



APPRAISAL OF RIGHT TO INFORMATION ACT, 2005

Dr. Sandeep Kumar

Himachal Pradesh University Institute of Legal Studies, Shimla, Himachal Pradesh, 171004.

ABSTRACT

The Right to Information Act 2005 has been described as one of the best law. The Act empowers individuals' to seek information from Central and State public authorities. The governments' cannot act in secrecy and hence accountable to furnish information sought for. The Central Information Commission and State Information Commission being statutory bodies constituted under the Act are investigating the compliance of the Act. But it has been witnessed that the RTI Act is poorly implemented. Besides, it has certain inherent shortcomings which need to be rectified at the earliest. The objective of the study is therefore to evaluate the provisions of the act, find out the gaps in its implementation and suggest measures to make the law more efficacious.

KEYWORDS

Information, Public Authorities, Shortcomings,

A. INTRODUCTION

The Right to Information Act, 2005 is one of the best laws passed by the government of India. The Act has been described revolutionary because it has changed the style of governance in India. The governments' used to act in secrecy are now bound to promote act in transparent manner. The principle of maximum confidentiality has been replaced by principle of maximum disclosure. The public authorities are responsible to furnish information to individuals and are accountable to disclose information on official websites. Since the enactment of the Act, it has been used at several occasions to expose the scams and corruption cases. Several provisions of the act impose obligation on RTI authorities to investigate the compliance of the Act. The PIOs and APIOs are responsible to furnish information within stipulated period of time. The Central Information Commission and State Information Commissions have been assigned the task to ensure the enforcement of the RTI Act. But several individual studies have been indicative the Act has been poorly implemented and has certain inherent shortcomings. The public authorities can be seen delaying furnishing of information sought for. The erring public officers rarely have been punished under the act. Despite of having best provisions in the law, the implementation is weak. Therefore, the objective of the present paper is to evaluate its provisions and to find out the shortcomings in the Act and in its subsequent implementation.

B. MAIN FEATURES OF THE ACT

The Parliament of India passed the Right to Information Act, 2005, to empower the citizens, promote transparency and accountability in the working of the Government. The purpose of the Act has been to contain corruption, and makes democratic system participatory, accountable and responsible. Section 2 (f) of the Act defines the term 'information' as "any material in any form, including the records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, 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 law for the time being in force." Similarly, under the Act public authority has been defined. According to the Section 2 (h) of the RTI Act the term public authority means body constituted under Indian Constitution, Government authorities and authorities who are substantially financed directly or indirectly. The public authority is bound to furnish the information within a specific time period with nominal fee. Moreover, Section 4 of the RTI Act imposes a duty on Public authority to disclose all necessary information on official websites to enable citizens to access information easily and without any bureaucratic hurdles.

The RTI Act also provides for establishment of separate State and Central Information Commissions. These statutory bodies are investigating the compliance of the RTI act. Any person aggrieved

with the decisions of First Appellate Authority can file second appeal before Central and State Information Commission as the case may be. However the individual's right to seek information is not absolute. There are several exceptions given under the Act to restrict the enjoyment of the right to seek information. Take for example, Section 8 of the Act which restricts information disclosure relating to security, foreign policy, defence, law enforcement and public safety matters, etc. Similarly Section 9 prescribes the grounds on the basis of which right to seek information can be curtailed. It says that a Central Public Information Officer or a State Public Information Officer may reject a request for information where such a request for providing access to information involves an infringement of copyright subsisting in a person other than the state. Again, section 24 lays down that the Act has no application to certain organizations such as intelligence and security organizations specified in the Second Schedule of the Act, as organizations established by the Central Government. The same law applies for the organisations of the State as well.

The Act contains provisions for appeals as well. Any person who is not satisfied with the information supplied or if no information was supplied, first appeal can be filed before First Appellate Authority. If a person is not satisfied with the decision of FAA, second appeal can be filed before the Central/State Information Commission as the case may be. The Act also contains provisions for punishment of the Public Authority who failed to perform his duty under the Act. Section 20 of the Act authorizes the Central/States Information Commission to impose penalty of Rs. 250 up to Rs. 25,000, on erring officials. The concerned Commission can even recommend for the disciplinary action against such authority.

C. CRITICISM OF THE ACT

No law is free from imperfections. The RTI Act 2005 also suffers with shortcomings despite of the fact that it has been described as one to the best laws across the globe on the RTI. The RTI Act has been criticized on the following grounds. The defects can be divided in two groups

I. DEFECTS IN THE RTI ACT

(a) Limited Application

The RTI Act is applicable only on public undertaking and government's bodies. Like many laws of the World it does not cover private entities. The term 'public authority' defined under section 2(h) of the Act does not cover private entities. Only those organisations public or private in which government's funds are involved can be regarded public authorities within the Act. The application of the Act on private entities becomes necessary because India is a welfare State where most of the sovereign functions are performed by private entities. Under such circumstance how private entities can be kept out of the purview

of the RTI Act.

(b) Teethless Statutory bodies

Under the RTI Act, the Central Information Commission and State Information Commissions have been established to investigate the compliance of the RTI Act. But it is unfortunate that the decisions given by these statutory bodies are rarely followed by public authorities against whom decisions are rendered. The Commissions don't have powers to enforce their decisions. Nor these bodies are capable to erring public bodies to punish for their contempt. The statutory Commissions cannot execute decree despite of the fact that they have been designated as Civil Courts hence exercise civil powers.

(c) Lack of Uniformity in RTI Rules

Under the RTI Act state governments have been empowered to make RTI rules concerning fee to be charged from the RTI applicants. Different state governments and their organisations have drafted different rules relating to charging of RTI fee. It has created problem for the RTI applicants to obtain information within stipulated period of time. The delay furnishing of information on part of information providing authorities defeats the entire purpose of the RTI Act. The lack of uniformity in RTI rules has also created the problem for the RTI authorities.

(d) No Protection to Whistleblowers

Under the RTI Act there is absence of protection to persons seeking information in public interest. The cases of murders and assault of RTI applicants are on the rise and have been reported from different parts of the country. The RTI Act is silent about their protection. The passing of separate law on whistleblowers' protection has created confusion. Rather than enacting separate law on it better it was to insert a provision in the RTI Act itself.

II. PROBLEMS IN IMPLEMENTATION

(a) Lack of Awareness about RTI Act

Various individual studies have been indicative of the fact that people as well as the information providing authorities are not aware about all provisions of the Act. The information seekers don't know whom they have to file RTI applications and if information denied to whom appeal can be filed. Similarly, RTI authorities such as PIOs and APOs are not aware about the RTI Act. These people are not trained in dealing with RTI applications and in most of the cases reject applications on vague, misleading and whimsical grounds. The government's run institutions or training centres, lack infrastructure to train the PIOs and APOs.

(b) No Financial Autonomy

The RTI authorities like PIOs, APOs and statutory bodies such as Central Information Commission and State information Commissions don't have requisite financial autonomy in absence of which they cannot discharge their functions effectively. For example, the Central Information Commission is earth running short of staff or is understaffed. This statutory body cannot recruit the supporting staff and depends on government to fill vacant post. It defeats the entire purpose of the RTI Act to supply information sought for on prompt basis.

D. CONCLUSION AND SUGGESTIONS

The foregoing discussion reveals that the Right to Information Act 2005 is a powerful tool to ensure transparent regime in India. It has exposed several scams and cases of corruption and has made public officers accountable to furnish information on prompt basis. There is provision in the Act for appeal. Under the Act the person if fails to get information from PIOs and APOs he or she can take recourse of appeal. The first appeal can be filed before FAA in same department and second appeal can be filed before Central Information Commission or State Information Commission as the case may be. The Act has provision to punish erring public authorities who fail to supply information sought for in time bound manner. Despite of this, the Act has some inherent shortcomings pointed out above. The Act is marred in its implementation. In order to come out from such problems, following suggestions have been tendered.

- The Central and State Information Commissions lack powers to enforce their decisions. Therefore it is suggested to amend the RTI Act in order to make Central Information Commission and State Information Commissions more goal oriented bodies. These bodies should be given powers to enforce their decisions as well as powers to punish for their contempt.
- There is need to insert a provision concerning whistleblowers' protection in the RTI Act to enable the RTI applicants to seek information without any fear.
- There is lack of awareness about the RTI Act among information seekers as well as information providers hence it is suggested to organise trainings programmes, workshops, seminars and conventions at regular intervals for the information providers. In order to raise awareness among the people in general, it is suggested to organise awareness campaigns through *nukar natak* and media in rural areas in India.
- The financial autonomy should be given to CIC and SICs in matter of recruiting supporting staff. It would reduce the areas of case piling before commissions.
- It has been seen that government of India does not appoint CIC in case the post falls vacant. Same is true about the governments in states which have been seen reluctant in filing post of State Information Commissions. It is suggested that post of Information commissions should not remain vacant in CIC as well as in SICs. The government should fill up these posts on swift basis.

It is hoped that the government of India will think seriously about the poor implementation of the Act. The Act will be enforced and applied with full force. Likewise, the inherent defects in the act need to be removed at the earliest to call RTI Act a revolutionary law in real sense. Lets hopes that governments in New Year of 2017 will try their level best to remove the shortcomings in the Act.

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