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Right to Information Act, 2005 and Its Ramification

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"The real 'Swaraj' will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused"

Mahatma Gandhi

Introduction

Constitution is a legal document having a special legal sanctity, which sets out the framework and the principal functions of the organs of the government, and declares the principles governing the operation of those organs. The Constitution of a country seeks to establish the fundamental organs of the government and administration. It also lays down their structure, composition, powers and defines the relationship of one organ with another. Further it regulates the relationship between the citizens and the state, more particularly the political relationship¹.

Information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues on political, social and economic front. Free exchange of ideas and free debate are essential for a democratic country like India. In this age of information technology, right to information is a critical factor in ensuring country's social, economic and political development. In a developing country like India, availability of information needs to be assured in the fastest and simplest form possible².

Every democratic government should involve the people as participants and remain responsible to them. This is termed as positive constitutionalism or constitutional democracy³. The Preamble of our Constitution makes it clear that India is a 'Democratic Republic' which signifies that the government is of the people, by the people and for the people. From this it is clear that one of the most important fundamental principles is to maintain transparency, openness and

accountability, in each and every administrative authority.

Right to information refers to the right of every citizen of the state to access information under the control of public authorities. The main objectives are to promote openness, transparency and accountability in administration and to ensure public participation in matters related to governance⁴.

Right to access information held by public bodies is a fundamental right guaranteed under the Constitution of India. Supreme Court of India⁵ accepted this right as an inherent part of Right to Freedom of Speech and Expression⁶ and the Right to life and personal liberty⁷. The court judgments were not sufficient however to provide transparency, openness and accountability at the grass roots level. It is difficult for each and every citizen to approach the judiciary to invoke writ jurisdiction on the grounds of violation of fundamental rights. There was a need for a separate legislation to guarantee right to information to each and every citizen.

In this direction the Union government made the Right to Information Act, 2005. The main purpose of the Act is to bring transparency, openness and accountability in each and every organs of the government. This Act came into force on 12th October 2005.

Salient Features of the Act

Growing public concern about callousness and corruption in government resulted in a clamour for greater transparency culminating in the demand for a Right to Information legislation. Right to information is necessary to promote a culture of accountability and to expose corruption and malpractices.

Right to Information Act, 2005 is a very compact law, it consists of just Sections 31 and divided into four Chapters. The main features are as follows:

1. It creates and states the right of citizen to obtain information.
2. The term right to information includes any record, document, inspection of work and taking certified samples of materials⁸.
3. It creates corresponding duty and responsibility *on* the state and its functionaries.
4. It imposes a duty on the public authorities to disclose information *suo motif*.
5. Any citizen can avail information under this Act, by filing an application to the concerned Public Information Officer, on payment of prescribed fee¹⁰.
6. There is no need on the part of the applicant making request for information to give reasons for requesting the information or any other personal details except those that may be necessary for contacting him¹¹.
7. It imposes a duty on every public authority to designate - Public Information Officers (PIO) and Assistant Public Information Officers (APIO)¹².
8. It lays down the time limit within which the information must be provided to the applicant and has special mechanism to deal with genuinely urgent request for information within 48 hours, if it concerns the life and liberty of a person¹³.
9. PIO's shall be liable for penalty if they refuse to receive an application or do not furnish information within the time specified⁴.
10. Under this Act no suit, prosecution or other legal proceeding shall lie against any person for anything done in good faith or intended to be done under this Act or any rule made there under¹⁵.
11. The Act lays down the exceptions or the grounds on which the public authority can withhold the information¹⁶.

12. File noting is an integral part of the government file and is subject to disclosure under the Act. This has been clarified by the Central Information Commission in one of its orders on 31st Jan 2006
13. Chief Justice of India is not exempt under the Right to Information Act, 2005. Three member bench of the Chief Information Commission held that the information available with the CJI must be deemed to be available with the Supreme Court. If any information is available with one section of the department, it shall be deemed to be available with public authority as one single entity. Further it was held that the institution and its head could not be two distinct public authorities¹⁷.

Review of the Act for Practical Implementation

A balance has to be struck between one person's right to privacy and another's right to information. The former has normally to be protected unless the balance of public interest lies *in* disclosure. Such a situation should be listed out as far as possible and the authorities competent to make this trade-off judgement specified under the Act itself¹⁸. The Government should appoint a committee to review the functioning of the Act, to make the Act more suitable in its proper implementation in reality. The committee should keep in mind the following aspects in reviewing or amending the Right to Information Act, 2005. Careful studies of the Act recognize the following difficulties in practical implementation of this Act.

1. There is no mention in the Act about who will declare the Public Authorities. Particularly those organizations which disclaim to be Public Authorities. As per the Act Appropriate Government¹⁹ should publish the list of Public Authorities, but there is no provision of declaration by the Government
2. Under this Act, senior most person in a public authority is to be designated as PIO. As a result he has to perform his normal duties in addition to that, he has to provide information to the applicant who files an application under the Act. This may hamper

his regular duties, if the department receives more and more applications he will try to dispose the applications due to fear of penalty and neglect his regular duties. No separate qualifications or extra remuneration is paid to the person who is designated as PIO in discharging two different kinds of duties. There is a need to designate a separate person who can take the responsibility in providing information to the applicant under the Right to Information Act, 2005. Further there is a need to prepare separate rules and regulations governing the administration of APIO's and PIO's (qualifications, disqualifications, leave, and other service conditions).

3. The mandatory time limit of 30 days for the supply of information is creating a situation of injustice as it is often found that PIO's are not alone responsible for the delay or refusal to supply information. The PIOs have to depend upon many other officials, who are really responsible or holding the information. In majority of cases it is difficult for the PIO to continually pursue the concerned officials to supply information. There is a need to impose liability even upon those persons who are practically responsible or holding information to be provided to the complainant. Hence there is a need to incorporate a separate provision to impose penalty even upon those person who are responsible or holding the information.
4. Citizens who are well versed with various provision of the Act, are filing frivolous applications with the public authorities for monetary gains or they are filing application on behalf of others for economic benefits. This activity should be restricted by making appropriate provisions to this Act.
5. Under this Act any citizen can avail information from any department, organization, company or corporation. That means any Tom, Dick and Harry walking on the road can apply for information. This results into filing of enormous frivolous applications. Persons who are not at all

concerned or affected should be prohibited in obtaining information. To avoid this a new provision 'genuine citizen or interested citizen' can be incorporated under the Act.

6. There is a need to increase the fee amount based on the information requested by the applicant and upon the period and labour involved in searching the information. The present Act should incorporate differential fee structure taking into account various factors involved in collection of information.
7. The Act failed to clarify the term 'substantial interest' as mentioned under Sec.2 (h)²⁰ while defining the term 'public authority'. This term should be defined in order to avoid any kind of misinterpretation by the advocates or judges.
8. After asking for the information as requested by the applicant, if the applicant fails to come and collect the information or if the applicant comes to collect the same information after one or two years, no provisions are available under the Act whether in such a situation to provide the information or refuse to do so. Further there is a need to fix time limit within which the applicant can collect the information.
9. In case of third party information, if the third party refuses to provide information discretionary power is given to the PIO. This provision may affect the privacy of the third party. There is need to make more specific rules in this regard.

Conclusions

Good governance results from the conscious efforts of the persons responsible for achieving it and in taking up appropriate programmes that would bring transparency, accountability and citizen friendliness in day to day situation.

A transparent and open government increases the faith and trust of the public in its functioning. At the same time it reduces suspicion and creates space for the free flow of information, which allows citizens to participate in decisions taken in their interest. Knowledge about good governance is

not enough. Genuine people's participation is necessary in administrative process, and decision making. Public cooperation is important but private interest and frivolous matters should not over weigh the public interest.

To provide transparency and to retain the constitutional principles of democracy we need the most important law that is the RTI Act, 2005.

The above discussion highlights the problems faced by the various authorities (PIO/APIO) established under this Act. Therefore there is a need to make changes or review the Act to remove the lacunae, otherwise the objectives of the Act may be lost in course of time. The present Act is just three years old, the framers were not aware about the problems in the operation of the Act. We should learn from experience and adopt ourselves to the situation. In this respect a committee should be appointed to review the RTI Act, 2005. The committee must take care of the difficulties faced by the various authorities under this Act and suggest appropriate changes. The committee can review the present Act taking in to account the problems faced by the PIO's, Appellate Authorities and the general public in implementing the Act in practice. Since the Act facilitates the exercise of many other rights, it is not enough to have the Act passed and lean back waiting for miracles to happen. It is necessary to create a conducive environment as well as systematic support mechanism so that the Act comes alive as an accessible, effective tool of improved citizen's interaction with the government²¹.

Definitely the Right to Information Act, 2005 is a boon in obtaining information, providing transparency and achieving the most important fundamental concept of the Indian Constitution that is democracy.