides that notwithstanding anything in the Official Secrets Act, 1923, nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to protected interests.

This Act makes it obligatory for every public authority to designate within 100 days, that is, by September 15, 2005, the officers as Central Public Information Officers (CPIOs) or the State Public Information Officers (SPIOs) as the case may be, in all administrative units or offices under it to provide information to the persons requesting for information under this Act<sup>8</sup>. The RTI Act in Section 20 has a provision for imposition of penalties on the Information Officers for refusal to receive an application for information without any reasonable cause. An appellate forum has also been constituted in the form of Central and State Information Commissions under Section 4 of the Right to Information Act, 2005. Section 22 of the Act clearly stipulates that the provisions shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Though the Official Secrets Act has not yet been formally repealed, Section 22 of the RTI Act specifically provides that it shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923. Thus, the RTI Act virtually eclipses or overrides the Official Secrets Act in keeping the citizens informed about all government transactions which are of general public interest.

The era has been shifted from secrecy to openness and governance is no longer a closed door affair. Citizens have the right to legally seek any information from public authorities including file noting, so long as the information does not belong to the exempt category like defence affairs. With the advent of the RTI Act, the sense of accountability and responsibility of public authorities has increased. The RTI Act has already proved to be an effective weapon for combating corruption in public services. The significant achievements of civil society organizations like 'Parivartan' in Delhi, in collecting information regarding the flow of public funds, dubious decisions etc. are all examples of the power of Information.

**Suggestion:** - However, legislation alone may not suffice unless the citizens themselves are vigilant as well as assertive of their legal rights and the public functionaries

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<sup>7</sup> . Gandham, Suresh Kumar, "The Right to Information in India-A study" *Supreme Court Journal* 2009 (Journal) p. 25.

<sup>8</sup> Section 5(1) of the Right to Information Act 2005

are responsive and are co-operative in providing access to the information sought. The RTI Act calls upon public authorities to promote timely and effective dissemination of accurate information. The Act thus, intends to break the myth of secrecy and provide an instrument to the citizens to question authority and demand their entitlements. However, it needs to be reiterated yet again that enacting legislation is simple, it is the implementation that often suffers, which renders many a well meaning legislation ineffectual. The RTI, if properly implemented, has the potential to ensure good governance, to reduce corruption and in order to achieve this objective all efforts must be directed towards ensuring that obstacles in the way of the smooth operation of the RTI law are removed.

Processing of the requests for information must be facilitated through effective decentralized structures and mechanisms. The chaotic nature of the information and public records system, the lack of proper archives and the absence of any consistent system for managing information across the government are some of the major institutional problems. Strengthening the information delivery mechanism and the records management systems is thus absolutely imperative.

**Conclusion:** - Right to Information Act is a powerful weapon in the hand of intelligent citizen which can protect them from the ill effect of corrupted machinery, as well as protect the illiterate citizen by providing the information to them like all other citizen rights. In this way it can deliver significant social benefits. It can provide a strong support to democracy and promote good governance, by empowering the citizen's ability to participate effectively from planning to evaluation and hold government officials accountable. Rather than just providing information, RTI in most of the countries has served to be an effective watchdog ensuring the honesty of all those coming in purview of the Act.

However, stricter implementation of this law requires not only political will but also active civil societies, RTI activists and few democratic features, such as respect for the rule of law. Currently the Right to Information Act in India is passing through a decisive phase and much more is needed 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 the citizen to know and avail it for the growth and maturity of this law. But in spite of above good developments, still there lies some difficulties in full realization of the law. To make the law more potent to curb corruption and to bring more transparency in the system as many critics feel, the following suggestions enumerated in the hypotheses need to be taken in to consideration. Flow of information not on maintaining secrecy, as with the Official Secrecy Act. This mindset need to be changed and penalties for non-supply of information shall be imposed on the erring officer.

**Better record maintenance:-** As revealed from the surveys conducted earlier, PIOs are unable to provide information due to lack of proper maintenance of official records. This should be tackled by use of improved version of more user friendly digital maintenance system in every office to store and provide information. Particularly in rural and backward

segments departments should be better equipped and officials entrusted to be periodically trained to manage information effectively.

**Complete and update disclosure:-** The disclosure as required should be complete and updated to avoid any ambiguity.

**Redress threat perception:-** There is no provision in the Act to protect the information seeker from threat perception. There should be some provision to provide protection. In this context, the Asian Centre for Human Rights suggestions for inclusion of mandatory and immediate registration of complaint of threat and conduct of inquiry by a senior police officer with timebound investigation may be considered. The Report of People's RTI Assessment 2008 also revealed that 40% of rural and 15% of urban information seekers are getting such threats and harassment from the officials.

**Unification of rules:-** As there are different rules for different states and union territories, it often creates often problem to the information seekers to be aware of such rules. To avoid such unnecessary trouble, a unifying rule may be prescribed for the entire country consolidating all the broad principles for the purpose. The Report of People's RTI Assessment 2008 found that, the information seekers are finding it difficult to find the names of PIOs in the district and sub-district offices. To avoid such problems, there should be a printed booklet for every office covering names of the PIOs.

**Protection to whistleblowers:-** There should be some provision to protect the whistle blowers, so that a lot a corrupt practices will be checked, or a separate law may be brought out for the purpose.

**Less exemptions:-** As the object of the law is to provide more information, the number of exemption as provided in section 8 may be curtailed and more particularly information relating to third parties as per section 11 may be reviewed.

**Curtailement of delaying process:-** To avoid unnecessary killing of time, section 7 may be suitably amended so that while the PIA is rejecting any information from disclosure within the same timeframe he should be required to obtain the approval of the appellate authorities from that department. Thereby any person aggrieved with the decision can directly go to the commission for appeal.

**Modification of present Law:** In relation to section 22 of the RTI Act which provides for the overriding effect of the law, provisions of other legislations like evidence Act, official secrecy Act may be suitably modified to be more conducive for the RTI objectives.

**Effective promotional activities:** Although promotional activities are taken up by the government and the commissions time and again though display of posters, public meetings, seminars and media, yet it has not been able to reach the people to whom it is addressed. The object of RTI is also to educate and empower the people and thereby

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strengthen the democracy. But people in remote and rural areas are in no way able to avail the benefit. To make them more aware, success stories of RTI may be published in news paper columns and the same may be telecast in national channels regularly. A senior bureaucrat (or any other bureaucrat, who will be able to coordinate among various Departments/Ministries) should be appointed at the State/Central level, An RTI Implementation Cell headed should monitor the reports/status on various issues related to RTI based on inputs from SIC/CICs and the Public Authorities. From an operational aspect, the nodal (administrative) department should be responsible for coordination and administration.

**Hearings through video conferencing:-** Since the Information Commissions are situated in State capitals, it is inconvenient for applicants to be present during the scheduled hearing. It is suggested that the Information Commissions use video conferencing (VC) as a mode of communication for such hearings. VC facility is available at each district headquarters which may be used for this purpose. More NGOs may be involved in focusing the RTI benefit and also they may be assigned to assist the people in getting their information. Judicial activism of high order is very essential to implement the Act in letter and spirit.

It is said that Rome was not built in a day. It equally applies to every system. In our country where a number of citizens are poor, illiterate and from working class, to get the desirable result of any development or law it requires time and sincere effort. As it is found that the people are day by day becoming aware of law and its benefits, it will surely strengthen the process of good governance and curb corruption.