

RIGHT TO INFORMATION ACT 2005 : A STEP TOWARDS TRUE DEMOCRACY

Sumanjeet

Abstract

In response to a movement for the right to information, started in the state of Rajasthan, the government of India enacted the legislation, the Freedom of Information Act, 2002. But the act never came into force. Against this background, the Right to Information Act 2005 was enacted by the Parliament. The Right to Information Act 2005 has many remarkable provisions. A person desiring information shall make a request in writing or through the electronic means to the Public Information Officer. Within 30 days of the receipt of the request, the Public Information Officer must either provide the information or reject the request for any of the reasons specified in section 8 and 9 of the act. The act has also put in place a system of penalties in case of non-compliance with the provisions of the act. The act is expected to bring transparency and accountability in the functioning of government departments/institutions. Although it has deficiencies, the act is a welcome step that can contribute to the process of development through good governance and enhanced people's participation.

Introduction

India is the largest democratic country in the world. The term 'democratic' implies that the government draws its authority from the people. The rulers are elected by the people and are accountable to them. Therefore, to protect the interest of people and govern the country in the interest of people is not only necessary, but also the duty of the state. It is here that the concept of good governance lies. But, this principle is often ignored or neglected by those who hold

legislative and executive powers (Ansari 2005). Many of them tend to use power and other resources in their own interest, which encourages corruption in the government institutions. During the last few years, there has been a serious debate on corruption in government institutions and various studies revealed that corruption can be checked by bringing transparency and accountability in the functioning of the various government institutions/departments. In fact, in a representative democracy, transparency and accountability of the institutions of government and the process of governance are the cardinal prerequisites for the very principle of representation (Mander 1999). The right to information is the first step towards making the institutions of governance more transparent and accountable to the people. In 1989, the then Prime Minister of India, V.P. Singh declared the approach of his government to the right to information and said that "an open system of governance is essential prerequisite for the fullest flowering of democracy. Free flow of information from the government to people will not only create an enlightened and informed public opinion but also render those in authority accountable" (Srivastava 2005). In the recent past, we have witnessed many distortions in our information system. The veil of secrecy was lowered many a time not in the interest of national security, but to shield the guilty, vested interest or gross errors of judgment. Thus, the government decided to make the right to information a fundamental right.

The idea of right to information has its nurturing under the dictum "*information belongs to the people and is generated with public money by public servants paid out of the public funds*". Therefore, it cannot be unreasonably kept away from the public. The right to information holds within it the right to seek information, as well as the duty to give information to share, organise and make it easily available, and to withhold it only when it is proven that this in the best of public interest (CHERI 2005). The duty to make information available to the people rests with the government and encompasses two key aspects, viz. enabling citizens to access information upon request and proactively disseminating important information.

Movement for the Right to Information

The right to information is implicit in the Constitution of India under the article 19 (right to freedom of speech and expression)² and article 21 (right to life and personal property).³ The Supreme Court⁴

has also clarified that the right to access information from the government departments is fundamental to democracy (*All India Reporter* 1975: 865). Activists at the grassroots level have firmly argued that the right to access information is essential to ensuring effective participatory development (Mishra 2003). The seed of this movement was sworn in the summer of 1987. The Mazdoor Kisan Shakti Sangathan (MKSS) led the inspiring struggle in the desert state of Rajasthan, as part of a larger people's movement for justice in wages, livelihood and land. The oldest member of this group was Aruna Roy, who resigned from the elite Indian Administrative Service over a decade earlier. She was accompanied by Shankar Singh and Nikhil Dey, a young man who abandoned his studies in the United States of America in search of meaningful rural social activism. In the winter of 1994, their work entered a new phase, breaking new ground with experiments in fighting corruption through the methodology of *jan sunwais* or public hearing⁵. The mode of public hearings initiated by MKSS commences with the premise of the fundamental right of people to information, about all acts and decisions of the state apparatus. In October 1995, the Lal Bahadur Shastri National Academy of Administration, Mussoorie organised a national workshop of officials and activists to focus attention on the right to information. Meanwhile, responding to the public opinion that coalesced around the issue, the Chief Minister of Rajasthan on the 5th of April 1995 announced in the state legislature that his government would be the first in the country to confer on every citizen the right to obtain free photocopies of all official documents related to local development works⁶. Exactly, a year later on the 6th of April 1996, MKSS started an indefinite *dharna* (protest demonstration) in Bewar town. Their immediate demand was that the state government should pass executive orders to provide a limited right to information in relation to local development expenditure. The government responded by issuing orders to allow inspection of the relevant documents on payment of fees. However, the order was rejected by the citizens' group as ineffective, because it did not allow taking photocopies of documents. In 1999, Ram Jethmalani, the then Union Minister of Urban Development passed an administrative order that any citizen would be entitled to inspect and take photocopies of any file in his ministry. Over the time, the campaign has spread throughout the country. After a protracted struggle India finally saw the passage of the Freedom of Information Act, 2002 (FOI Act). The act was passed

in December 2002 and received the Presidential assent in January 2003. But, even before the central FOI Act was passed some of the state governments introduced their own legislation on the right to information. Nine states have already passed the right to information law – the first amongst these was Tamil Nadu (1997), followed by Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003) and Jammu & Kashmir (2004).

At the national level progress in the follow-up action on the FOI Act has been slow. Although the FOI Act was passed by the Parliament in December 2002 and received the Presidential assent in January 2003, commencement date was not notified and therefore it did not come into force and remained a paper tiger (Hebbar 2004). Consequently, even after the passage of the FOI Act, campaigners continued to advocate for the speedy implementation of an effective right to information law. In 2004, these efforts were bolstered when the newly elected United Progressive Alliance (UPA) government specifically promised in the common minimum programme (CMP), which set out the government's key objectives for its term, that it would make the FOI Act more "*progressive, participatory, and meaningful*".

Right to Information Act, 2005

In view of the failure of the previous attempt to bring into force a legislative measure on the right to information, another bill on the right to information was introduced in Parliament on the 23rd of December 2004 and referred to a Parliamentary Standing Committee. The Committee's report, which made certain recommendations, was tabled in the Lok Sabha on the 21st of March 2005. The National Advisory Council, which had among its members Jean Dreze and Aruna Roy, key figures in the campaign for the right to information, also submitted its suggestions. In this process, the draft went through a number of changes and finally the bill was passed by the Parliament on the 11th of May 2005. Thus today we have the new avatar of the FOI Act 2002⁷- the Right to Information Act 2005⁸, which already has received the presidential assent in the month of June 2005.

The Right to Information Act 2005 provides for a practical system for the exercise of the right to information by the citizens⁹ - to secure access to information under the control of public authorities in

order to promote transparency and accountability in the working of every public authority. It provides for setting up a Central Information Commission and State Information Commissions for matters connected therewith or incidental thereto (Government of India 2005). The Central Information Commission shall consist of (a) the Chief Information Commissioner and (b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary. The Chief Information Commissioner and the Information Commissioners shall be appointed by the President of India on the recommendation of a committee consisting of (i) the Prime Minister, who shall be the chairperson of the committee, (ii) the Leader of Opposition in the Lok Sabha and (iii) a Union Cabinet Minister to be nominated by the Prime Minister. A similar set-up is envisaged for the State Information Commissions.

The right under the act is to obtain information from any public authority by means of (i) inspection, taking of extracts or notes; (ii) certified copies of any records of such public authority; (iii) diskettes, floppies or in any other electronic mode or through printouts where such information¹⁰ is stored in a computer or in any other device. The act provides for making information held by executive agencies of the state available to the public unless it comes within any one of the specific categories of matters exempt from public disclosure.¹¹ Virtually all agencies of the executive branch of government are required by the act to issue instructions to implement its provisions. These instructions inform the public where certain types of information may be readily available, how other information may be obtained on request, and what internal agency appeals are available if a member of the public is refused the requested information. The act is formulated to prevent abuse of discretionary power of the governmental agencies by requiring them to make public certain information about their working and work product.

The Right to Information Act covers a wide spectrum of bodies and officials from the central government, the state governments, local bodies as the panchayati raj institutions, and significantly, all bodies including non-governmental organisations (NGOs), that are established, constituted, owned, controlled or substantially financed by the government. Initially, some provisions of the act would come into force only after 120 days, by which time the necessary

infrastructure for them would be in place.¹² The new act also provides for what is called pro-active disclosure. Every public authority has to appoint, within 100 days of the enactment of this legislation, central and state Public Information Officers (PIOs)¹³ who will be put in charge of providing information under the legislation. At the sub-divisional and sub-district level, Assistant Public Information Officers (AIPOs) may be appointed to perform this function.¹⁴ The PIOs must publish a wide variety of information on its organisation, function and duties. This information has to be disseminated widely through the media and public announcements in the local language.

Implementation of the Act

A person desiring information shall make a request in writing or through electronic means in English, Hindi or in the official language of the area in which application is being made, to the central or state PIO appointed under section 5 (1) giving the particulars of the matter relating to which he/she seeks the information.¹⁵ Where a person cannot, for valid reasons, make the request in writing, the PIO may accept an oral request which may subsequently be produced in writing or render reasonable assistance to such person in making a written request. Within 30 days of the receipt of the request, the PIO must either provide the information on payment of such fees¹⁶ as may be prescribed or reject the request for any of the reasons specified in the act¹⁷ and 9.¹⁸ Where the request has been rejected under sub-section (1), the PIO shall communicate to the person making the request (i) the reason for such rejection, (ii) the period within which an appeal against rejection may be made and (iii) the particulars of the appellate authority. The act further provides that where the information sought for concerns the life or liberty of a person, the information shall be provided within the 48 hours of the receipt of the request. If a person fails to get a response from the PIO within the prescribed period, or is aggrieved by the response, an appeal can be filed within 30 days with an officer superior to the PIO. If the appeal is not successful, the applicant has the right to re-appeal, within 30 days, to the Central Information Commissioner or State Information Commissioner. In case, where the public special authority fails to comply within the specified time limit, information shall be provided free of cost. It is also provided in the law that a piece of information shall ordinarily be

furnished in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

Although the legislation does not provide for criminal liability as a penalty, it has put in place a system of penalties in the case of the PIO failing to provide the information requested or to issue the rejection order within the specified time. The PIO is liable to pay Rs.250 for each day of delay, subject to a maximum of Rs.25000 (Narain 2005). The Information Commission can ask the public authority that has denied the information to compensate the applicant for any loss incurred. The Information Commission can also recommend departmental disciplinary action against a PIO for intentionally obstructing the furnishing of information, denying or destroying information or providing misleading information.

Expected Benefits of the Act

Lack of information denies people the opportunity to develop their potential to the fullest and realise the full range of their rights. Individual personality, political and social identity, and economic capability are all shaped by the information that is available to each person and to the society at large. This was recognised by the United Nations at its very inception in 1946, when the General Assembly resolved that "freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated"¹⁹ (UN 1946). It is in this context that right to information is very important for a democratic country like India. This act is expected to produce much better result than the Freedom of Information Act 2002. The Prime Minister, Manmohan Singh declared that it would usher in a new era in the process of governance, performance and efficiency. Further, the Prime Minister added, the legislation would ensure that the benefits of growth would flow to all sections of the people, eliminate corruption and bring concern of the common man to the heart of all processes of the government.

It is expected that the act would bring transparency and accountability in the administration by making the government more open to continuous public scrutiny. It is also hoped that the act will secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decisions, and to ensure

that these are consistent with the principles of public interest and justice. Mander (1999) says that the right to information is expected to improve the quality of decision-making by public authorities, in both policy and administrative matters, by removing unnecessary secrecy surrounding the decision making process. It would also enable groups and individuals to be kept informed about the functioning of the decision making process as it affects them, and to know the kinds of criteria that are to be applied by government agencies in making these decisions (Baisakh 2005). It is hoped that this would also enhance participatory political democracy by giving all citizens further opportunity to participate more meaningfully in the political process.

The scope of the present act is also much wider than the Freedom of Information Act 2002. It has the widest possible reach covering central and state governments, panchayati raj institutions, other local bodies and recipients of government grants²⁰. Another important feature of this act is the independent appeal mechanism of the Central/State Information Commission. This independent appeal mechanism, coupled with the disclosure obligations and penalties, makes the right to information a potent instrument for good governance. Added to these benefits, the act lays down penalties for failing to provide information or obstructing its flow. In fact, it imposes obligation on agencies to disclose information *suo motu* thus reducing the cost of access.

Evaluation of the Act

While presenting the positive aspects of the Right to Information Act, one needs to critically assess its effectiveness in achieving its objectives. One of criticisms of the Right to Information Act 2005 is that the people of India - citizen now²¹ - under the act have to demand the information they need. They have to pay for the information that they request for, and then wait while the application gets processed. The decision regarding whether to give or deny the requested information lies with the government. Thus, the right to information is not as full a right as the name of the act seems to indicate. Further, the use of the word 'citizen' could be problematic because many Indians may find it difficult to prove that they are citizens of India. As in India there is no effective national identification system, many people may not be able to prove their national identity on paper (Slough and

Rodrigues 2005). Secondly, the act does not specify how much money has been allocated for setting up the mechanisms that the legislations will require. Thirdly, as per the act, the public authorities have been included in the definition of third party²² and under this it would be possible for the two different public authorities to collude in refusing information to the applicant and / or unnecessarily delay the process. Fourthly, as per the original bill the Information Commissions were to be constituted by a Committee comprised of the Prime Minister, leader of opposition and Chief Justice of India. The bill was amended to replace the Chief Justice with a Cabinet Minister selected by the Prime Minister. This means likelihood of the selection process being partisan because it is dominated by the political party in power. The situation is similar with the State Information of Commissions. Finally, while the act stipulates penal action in the form of fine for non-compliance with the act, it is not clear how it will be implemented for the destruction of a document containing information. Then there are several issues related to implementing the provisions of the act, such as financial allocation, and interface between the Central and State Information Commissions.

Despite being a progressive step on a number of fronts, the act contains certain restrictive provisions, which could be abused to deny information, which rightly belongs to the public domain. In the first place, the deficiencies in the act (as mentioned above) must be rectified. In the operation of the act, both the civil society and the government should work together to take to the most remote and unlettered people in India the information they need, which may be the minutes of meetings, committee reports, organisation structure, subsidies, tenders and other bits of information that are otherwise freely available on the net and are of interest to the masses. There is need to strengthen the provisions of the penal action for non-compliance with the provisions of the act. It should ensure that officials do not get away with such non-compliance. Therefore, penalty provisions need to cover a broader range of offences and the appeal bodies should have sufficient power to take action on officers who act against the law. Fast track courts may be constituted for the speedy disposal of corruption cases caught as a result of use of information obtained under the provisions of the Right to Information Act. Further, the major challenge that lies ahead is in formulating rules that will deal with the nuts and bolts of the

legislation. According to Shekhar Singh, convenor of the National Campaign for People's Right to Information (NCPRI), these rules will have to look at the process relating to the receipt of requests, selection and training of the staff, developing user friendly manuals to demystify and publicise information, and providing the special legal status for information that is accessed (NCPRI 2005). There is need to learn from the experience of the developed countries where such act has been already in force. In many developed countries that have the legislation on the right to information, most of the information of interest and/or concern to the people is readily available. Perhaps that is why the right to information act seems to work better there. In this regard, such an environment needs to be created where information seeker will only have to request and pay for certain classes of information, which have already been specified as not freely available. Role of media also cannot be neglected. It should act as a watchdog, scrutinising the powerful and exposing mismanagement. It is also the foremost means of distributing information in a country like India where illiteracy is widespread, and Radio and Television have become vital communication links. Therefore, a sound access system is needed in which the media can seek, receive and impart essential information accurately, and it is as much in the interest of the government as of the people. Last but not the least, civil servants should view the act in a positive spirit. They should not see it as a law interfering with the functioning of the government, but accept it as an instrument for improving the government-citizen interface, resulting in a friendly, caring and effective functioning.

Conclusion

Public trust is the most crucial aspect, not only of effective governance, but also of true democracy. Without the support and trust of people, government will be more likely to face resistance to its policies and programmes, and implementation will be more difficult. In the operation of the Right to Information Act 2005 the government can expect to win the support and trust of people as it brings transparency and accountability in the functioning of government departments. No doubt, the act has gone considerably beyond the Freedom of Information Act 2002 in a number of areas, including

independent appeals, penalties for non-compliance, proactive disclosure, and clarity and simplicity of the access process. However, it does have shortcomings that need to be attended to so that the Right to Information Act can take off in the real sense and make its impact on democracy and the development process in India.

To sum up, the Right to Information Act is a vibrant step of the government towards developing true democracy in India. Like any other legislation, success of this act would largely depend upon proper implementation. And successful implementation would require the will of the politicians and bureaucrats. They need to change their mindset and accept the legislation as part of the process of good governance. All the more, its positive impact on development will be realised only with the awareness of the act at different levels. For this the government, civil society organisations, intellectuals and experts should publicise the various provisions of this act among the masses. As a result when information is increasingly accessed and used by the people, the process will increasingly contribute to development in true sense.

Notes

- ¹ The author, while being solely responsible for any mistakes, is very thankful to Dr. L.N.Dahiya, Professor, Department of Commerce, M.D. University, Rohtak and Dr. Rajender Chaudhary, Reader, Department of Economics, M.D. University, Rohtak for their very insightful comments on the earlier version of this paper, and to the anonymous referee for the constructive comments and valuable suggestions in preparing the final version.
- ² The Constitution of India underpins the citizen's right to information, but only indirectly. The stress upon the Freedom of Speech and Expression in Article 19 (1) (a) and seven contingencies in which reasonable restrictions may be imposed under Article 19 (1) (b), has however been interpreted by Courts to assume that a right to receive information as distinct from the right to hold and impart it, does exist as a concomitant right. It follows that if it is desired to introduce the specific Freedom of Information Act, there is nothing in the Constitution to prevent it.
- ³ Article 21 of the Constitution is one that has been so transformed by the Supreme Court that it now encompasses all conceivable human rights

within its ambit. On plain reading, it is a directive to life or personal liberty of a person.

⁴“In a government.... where all the agents of the public must be responsible for their conduct, there can be few secrets. The people have a right to know every public act, everything that is done in a public way, by their public functionaries. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption” (*All India Reporter 1975: 865*).

⁵As with most great ideas, the concept and methodology of public hearings or jan sunwais fashioned by MKSS was disarmingly simple. It evoked widespread hope among the underprivileged people locally, as well as among the progressive elements within and the outside government.

⁶However, until a full year later, this assurance to the legislature was not followed by any administrative order. The inaction was presumably under pressure from both the elected representatives and the officials connected with such works, who were used to siphoning off major portions of the funds for government expenditure.

⁷Freedom of Information Act 2002 was a very weak law, which failed to give proper effect to the constitutional right to information. The exemptions were broadly drafted, no independent appeal mechanism was established and no penalties were included.

⁸The short title of the legislation has been changed from ‘Freedom of Information’ to ‘Right to Information’ Act.

⁹The act extends to the whole of India except the state of Jammu and Kashmir.

¹⁰Information in this context means any material in any form relating to the administration, operations or decisions of public authority.

¹¹The following are exempt from disclosure under S.8:

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

- 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;
- information received in confidence from foreign Government;
- 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;
- information which would impede the process of investigation or apprehension or prosecution of offenders;
- cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;

Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

- ¹² The provisions of sub-section (1) of section 4, sub-sections (1) and (2) of section 5, sections 12, 13, 15, 24, 27 and 28 came into force at once, and the remaining provisions of this act came into force after 120 days of its enactment (Government of India 2005b).
- ¹³ In this paper PIO is used for Central Information Officer or State Information Officer, as the case may be.
- ¹⁴ If the application is before an AIPO, the time limit is 35 days.
- ¹⁵ An applicant, making request for information, shall not be required to give any reason for requesting the information or any other personal details, except those that may be necessary for contacting.
- ¹⁶ The act prescribes that the PIO can charge a reasonable fee for supplying the information, but there is no charge for the applicants who live below the poverty line.
- ¹⁷ Section 8 (1) imposes certain restrictions on the right to information, under which the central PIO or state PIO may for reasons to be recorded in writing, withhold the information, the disclosure or contents of which are exempted from disclosure for any of the grounds mentioned in clause (a) to (j) of section 8 (1). Under clause (a) information, the disclosure or

contents of which will prejudicially affect the sovereignty and integrity of India or security of the state or international relations shall be withheld. Subject to this clause, any information relating to any occurrence, event or matter that has taken place, occurred or happened within twenty years from the date on which the request is made shall be provided.

¹⁸ Without prejudice to the provisions of section 8, a central or state PIO, 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.

¹⁹ Resolution 59 (1) of the 65th Plenary Meeting of the General Assembly of the United Nations in December 1946.

²⁰ However, domestic and foreign private bodies working within the country have been excluded from the purview of the act.

²¹ Subject to the provisions of this act, all citizens shall have the right to information.

²² A third party means a person other than the citizen making a request for information and includes a public authority. Third parties have a right to be heard in respect of applications and appeals dealing with information submitted by them to the government in confidence [S.2 (n) and S.11].

References

All India Reporter, 1975, "Raj Narain, Petitioner v. State of Uttar Pradesh, Respondent", Vol. LXII, No. 7 and 8, Supreme Court, 865-866

Ansari, N. A., Mohd., 2005, "Criminalisation of Politics and Electoral Reforms", *Indian Journal of Politics*, Vol. XXXIX, No. 1 and 2, 139-148

Baisakh, Pradeep, 2005, "Right to Information and Rural Development", *Kurukshetra*, Vol. 53, No. 9, 4-9

CHERI, 2005, "Right to Information: India", accessed on www.humanrightsinitiative.org/programs/ai/rti/india.html

Government of India, 2005a, "Effective Operationalisation of the Mandatory Provisions of the Right to Information Act 2005 - Setting up of Basic Infrastructure in the Department of Information Technology", communication No. M-18012/1/2005- MS (O&M) issued by the Department of Information Technology, Ministry of Communication and Information Technology

Government of India, 2005b, Ministry of Law and Justice, "The Right to Information Act 2005", *The Gazette of India*, No. 22, June 15, Ministry of Law and Justice (Legislative Department)

Mander, Harsh, 1999, "The Movement of Right to Information in India: People's Power for the Control of Corruption", Working Paper Series 14, Pune, National Centre for Advocacy

Mishra, N., 2003, "People's Right to Information Movement: Lesson From Rajasthan", *Discussion Paper Series-4*, New Delhi, Human Development Resources Centre, UNDP, India

Narrain, Siddhartha, 2005, "Affirming the Right to Know", *Frontline*, June 17, 26-28

NCPRI, 2005, "Right to Information Act of 2005: A Primer", accessed on www.righttofoodindia.org/data/ncpriosrtiprimer.doc

Slough, P. and Rodrigues, C., 2005, "India's Right to Information Movement Makes a Breakthrough", *Open Government: A Journal of Freedom of Information*, Vol. 1, No.1, 1-13

Srivastava, Abhinav, 2005, "Right to Information", accessed on www.legalserviceindia.com/articles/rgti.htm