Research Paper Commerce

The Right to Information in India Implementation and Impact

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ABSTRACT

The Right to Information Act 2005 was passed by the UPA (United Progressive Alliance) Government with a sense of pride. It flaunted the Act as a milestone in India's democraticjourney. It is five years since the RTI was passed; the performance on the implementation frontis far from perfect. Consequently, the impact on the attitude, mindset and behaviour patterns ofthe public authorities and the people is not as it was expected to be. Most of the people are stillnot aware of their newly acquired power. Among those who are aware, a major chunk eitherdoes not know how to wield it or lacks the guts and gumption to invoke the RTI. A little morestimulation by the Government, NGOs and other enlightened and empowered citizens canaugment the benefits of this Act manifold. RTI will help not only in mitigating corruption inpublic life but also in alleviating poverty- the two monstrous maladies of India.

KEYWORDS RTI Recommendations, NGO, United Progressive Alliance

INTRODUCTION

The Right to Information Act was passed on 15 June 2005 by the United Progressive Alliance (UPA) Government and came into effect from Oct. 12, 2005. It has been five years now sincethe Right to Information is being implemented. It is sufficient enough a period to give us an idea of its value and worth. This paper briefly discusses the salient features of Right to Information, reviews its implementation, explores its impact and attempts to offer suggestions for its optimum use. The Right to Information Act 2005, the RTI hereinafter, was enacted by the National Parliament to dismantle the culture of secrecy and to change the mindset of the bureaucrats and political leaders and to create conditions for taking informed decisions. The RTI provides a framework for promotion of citizen-government partnership in carrying out the programmes for the welfare of the people. The principle of partnership is derived from the fact that people are not only the ultimate beneficiaries of development, but also the agents of development. The stakeholders' participation leads to better project and more dynamic development.

Salient Features of the RTI Act 2005

The Right to Information is a well-formulated Act. The Act is based on the premise that democracy requires an informed citizenry and transparency of information. The Right to Information Act contains six chapters and two schedules. Chapter 1 is entitled'preliminary' and explains the various terms like appropriate government, public authority, information, record, third party etc. Chapter 2 contains obligations of public authorities. Chapter 3 deals with the Central Information Commission while Chapter 4 describes State Information Commissions. Chapter 5 is about the powers and functions of the Information Commissions, appeals and penalties and Chapter 6 has all the miscellaneous things. Schedule 1 contains the oath to be taken by various levels of Information Commissioners. Schedule 2 contains a list of intelligence and security organizations established by the Central Government. RTI is for the right of any citizen of India to request access to information and the corresponding duty of Government to meet the request except the exempted information (Sec.8/9). Some of the important terms explained in the Act are as follows:

- "information" means any material in any form, including records, documents, memos, e-mails, 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.
- "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 the State legislature;
(d) By notification issued or order made by the appropriate Government and includes any –

(1) Body owned, controlled or substantially financed;
(2) Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

- "right to information" means the right to information accessible under this Act which is held by right under the control of any public authority and includes the right to –

(i) inspection of work, documents, records;
(ii) (ii) taking notes, extracts or certified copies of documents or records
(iii) (iii) taking certified samples of material obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

There are some obligations for the public authority given in S4 (1). According to it every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such record is facilitated.

Process

Application has to be submitted in writing with prescribed fee to Public Information Officer (PIO). PIOs will be there in each department/agency to receive requests and provide information. Assistant PIOs will be at sub- district levels to receive applications/appeals/complaints.

Information has to be provided within 30 days, 48 hours where life or liberty is involved, 35 days where request is given to Asst. PIOs, 40 days where third party is involved and 45 days for human rights violation information from listed security/ intelligence agencies. No action on application for 30 days is a deemed refusal. (There is no fee for delayed response.

Every PIO will be liable for fine of Rs. 250 per day, up to a maximum of Rs. 25,000/-, for -

i. not accepting an application;
ii. delaying information release without reasonable cause;
iii. malafidely denying information;
iv. knowingly giving incomplete, incorrect, misleading information;
v. destroying information that has been requested and
vi. obstructing furnishing of information in any manner.

Role of the Central and State Governments
The role of the Central/ State governments include interlaid the following:

- Develop educational programmes for the public especially disadvantaged communities on RTI.
- Encourage Public Authorities to participate in the development and organization of such programmes.
- Train officers and develop training materials.
- Compile and disseminate a User Guide for the public in the respective official language.
- Publish names, designation, postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc.

Exemptions:
The following organizations are exempt from the RTI Act [S.8)]

Nineteen government organisations are exempt from the RTI Act. These include intelligence agencies like the Intelligence Bureau, Research and Analysis Wing, Directorate of Revenue Intelligence, and Central Economic Intelligence Bureau etc. Research bodies working with the country's security apparatus are also immune to the law, as are paramilitary forces. The Directorate of Enforcement, Narcotics Control Bureau, Special Service Bureau, special branch of the police in the Andaman and Nicobar, Lakshadweep and Dadra and Nagar Haveli are excluded from the Act. These organisations are, however, required to provide information under the Act if the panel believes the appellant's query relates to a case of corruption or abuse of human rights. Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosureoutweighs the harm to the protected interests. The categories of information exempted from disclosure in this Act are kept to a bare minimum. Reasons for seeking information are not required to be given. People belonging to below poverty line do not have to pay any fees for seeking information. The Right to Information is a product of both institutions and culture. Institutions are shaped by laws and the structure of Government. Culture is rooted in the history and practice of Government as well as in the broader traditional understandings of the accountability of leaders and of what constitutes representation. Culture is often more powerful than formal arrangements, particularly in societies that are undergoing a process of democratic transition and /or whose political systems still reflect traditional social methods of interaction.

Implementation
The right to information has been there for five years now. It's time to reflect on its implementation and impact. A perusal of its salient features makes it clear that its implementation requires the formation of Information Commissions, appointment of Information Commissioners and PIOs at the Centre and in the States, the training of PIOs, punishment of the erring officials, obligation on the part of the government to bring departmental information in public domain, and creating awareness among the public especially the disadvantaged groups. The record of the Central and various State Governments and Information Commissions and PIOs on the above-expected roles has been mixed so far. There is variance in performance between and within states explained largely by the commitment of the state government and the quality of the officials concerned. Information Commissions have been formed but the general opinion is that the Commissioners have a lackadaisical attitude. It has been found that the Central Information Commission is in a complete mess. The Commissioners at the CIC hear on an average 3 or 4 case a day. Files are lost and the appellants have to repeatedly file their cases. Cases come up for hearing after seven months or so. Commissioners are unwilling to impose penalty on guilty officers. This encourages the PIOs to refuse requests for information at the first level. This means that a good portion of applications ultimately graduate into appeals before the CIC. The orders of the CIC are disturbing for many reasons. It has passed several orders wherein one or both parties have not been heard. This violates principles of natural justice. The CIC must have decided over 2,000 cases by now, of which a negligible percentage (about 5 or 6 decisions) impose any penalty on officers. With such misguided soft approach of the CIC, guilty officers merrily go scot-free. This can create doubts in people's mind about the efficacy of the RTI Act.

The team of RTI activists found that several issues were in need of urgent attention e.g,

1. Ambiguous orders
2. Lack of proper procedure for recording orders.
3. Total lack of accountability as to when written orders will be given.
4. No penalties imposed even on PIOs who have denied information without any justification.
5. Arbitrary refusal of information for reasons not justified by the RTI Act.
6. Information Commissioners arguing on behalf of public authority, manufacturing imaginary justifications for denial of information when PIOs are not present to represent their own case.

One year after the implementation of RTI a study using the state education ministries as a test case, found that only 12 states and union territories' education departments released over 35% of the information required. Madhya Pradesh, Uttaranchal, Chandigarh, Punjab and Delhi -- in that order -- were the top five states in the country to provide information on the education department. Madhya Pradesh made public 87% of the information sought, while the figures for Uttaranchal and Chandigarh were 70% and 64% respectively. Delhi provided 54% of information sought, says the study.

Impact
RTI Act is one of the most people friendly legislation ever. Thousands have benefited from it. But it is true that more than five years after Parliament passed the Act in June 2005, the road to accessing the information remains arduous. RTI has made both tangible and intangible impact on the system and its people. People have used the RTI tool to get their ration cards, passports, pension funds, birth certificates, income tax refunds et. al. There have been cases when people as old as ninety years and as young as nine years have taken recourse to RTI to get their work done. People below the poverty line, disabled and blind people also have used it to their advantage. Big scams have been averted by the use of RTI. e.g., when information revealed by RTI exposed that 87% of wheat and 94% of rice meant for the poor were siphoned of by the shopkeepers and food grain officers, steps were taken to streamline the system. In 2007, data obtained under RTI inspired citizens to question elected representatives to stop a scam worth over Rs. 6,000 crores in the Crawford Market redevelopment issues in Mumbai.

The impact of RTI application in concerned division of the public institution was as follows: Before RTI Act after RTI Act

- The staff was lethargic The staff became active
- The Staff did not have any fear The staff had fear of RTI Act
- The staff was not regular and punctual in their duties
- The staff became regular and punctual
- The staff was not feeling responsibility The staff had started feeling responsibility
- Proper action was not being taken by the staff on the

complaints
- All concerned officials became serious about each and every complaint
- Proper files were not maintained All concerned officers and officials had been asked to maintain proper files
- The staff members were not conscious they became conscious about their duties.
- The staff members were engaged in corrupt practices The corruption in the division reduced
- The authorities were not alert the authorities became alert to avoid such cases in future.

Conclusion

Thus the impact of RTI is palpable. People do feel more empowered. Their bargaining power Vis a vis public officials has increased manifold. Right to information has definitely resulted in greater transparency in governance. All the levels of the Government – The Centre, states and local bodies, including village level panchayats- have put their records in public domain, through publications as well as internet in the regional languages. RTI applications have annually increased by 8 to 10 times. The implementation of RTI has been better in states that adopted RTI Act before 2005.This means that with time its implementation and use would definitely pick up. The impact includes its use by the general public and by the marginalized groups, change in the mindset and attitude of people as well as the authorities.

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