
THE RIGHT TO INFORMATION ACT, 2005 AND THE APPROACH OF THE JUDICIARY

Shreyas Mishra, Research Scholar, University of Lucknow &
Shefali Mishra, LL.M., SRM University, Lucknow

*“A government which functions in secrecy not only acts against democratic decency, but
also buries itself with its own burial”*

- Justice Krishna Iyer

INTRODUCTION

On international right to know day an organization name as center for law & democracy issued a ranking for Right to information Act across the world and Indian Right to information Act got 4th position in the list. The very first RTI legislation was passed in Sweden which known as freedom of information Act 1776. In 1948 UN general Assembly passed a resolution and declares that right to information is fundamental human right. At present almost 111 countries have their own Right to information Act.

The authors think that in any democratic country free flow of information is necessary for the survival of democracy in that country. It is inherent part of right of speech and expression and personal liberty. Apex court of India in his one of landmark judgment in 1986¹ held that right to information is an integral part of right to speech and expression which is provided in Indian constitution under Art 19 as a fundamental right. In another case² Supreme Court held that disclosure of information as regard the function of government is a rule and secrecy is an exception.

We all are somewhere accountable to any one for instance students towards their teacher, government toward public. If there is no free flow of information, then it might be possible that student or government forget their responsibility and misuse their liberty. That's way in almost

¹ Mr. Kulwal v/s Jaipur Municipal Corporation in 1986

² SP Gupta v. UOI MANU/SC/0080/1981;

all the democratic country passed a special law for freedom of information. In India we also have legislation for freedom of information and i.e. right to information act 2005.

A famous saying in respect of power is “Power tends to corrupt and absolute power corrupt absolutely”. If a government officer has power without any answerability, then they used it in arbitrary way. Justice Krishna Iyer in the Maneka Gandhi case said “a government which functions in secrecy not only acts against democratic decency, but also buries itself with its own burial”. In any healthy democracy right to know is essential for people to participate in governance.

Right to information Act came into force in October 2005. When this Act was passed by parliament some social activist said that this Act will be a most efficient and powerful weapon in the hand of people, and if you read the bare provision of this Act you too will agree to it. But in reality it is totally different there is lot of lacunae in this Act.

STATEMENT OF PROBLEM

Right to information Act was passed in 2005 in India after long struggle of civil society and other activist. This Act was enacted with aim to bring more transparency in participatory democracy of India. Unfortunately, this Act is failed to achieve its aim and objective because various participant of democracy claim immunity under this Act and they got it also just because they have the authority to decide this matter. This Act is not clear on various issues like whether RTI is applicable on Private institution.

On paper this Act is very powerful but reality is totally different. First of all, 30 days’ time period for giving information is more than sufficient to threaten or even sometime killing the person who is seeking information. Information commissioner has power to impose Fine only up to 25000 on PIO, which is very less and not helpful to create deterrence in mind of Public authority.

HYPOTHESIS

RTI is good piece of legislation on paper but not on reality. Act itself not contain sufficient remedy and courts are not active for wider interpretation of this legislation. Right to information is not absolute right, but its exceptions’ are vague in nature or in other word in this Act there is lot of chances to escape from statutory obligation.

OBJECTIVE

The primary objective of this project is to analyze the bare provision of RTI Act 2005 and its relation with constitutional right. Its effect on society and government machinery and future of this Act. Supreme Court view and guideline on this Act and its comparison with other country legislation on RTI.

SCOPE

In this project researcher is going explain the ambit of this Act it means that authority to whom this Act is applicable to whom it is not applicable. Right to speech and expression include right to information or not and its need as human right.

RESEARCH QUESTION

Critically analyse the Right to information Act 2005? Discuss its applicability and non-applicability areas.

The approach of Supreme Court on right to information and its nexus with other fundamental rights of Indian constitution?

Compare the provision of Indian right to information Act with other countries right to information Act?

RESEARCH METHODOLOGY

The present research is an analytical study of right to information under RTI Act 2005 and Indian constitution. The research methodology adopted in this project is based on doctrinaire method. To know how the complaint should be filed, to whom it should be made, what is the time period within which it should be made. Researcher will take help of bare text and various judgment of CCI and supreme court of India.

OBJECTIVE AND IMPORTANCE OF RIGHT TO INFORMATION ACT, 2005

The primary objective of this legislation is mentioned in the preamble of this Act which provides right to citizen to get information from any public authority and promote transparency and accountability in working of any public authority. Further in preamble of this Act establishment of central information commission and state information commission is also

mentioned. One more thing which is notable in the preamble of this Act is it provides information only at desire of citizens it means that there is no obligation on public authority to furnish information without any application.

Right to Information Act 2005 is a very small and powerful legislation. It consists just 6 chapter and 31 Sections. According to section 1 of this Act it is applicable to whole India except state of Jammu and Kashmir. In this chapter of project, we will see the mechanism of working of this powerful Act.

As we all know that this Act empower us to get information from public authority but question is how to get the information. The process of getting information from public authority is started from filling of an application. Procedure for filling of application is mentioned in section 6 of the Act. This section provides application for information shall be made in writing or electronically in English or Hindi or any other local language. Further this section gives liberty to informant not to give reason for seeking information. Section 7 of this Act put obligation on PIO to provide information within stipulated time period i.e. 30 days or 48 hours (if information is related with life and liberty) from the date of application to the informant. If interest of 3rd party is involved than this period is 40days.

If within stipulated period of time PIO failed to give information, informant may go appeal and if not satisfied or if no information is received than second appeal can be made. Provision for appeal mentioned in section 19 of this Act, according to this section first appeal shall be made before immediate senior officer of PIO and second appeal should be made before central information commissioner if PIO is central government officer and if PIO is state government officer than to state information commissioner within 90 days from the decision of first appellate body or from the day of refusal.

Section 8 of this Act provide list of subject matter which are exempted from disclosure of information³. It means that, if someone asks information on these matters then PIO will not be

³ Exemption from disclosure of information. —

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, —

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

bound to give information for example if Mr. X wants information from department of Intelligence bureau related with their function, PIO of IB shall deny to give such information under section 8 (1)(a) of this Act. Along with section 8 sections 9⁴ of this Act provide another ground for rejection of application on the basis of protection of copyright.

Another important provision of this Act is section 20 which gives power to IC of centre or state to impose fine on PIO for not giving information w/o any appropriate reason.

APPROACH OF JUDICIARY ON RTI

We all know that this Act was enacted in 2005 with the objective to bring more transparency and accountability in functioning of government. It does not mean that before 2005 there was no legislative provision and judicial pronouncement for freedom of information or free flow of information. Apex court in 1975 Raj Narayan case ⁵ said citizens have Fundamental right to receive information on public matters in the name of Freedom of speech and expression under Article 19(1)(g) of this constitution.

Similar decision held by apex court in his various other judgments⁶ that right to information is integral part of speech and expression. In Maneka Gandhi⁷ case Supreme Court held that one

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

⁴ Grounds for rejection to access in certain cases.—Without prejudice to the provisions of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

⁵ State of UP v. Raj narayan AIR 1975 SC 865

⁶ Bennet Colman v. UOI AIR1973 SC 106, SP Gupta v UOI AIR1982 SC 149, and Secretary, Ministry of information and broadcasting v Cricket assn. of Bengal (1995) 2 SCC 161

⁷Maneka Gandhi v. UOI AIR 1978 SC 597

can seek information as a fundamental right under Article 21 for the purpose of protection of life and liberty of others. In another case Supreme Court again held that right to information is part of personal liberty of citizens so it is protected under Article 21 of Indian constitution⁸. In *Shri Dinesh trivedi v. Union Of India*⁹ court held that for the participatory democracy it is very necessary that citizens of this country should know the decision taken by government and the basis which helped government to reach such decision.

So from all these judgments it is very clear that before enactment of this wonderful legislation supreme court made various attempt to put obligation on government authority and make them accountable towards citizen of this country. But due to the lack of proper statutory enactment there was no defined procedure for seeking information from public authority. Necessity is mother of innovation so after a long struggle from various group of civil society, NGOs and recommendation of Law commission and draft of Press council we finally reached at the conclusion that is Right to Information Act 2005.

After enactment of this powerful legislation it was duty of our court to maintain its effectiveness and through judicial activism strengthen the weakness of this Act. Our court and CIC on various occasion proved it that they are doing their work like in *CBSE & anr. v. Aditya Bandhopadhyay & Ors.* Apex¹⁰ court gives right to student to get his or her answer sheet of their exam. Supreme Court in *RBI v. Jayantilal Mistry*¹¹ held that RBI comes under the ambit of RTI and according to researcher this is good example of judicial activism because at the demonetization and till today we are witnessing the power of RTI in context of demonetization.

Not only supreme court but high courts are also in different cases show its activism, for example in one case Delhi high court held that office of Advocate general comes under the preview of Right to Information Act 2005¹² and in another case same high court held that application under this Act can be made for the information which is not relevant and other sources are available to get the same information¹³. Kerala High court in *Jiju Lukose vs State*

⁸ *Essar Oil Ltd v. Halar Utkarsha Samiti*AIR 2004 SC 1834

⁹ <https://indiankanoon.org/doc/716836/>

¹⁰ Civil Appeal No. 6454/2011....

¹¹ 'MANU/SC/1463/2015' Justice M.Y. Eqbal. "RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. Thus, RBI ought to act with transparency and not hide information that might embarrass individual banks"

¹² *Subhash Chandra Agrawal v. Office of AG* (MANU/DE/0691/2015)

¹³, *Adesh Kumar v. Union of India* (Delhi high court)'MANU/DE/2312/2011

of Kerala held that it is a duty of a police officer to give copy of FIR on the application made under Right to Information Act subject to exemption made by appropriate authority.

After all these judgments now we are going to see second part i.e. view of Indian courts and parliament on some controversial issues related with RTI and try to find out reasonable solution for these problem.

1. First issue is whether through application under Right to information Act applicant can seek information from political parties?

According to the researcher point of view this issue is most controversial issue not only with Power of RTI but some where it shows clear fight between two wing of our country on one hand legislature who made this Act and other hand judiciary who is carrying out the responsibility of guardian of This Act.

Transparency and accountability in the function of government and political body is very much necessary to run any participatory democracy in its true sprits. In 2010 a nonprofit org. called ADR (Association for democratic right) filled an application under this Act to all national parties to know about their last 10 voluntary donation received by them in the past five year but none of the political parties gave the correct reply to such application. Due to this behavior of political parties NGO went to CIC¹⁴ with contention that these parties majorly do public work and election is part of constitution so political parties comes under the definition of public authority. In 2013 CIC (full bench) passed an order by saying that all the national political parties shall come under the definition of public authority as mentioned in section 2(h) of this Act. In the same order CIC make it compulsory for every political parties to established a separate office of CPIO on it headquarter to response the application of RTI within 6 months from the order.

Normally political parties are not unanimously agreeing on any issue in India but on this issue they moved a bill for amendment in RTI Act in Lok Sabha and passed a bill with unanimous consent. But after strong opposition from civil society this bill moved to standing committee and unfortunately committee agreed with that bill as it is without considering the opinion of public. Fortunately, due to lapse of time bill was not passed in parliament and till today there is no enforcement of order of CIC.

¹⁴ Mr. Anil Bairwal vs Parliament

In this year 2017 a social political activist filled a petition in Supreme Court for bringing political parties under RTI Act so ultimately again ball is in the court of judiciary let's see what they will decide. For one thing we are very much sure that political parties are not accepting the decision against them easily and we will witness again the cold war between legislature and judiciary.

2. Second issue is whether judiciary comes under the ambit of RTI?

Subhash Chandra Agarwal an RTI activist filed an application in apex court's central Public information officer for the purpose of getting information of correspondence made between central government and CJI of India relating to the appointment of justice Lodh, H.L Dattu and AK Gangly, superseding the seniority of Justice A.P. Shah, Justice A.K. Patnaik and Justice V.K. Gupta. Supreme Court dined to give such information on the ground that it will hamper the independency of judiciary. Then petitioner went to CIC, CIC ordered to the CJI to provide information to the petitioner. Than an interesting thing happened administrative wing of 'Supreme Court went to appeal in Supreme Court instead of going to any High court. A three judges bench constituted to hear the matter but bench referred this matter to the constitution bench to decide whether disclosure of information interfere in judicial independency or not and matter is still pending before 5 judges bench of apex court.

In the same matter two other questions from two different cases clubbed with this matter, first one is whether information sought is comes under the category of personal information as mentioned in section 8 exemption clause of RTI Act second one, if it will allow then is there any chance of threat or affect the credibility of judgment.

Former information commissioner Mr Shailesh Gandhi in interview to a newspaper said few words about credibility of Apex court after RTI came into force he said ""If I look at the Supreme Court judgments on transparency and Right to Information before the Act came in 2005 and after the Act, it looks like these are two different countries, two different courts," in support of this statement Mr Gandhi gave this fact that out of 17 orders of the SC on RTI, in only two it ordered information to be given.

At the end of this issue researcher want to say that he is very keen to know the judgment of constitution bench of apex court because in very few instances it happened that supreme court will be deliver judgment on a matter which affect credibility of court.

3. Third issue is whether RTI is applicable on private sector or not?

We all know that under Right to information Act we can seek information from any public authority which is defined in section 2(h) of this Act¹⁵. On the face of this section it is very clear that in this definition nowhere word private sector is explicitly mentioned. Even in one judgment Delhi High court held that that the mere establishment of a body under a statute will not automatically render it a public authority for the purposes of the RTI Act¹⁶.

In same definition it is also mentioned that authority or body or institution of self-government established or constituted

(i) Body owned, controlled or substantially financed;

(ii) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government

This part of the definition enlarges the ambit of the Act because these words controlled or substantially financed is in itself a larger word. Control means government has power of supervision and regulation on organization this view by some high courts¹⁷ but some high courts are not agree with this view according to them supervision and making regulation cannot be equated with control¹⁸.

Whereas the word substantially financed have no specific definition. Substantially it means that majority of financing of organization or institution is done by government for example Indian Olympic Association was held as a public authority under RTI Act by Delhi high court

¹⁵ Section 2 (h) of the act as follows:

public authority means any authority or body or institution of self-government established or constituted, —

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by any other law made by State Legislature;

(d) by notification issued or order made by the appropriate Government, and includes any--

(i) body owned, controlled or substantially financed;

(ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government

¹⁶ National Stock Exchange of India Limited v. Central Information Commission, WP (C) No. 4748 of 2007 Decided on 15 April 2010 by Delhi High Court.

¹⁷ Mulloor Rural Co-operative Society Ltd v. State of Kerala ILR 2012(2) Kerala 576; Hindu Urban Cooperative Bank Ltd v. State Information Commission (2011)ILR 2 Punjab and Haryana 64.

¹⁸ Dr. PanjabraoDeshmukh Urban Co-operative Bank Ltd., Vidarbha Region v State Information Commissioner AIR 2009 Bom 75; Nagar YuwakShikshanSanstha v. Maharashtra State Information Commission AIR 2010 Bom 1; A.C. Bhanunni v. The Commissioner, Hindu Religious and Charitable Endowments, WP(C).No. 30470 of 2008

in 2009¹⁹. But nowhere exact percentage of contribution for substantially financing by government is mentioned. There is big ambiguity to decide whether this institution comes under purview of this Act.

According to the researcher point of view there is need of proper guideline from Supreme Court of India or legislature should make law to decide what should be the quantum of financing.

COMPARISON BETWEEN THE INDIAN RIGHT TO INFORMATION ACT AND OTHER COUNTRY'S LEGISLATION AND VIEW OF UN

Freedom of information is integral part of fundamental right of expression which was recognized by resolution 59 of UN general assembly in 1945 and Article 19 of UN declaration on Human right 1948 encompasses it as freedom of expression²⁰. Article 10 of the European Convention on human right also provide same thing²¹ So freedom of information is part and parcel of freedom of expression from 1948 but unfortunate thing is not only developing countries even developed countries enacted this legislature after 2000 for example freedom of information Act 2000 in UK.

Now the researcher will make a comparison between India and Worlds two developed and law-abiding countries UK and US.

In UK legislation for freedom of information Act was enacted in 2000 five year earlier in comparison to India. When we compare right to information Act 2005(India) and freedom of information Act 2000 (UK) on the basis of their size we got to know that Indian RTI Act is smaller to UK freedom of information Act. UK Freedom of Information Act is divided into 8 parts and 8 schedules and it contain 88 sections whereas India RTI Act contains 31 section 2 schedule. After this comparison it is quite clear that UK's freedom of information Act is more powerful and balanced in compare to Indian Right to information Act. Section 4 to 7 of freedom of information Act deal with public authority but only one clause definition section i.e. section 2(h) of Right to information Act provide information about public authority. In UK list of

¹⁹ Indian Olympic Association vs Veeresh Malik & Ors. WP (C)No.876/2007

²⁰ Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

²¹ everyone has a right to freedom and expression and this right shall include to hold opinions and to receive information and ideas without interference by public authorities and regarded of the frontier

exemption from information is provided separately in Part 2 and in India section 8 and section 9 and 24 is for this purpose.

In UK within 20 working days' information shall be delivered, where in India 30 days' period for giving information but for health and life matters this should be done within 48 hours whereas in UK no provision like this. In RTI only citizen of India can seek information which is different from UK where not only citizen but also non-citizen can make an application.

Through first amendment freedom of speech and expression was inserted in constitution of USA. In 1966 Act called freedom of information was passed. We all know that USA is federal country and this Act is applicable only on federal agencies not on state agencies its different thing that some state passed similar legislation. India is not truly federal when we compare it to USA and here RTI is applicable on all agencies whether they come under purview of State government or central government. In 1996 electronic freedom of information Act amendment was passed which is mile stone in such kind of legislation. Unlike India anyone can seek information from Public authority in USA and this information shall be delivered to him within 20 days from the date of application.

CONCLUSION

On the Bare Act, this Act seems like solution of many problems in India like corruption, fix accountability of government employee etc., but in practicality the Act has failed to achieve its basic objectivity. Various issues in this Act are still an unsolved problem for RTI Activist like delay in reply by PIO, no monetary compensation etc. On one hand this Act creates responsibility of PIO to give information but on other hand they easily exempt themselves from giving information due to wider interpretation of Section 8 of this Act.

There is no proper guideline from Supreme Court on ambiguous terms of this Act like no guideline on public authority. History of this Act shows that legislature and parliament never ever want to give more strength to this. According to the researcher there is need of proper scrutiny of this Act by legislature with intention to more strengthen the power of this Act.

On the name of independency of judiciary, Supreme Court can't exempt themselves from the preview of this Act. It's their duty to protect citizen's fundamental right of speech and expression.