

RTI- OPACITY BEHIND THE TRANSPARENCY

Puneet Jain & Riya Jain

University Institute of Legal Studies, Panjab University

The hallmark of true democracy is the installation of transparent and participative processes where in the citizens need to be well informed on all issues relating to public interest. To achieve the bi-model of transparency and accountability in public affairs, a watchdog provision, Right to Information (RTI) came into being in 2005. RTI refers to the right of every citizen of the state to access information from the public authorities and consequently expose corrupt practices prevalent under their governance. The Supreme Court in its various dictums has undoubtedly recognized RTI as an implicit part of the Right to freedom of speech and expression guaranteed under Art.19 (1) (a) of the Constitution. But in recent years RTI has happened to be fatal for those who questioned the incompetence and lacunae in governance. It is rather becoming Obstruction to Information (OTI) where the giver of information utilizes all his strength to prevent the disclosure of same. The concept of quid pro Quo where in “an individual sees the sovereign as its protector and in return that individual adhere to the rules and laws formulated by it”, is nowhere seen. In order to set right this anomaly, RTI was enacted which not only aims at ending the long lasting opaque governance of the government but instills the feeling of respect and harmony among the subjects of the nation. So the present paper broadly exemplifies the roots and extensive coverage of RTI in the country.

Keywords: RTI, Democracy, Transparency

INTRODUCTION

In the initial years after independence the nation aspired and expected a lot from the Government. People of the country sailed in the boat of hope and ambitions. Our forefathers sacrificed their lives in freeing India from intolerable servitude of britishers and solicited appealed from coming generations to keep the idea of true democracy intact as it travels downwards.

Now the question here arises is: Have we been able to live up to their expectations?

No doubt that the journey of the idea of democracy not only changed the lives of the millions it touched; it also changed the idea of democracy itself in ways more than one. Call it creolization or vernacularisation of democracy, this transformation is at the heart of whatever success democracy has achieved in India. But we are still far from giving veritable meaning to our Constitutional Democracy. In the medley of disparate voices of our opaque parliamentary system, the larger vision which should guide us tends to get blurred at times. People waited and waited but the frustration grew on every step. The euphoria of the freedom movement and independence finally faded. There were sporadic demands for transparency in government, especially when certain events or issues erupted. So at this

point of time RTI Act turned out to be only resort in the hands of common people which resultantly created an intrusive wave in the country. A dire need was felt for strong legislation which could question the in governance and expose the malpractices of the government. It was then in 2005, the Right to Information act was legislated which seeks to establish a transparent government rather than an opaque and collusive one.

HISTORICAL BACKGROUND OF RTI

The legendary judge of Supreme Court, V. R. Krishna Iyer very judiciously traces the source of Right to Information in various ancient mythological and literary texts.

Starting from the Rig Veda¹, which gives a bleak sight of RTI in its following line:

“Let noble thoughts come to us from every side”

Thereafter the Bible² shows a glance of RTI in its text:

“And ye shall know the truth,

And the truth shall make you free”

Advancing towards literature in 20th century, we get the strong glimpse of RTI in the Noble prize winning poetry³ ‘Gitanjali’ by Rabindra Nath Tagore.

“Where the mind is without fear and the head is held high;

Where knowledge is free;

Where the world has not been broken up into fragments by narrow domestic walls;

Where words come out from the depth of truth;

Where tireless striving stretches its arms towards perfection;

Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit;

Where the mind is led forward by thee into ever-widening thought and action;

Into that heaven of freedom, my Father, let my country awake.”

Talking about the hegemony of britishers, disclosure of information held by public authorities in India was governed by the Official Secrets Act (1923). This law made all disclosures and use of official information a criminal offence. It gave an unquestionable power to Government to do any act behind the curtains purporting secrecy a rule and disclosure an exception. After independence, the urge for transparent and pellucid

¹ Rig Veda, 1-89- I

² John 8:31-32 King James Version (KJV)

³ English Translation in 1912

government roared throughout the country. Unfortunately, the mortifying war with China in 1962 more than any other single event marked the end of the people's honeymoon with the Indian Government. This opened the Pandora's Box for Indian Government. The deaths of plethora of Indian soldiers and the rapid loss of territory to China shook public confidence in the government like nothing had done before. There prevailed contrasting opinions between the adamant government and tenacious people regarding the significance of right to know.

CONSTITUTIONAL RECOGNITION

In an English case *Attorney General v. Times Newspaper Limited*⁴, the horizon of "freedom of expression" was expanded and held that it has four broad social purposes to serve:

- a. It helps an individual to attain self-fulfillment;
- b. It assists in the discovery of truth;
- c. it strengthens the capacity of an individual in participating in decision-making; and
- d. it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change

The Supreme Court of India as the adjudicator of last resort brought the decade long conflict to rest. Right to Information was explicitly held to be a fundamental right under Article 19(1) (a) of the Constitution in *State of UP v. Raj Narain*⁵. This benchmark judgment for years not only proved to be the leading light for other dictums but it also paved way for the activists who endeavored a lot to transfigure this constitutional right into a full fledged Law.

Justice Krishna Iyer in the *Maneka Gandhi v. Union of India*⁶ said "a government which functions in secrecy not only acts against democratic decency, but also buries itself with its own burial" Further in *S.P. Gupta v. Union of India*⁷ the court declared that "The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under article 19 (1) (a)." Also it emphasized on the fact that *the open Government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception.*

STATUTORY RECOGNITION

⁴ (1973) 3 ALL ER 54

⁵ (1975) 4 SCC 428, by Justice KK Matthews

⁶ AIR 1978 SC 597

⁷ AIR1982 SC 149

However even after numerous Supreme Court judgments, there was a need to convert RTI into statutory provision. So the following incidents acted as a catalyst in passing of RTI Act:

- Bhopal Gas Tragedy in 1984 jostled activists' groups around the world into resurrecting their demands for Right to know legislation granting them broader access to information about hazardous technologies.
- The prominent Mazdoor Kissan Shakti Sanghatan movement of Rajasthan in May 1990 led by Smt. Aruna Roy;
- After years of knocking at official's doors and despite the usual apathy of the State government MKSS succeeded in getting photocopies of certain relevant documents. Misappropriation of funds was clearly obvious. In some cases, the muster rolls contained names of persons who either did not exist at all or had died years before. MKSS organised a Jan Sunwai (People's hearing) the first ever in the history of Rajasthan. Politicians, administrators, landless labourers, private contractors were all invited to listen and respond if willing to defend themselves. Popular response was phenomenal, whereas, understandably, most Government officials and politicians stayed away and remained silent⁸.
- In 1996 Draft act was formulated in a meeting of social activists at the Lal Bahadur Shastri National Academy of Administration, Mussorie.
- The endeavour of Shri. Harsh Mander, the then Divisional Commissioner of Bilaspur (MP) in 1996 to disclose the registers of Employment Exchange and the records of public distribution system to the citizens.
- The agitation led by Shri. Anna Hazare in Maharashtra in 2001 as well as the agitation by an NGO in a small place like Bhilangana block in Tehri Gadhwal⁹.
- The Shourie Committee draft law was converted into Freedom of Information Bill, 2000 and was introduced in Parliament in 2002 which never came into operation.
- Some States like Tamil Nadu, Goa, Rajasthan, Maharashtra, Delhi, Madhya Pradesh, Assam and J&K had enacted their own Right to Information Acts.
- After a long procrastination of RTI bill, finally it came into effect on October 12, 2005.

RTI AS HUMAN RIGHT

Access to information ensures a participatory democracy, tackles the malaise of corruption, strengthens people's trust in the government, supports equitable, just and people – centric

⁸ Abhinav Srivastava, <http://www.legalservicesindia.com/articles/rgti.htm> (accessed on 23/9/2015)

⁹ Handbook on Right to Information Act 2005, <http://www.rvpn.co.in/righttoinformation/RTI-24.pdf> (accessed on 24/9/2015)

development. United Nations at its very inception in 1946 believed on the fact that secrecy in the working of any government is against the right of the citizens. Then the General Assembly resolved: “*Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated*”. Enshrined in the Universal Declaration of Human Rights, the right’s status as a legally binding treaty obligation was affirmed in Article 19 of the International Covenant on Civil and Political Rights which states: “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*” This has placed the right to access information firmly within the body of universal human rights law¹⁰.

FEATURES OF RTI

India’s RTI Act is generally claimed as one of the world’s best law with an excellent implementation track record. It is one of the most empowering and most progressive legislations passed in the post Independent India. There are following features¹¹ of RTI:

- Every citizen of India has fundamental right to seek information from the public authority. Section 2(h) of the Act defines "public authority" means any authority or body or institution of self- government established or constituted—
 - By or under the constitution
 - by any other law made by Parliament;
 - by any other law made by State Legislature;
 - by notification issued or order made by the appropriate Government, and includes any—
 - body owned, controlled or substantially financed;
 - non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;
- Information means anything which is in existence. It includes any mode of information in any form of record, document, e-mail, circular, press release, contract, sample or electronic data, etc. Rights to information covers inspection of work, document, record and its certified copy and information in form of diskettes, floppies, tapes, video cassettes in any electronic mode or stored-information in computers, etc.

¹⁰Right To Information, <http://shaktivahini.org/?initiatives=right-to-information> (accessed on 17/11/2015)

¹¹ Proposed points for discussion on important RTI provisions, <http://www.iitgn.ac.in/RTI/RTI-Guidelines.pdf> (accessed on 24/9/2015)

- It is the duty of authorities to acknowledge them with information asked for within 30 days from the date of request in a normal case.
- If information is a matter of life or liberty of a person, it can be obtained within 48 hours from time of request.
- The onus lies on the governmental department to explain refusal to disclose information.
- Right to Information not only means the citizens right to ask for information that they want it but also includes more importantly so the duty of public bodies to disclose information suo moto (sec.4). This means that the government has a positive duty to give certain types of information without waiting to be asked for it.
- An outstanding feature of the Right to Information Act, 2005 the information seeker is not required to give reasons for asking such information.
- The Information Commissions constituted under this act shall be independent bodies both at Central and State level. The commissions will be responsible for encouraging the citizen's right to know and for enforcing the provisions of the Act.
- Every public authority is under obligation to provide information on written request or request by electronic means
- The right to seek information is fettered by certain exemptions mentioned under sec.8 and sec.9 of the act.
- Appeal against the decision of the Central Information Commission or State Information Commission can be made to an officer who is senior in rank.
- If the authorities fails or refuses to provide information without any reasonable explanation, they shall be penalized with Rs.250/- per day but the total amount of penalty should not exceed Rs.25, 000/-.
- No Court can entertain any suit, application or other proceedings in respect of any order made under the act.

RTI: AN ARMOUR

One has to be reminded that several scams and scandals like the 2G scam, Adarsh Housing Society and vyapam scam have been exposed in the past by whistleblowers with the sublime support of RTI. These scams, directly or indirectly proved fatal for the country's growth. Let's have a brief discussion over some of them¹²:

¹²Vibhuti Agarwal, "A Look at Some RTI Success Stories" (2011), available at <http://blogs.wsj.com/indiarealtime/2011/10/14/a-look-at-some-rti-success-stories/> (accessed on 25/9/2015)

1. **2G Spectrum Case:** Vivek Garg, filed the RTI on behalf of resident welfare associations in Delhi¹³. The 2G spectrum scam involved politicians and government officials in India illegally undercharging mobile telephony companies for frequency allocation licenses, which they would then use to create 2G subscriptions for cell phones. With the help of RTI Garg exposed former telecom minister Mr. A. Raja. This scam resulted in huge loss to the country's economy worth about 1.76 lakh crores.¹⁴
2. **Adarsh Society Scam:** The applications filed by RTI activists like Yogacharya Anandji and Simpreet Singh in 2008 were instrumental in bringing to light links between politicians and military officials, among others. The 31-storey building, which had permission for six floors only, was originally meant to house war widows and veterans. Instead, the flats went to several politicians, bureaucrats and their relatives. The scandal has already led to the resignation of Ashok Chavan, the former chief minister of Maharashtra. Other state officials are also under the scanner.
3. **Public Distribution Scam in Assam:** In 2007, members of an anti-corruption non-governmental organization based in Assam, the **Krishak Mukti Sangram Samiti**, filed an RTI request that revealed irregularities in the distribution of food meant for people below the poverty line. The allegations of corruption were probed and several government officials arrested.
4. **Assets of Supreme Court Judges:** Subhash Aggarwal filed his first RTI application to know assets of Supreme Court judges. This application posed many queries in front of the Indian Judiciary. At last his efforts bore result when the SC decided to put the asset records of all the judges on the court's website in 2010. His similar RTI applications with the government meant posting of asset details of union cabinet ministers and the President on government websites.
5. **Appropriation of Relief Funds:** Information obtained through an RTI application by an NGO based in Punjab, in 2008 revealed that bureaucrats heading local branches of the Indian Red Cross Society used money intended for victims of the Kargil war and natural disasters to buy cars, air-conditioners and pay for hotel bills – among other things. Local courts charged the officials found responsible with fraud and the funds were transferred to the Prime Minister's Relief Fund.
6. **IIM's Admission Criteria:** Vaishnavi Kasturi a visually-impaired student, was denied a seat in the Indian Institute of Management in Bangalore, despite her impressive score at the entrance examination. Ms. Kasturi wanted to know why, and wondered whether it was because of her physical disability. She filed an RTI application to request the

¹³ <http://www.hindustantimes.com/delhi/agents-of-change/story-u8yT6AyQbqKnlmofAjAqJ.html> (accessed on 25/9/2015)

¹⁴ "Agents of Change" (2014), available at <http://www.hindustantimes.com/delhi/agents-of-change/story-u8yT6AyQbqKnlmofAjAqJ.html> (accessed on 25/9/2015)

institute to disclose their selection process. Although she failed to gain admission to the institute, her RTI application meant that IIM had to make its admission criteria public. It emerged that the entrance exam, the Common Admission Test, actually mattered little compared to Class 10 and 12 results.

7. **Vyapam Scam:** An RTI revealed, multi-crore Madhya Pradesh Professional Examination Board (MPPEB) scam, that there were financial irregularities of more than Rs. 4 crore just in the sale of application forms and examination fees in conducting 14 entrance examinations by Vyapam in 2006-07.¹⁵

Though one of the impediments felt in eliminating corruption in the Government and the public sector undertakings is lack of adequate protection to the complainants reporting the corruption or willful misuse of power or willful misuse of discretion which causes demonstrable loss to the Government or commission of a criminal offence by a public servant. The government overall response to reprisals against RTI users or whistle blowers has been terrible.

RECOMMENDATIONS & SUGGESTIONS

The Second Administrative Reforms Commission Chairperson, Shri Veerappa Moily submitted the first report on 'Right to Information - Master key to good governance' to the then Prime Minister, Dr. Manmohan Singh. The following were the key recommendations¹⁶ of the Commission on the subject:

1. The Official Secrets Act, 1923(OSA) in its current form is incongruous with the regime of transparency in a democratic society. OSA should be repealed, and suitable safeguards to protect security of State should be incorporated in the National Security Act.
2. At least half the members of the Information Commissions should be drawn from non-Civil Service background, so the commission is far from the reach of bureaucracy and justice will be served.
3. Complete reorganization of public records is a precondition for effective implementation of RTI. A public Records Office should be established in each State as a repository of expertise, to monitor, supervise, control and inspect all public records. 1% of the funds of all flagship programmes of Government of India should

¹⁵Rs. 4 Crore Irregularity in Sale of Forms in Vyapam Scam": RTI (2015), available at: <http://www.ndtv.com/india-news/rs-4-crore-irregularity-in-sale-of-forms-in-vyapam-scam-rti-1202278> (Accessed on 27/9/2015)

¹⁶ Press Information Bureau (Govt. of India), "Administrative Reforms Commission submits first report on Right to Information to Prime Minister" (2006), available at http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/india/arc_submit_rti_report_to_pm.pdf (accessed on 29/9/2015)

be earmarked for five years for updating all records and building necessary infrastructure.

4. The Information Commission should be entrusted with the authority and responsibility of monitoring the implementation of the RTI Act in all public authorities.
5. Clear and unambiguous guidelines need to be evolved to determine which non-governmental organizations would come under the purview of RTI Act.
6. Most requests for information are usually to use it as a tool for grievance redressal. States may be advised to establish independent public grievance redressal authorities to deal with complaints of delay, harassment and corruption. These authorities should work in close coordination with the Information Commission.
7. Certain safeguards should be introduced to discourage frivolous and vexatious requests so that the system is not overloaded, and discipline and harmony are not jeopardized.
8. A roadmap should be charted out for effective implementation of RTI Act in the Legislature and Judiciary at all levels

Apart from these recommendations, there are following suggestions¹⁷ to strengthen the roots of whistle blowing and RTI Act in India:

- The RTI call centre should be set up for filing RTI applications/appeals/complaints over the telephone by the citizens. Additionally, it could also serve as a centralized database of all the RTI applications received and the respective responses. The Call centre can be developed on the lines of the “Jankari” RTI call centre in Bihar¹⁸.
- In order to conceal the identity of whistleblowers government passed an order stating that applicants need not mention their full address in applications; instead they can simply mention their post box number. But however this order needs to be circulated largely.
- Innovative and intensive multi media campaign should be launched to create consumer awareness in the country. Like, they have created the brand ‘Jago Grahak Jago’ brand, which has now become a recognizable name to the literate consumers in the country, having been used in a blitz print media campaign, in English, Hindi and regional languages.

¹⁷ Available at <http://rti.gov.in/rticorner/studybypwc/recommendation.pdf> (accessed on 30/9/2015)

¹⁸ Available at <http://rti.gov.in/rticorner/studybypwc/recommendation.pdf> (accessed on 1/10/2015)

- There should be an Implementation cell to speed up the process of obtaining information.
- Instead of keeping any suspicious attitude towards the Act, people should convince its holistic approach and meritorious aspect. Gunnar Myrdal, a renowned economist of international repute, in his illuminating work 'Asian Drama' has rightly emphasized on the attitudinal change for attaining economic development in the developing countries¹⁹.
- Right to Information education should be introduced in the school syllabus. To ensure the new generation is aware of Right to Information, the department may work with education boards to have mandatory questions on Right to Information in class X exams. An effective Right to Information education programme should also cover training of teachers belonging to schools.
- Since more than half of the population of India is illiterate, so it is important to educate them and hence improve the literacy rate.
- Proper infrastructure should be provided for the working of this Act, this will imbibe confidence in general public.
- Non-availability of records and the format the records are maintained helps in a quick turnaround. Therefore, there is a need to implement a record management system that should facilitate.
- PIO's should be well versed with rules and procedures of the act. They should update themselves with the orders passed by the government or any authority on daily basis.
- There is a need for a strong "control mechanism" to monitor the extent of implementation of the Act periodically, and ensure that RTI Act is followed in letter and spirit.

CONCLUSION:

People were on the verge of losing their faith in the so called democratic framework of the country. Their hopes and aspirations from the government were totally shattered. For a citizenry accustomed to the opaque veil of secrecy which shrouded most government institutions and actions, the promise of the 'sunlight' of transparency meant a return of power to the people.²⁰

¹⁹ Gunnar Myrdal, "The equality issue in world development" (1975), available at http://www.nobelprize.org/nobel_prizes/economic-sciences/laureates/1974/myrdal-lecture.html (accessed on 1/10/2015)

²⁰ Nishikanta Mohapatra, Available at http://rti.gov.in/rti_fellowship_report_2011.pdf (accessed on 1/10/2015)

At this point of time RTI Act turned out to a magic lamp in the hands of common people which resultantly created an intrusive wave in the country. It is undoubtedly a milestone in the road taken by the country for setting up bedrock foundation for democratic institutions. It imparts depth to the public responsive functioning of the Government and its various agencies with the due support of media. Although RTI has proved to be a great tool in exposing many scams but we cannot turn a Nelson's eye to the consequences the activists or whistleblower faces after exposing them. Across India, the assaults on higher education as a self-governing organization and on dissident public voices of journalists, whistleblowers or academics, as well as of workers, peasants, women and youth are intensifying at rapid pace. Ordinarily the blowers should be treated as a hero but unfortunately they have to abscond like a criminal to save their life. Even government's efforts to secure the lives of these god-fearing men are not worth praising. No doubt something is terribly wrong with the world. It is difficult to have faith in a civilization that sends Socrates, Galileo and Rosa Luxemburg to death, or compels Walter Benjamin to suicide and hence provoked a worldwide outcry accompanied by the right to freedom of speech and expression. But in order to raise the transparency in the system the awareness in the people is to be increased. Until and unless the people have faith in government the people are not going to risk their lives.²¹ RTI is still in its infant phase, there is still more to come. The government and society should work whole heartedly and honestly to create a pellucid system of governance and try to transform the marvelous dream of forefathers into reality.

²¹Shelly Walia, "No country for dissidence", The Tribune, 30th September, 2015