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“Unmasking the key challenges with respect to Right to Information (RTI) in India”

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ABSTRACT:

In modern times, maintaining transparency and being accountable are considered as pillars of democracy. A strong democracy has characteristics of an independent press, vigilant and informed citizens who have access to information without any restrictions. Public sector banks have gained limelight, unfortunately for the wrong reason – poor performance and weak financials. Citizens want detailed information about the working style and policies of the government and hence, enforcement of the RTI becomes wise. The Freedom of Information Act, 2002 suffered criticism on a large scale and was eventually repealed. The RTI Act, 2005 was implemented with the broad objective of curtailing corruption, improving transparency and bringing greater accountability in public administration, leading to improvement in delivery of services to the people. The RTI Act, a relatively young law has gained support and criticism from all sections of the society. Due to the enforcement of the Act, public authorities can now be questioned and they are required to maintain proper documents. Though the act has wide coverage, all public offices generally resist from disclosing information. Laws like the Official Secrets Act, 1923 act as a shield, protecting the bureaucrats and giving them a reason to not disclose

information. This study aims to unmask the important challenges and problems faced regarding RTI in our country.

Keywords- *Strong democracy, RTI, young law, public administration, accountability.*

Introduction

This act consists of six chapters and two schedules which is as under:-

- Chapter 1 is entitled “preliminary” and provides description of various terms.
- Chapter 2 contains information pertaining to obligations and duties of public authorities.
- Chapter 3 deals provides information about the central information commission.
- Chapter 4 gives information about the state information commission.
- Chapter 5 explains powers and functions of the information commission.
- Chapter 6 discloses all the miscellaneous things.
- Schedule 1 contains the oath to be taken by various level of information commissioner.
- Schedule 2 contains a list of intelligence and security organization established by the central government.

Some important terms:-

Public authority- “Any authority or body of institution of self-government established –

- a) By or under the constitution;
- b) By any other law made by the parliament;
- c) By any other law made by the state legislature;
- d) Order made by the appropriate Government.”

“Right to Information implies the right to information available under this Act which is held by directly under the control of any public authorities”. This Act provide privilege to

- i. Inspection of work;
- ii. Taking printouts, notes;
- iii. Taking specimens of materials

iv. Acquiring data as video tapes diskettes or in some other electronic form.

The RTI empowers a citizen to requisite information, without the need for creating pressure groups or associations. The Act applies to central as well as state government. The Act defines information in sec. 2(f) 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 lender any law for the time being in force.” Since the last couple of decades, the concept of right to information has become extremely popular in the context of human rights and democratic discourse. In May 2005, the Indian Parliament ratified and passed the RTI Act. A significant provision of the act states that information requested has to be provided within thirty days from the date of request. In exceptional cases where the question is of life or liberty of an individual, the requested information should be furnished within forty eight hours.

The Act has been formulated to achieve multiple objectives, making it one of the best acts in the interest of citizens. The primary objective of the act is to empower the citizens- it gives every individual a chance to question the government and seek clarification, enabling to evaluate the integrity and appropriateness of its decision. Information requested can be refused to be provided, given there is a valid justification for the same. Hence, unless there is a valid reason for refusal, authorities cannot escape from providing information that is requested. The second objective of the Act is to promote transparency and accountability on part of the authorities. Last but not the least, controlling corruption is another key objective of this Act. Corruption is an evil that is widespread and is difficult to tame. This act can be used as an instrument to combat this evil. If the authorities are aware that they cannot be questioned and no information can be requested from them, it will lead to large-scale corruption. The act has provided an avenue to the citizens to create an impression in the minds of the authorities that they will be questioned and will be asked for clarification(s).

The Act empowers only Indian citizens and foreigners, refugees, etc. are outside the scope of the act. The Act is a landmark reform in public administration. It envisages to secure for every citizen the right to inspect, question and examine the decisions taken by the government. It is an important tool that is capable of exposing corrupt practices to ensure a clean and transparent administration.

The Act provides for disclosure of information proactively. It provides of appointment of Public Information Officer (PIO) and set up of Central Information Commission and State Information

Commission. These commissions have been empowered to hear the appeals and pass necessary orders regarding compliance of the Act.

The Act encourages computerization of records so that information sought can be furnished easily. It prescribes that the PIO can charge a reasonable fee for supply of information, however people who live below poverty line are exempted from paying such fees.

II] Comparing Legislation regarding access to information in India (RTI) with other advanced nations

Table below helps us to get an overview of how our legislation is in comparison to other developed nations:

Table 1: Access to Information Legislations - Comparing India with United States of America and United Kingdom

Particulars	India	United Kingdom	United States of America
Constitutional Protection	Protected(by interpreting)	Not protected	Not protected
Right to access information	Enjoyed only by citizens	No such limitation	No such limitation
Legislation	Right to Information Act, 2005	Freedom of Information Act, 2000	Freedom of Information Act, 1966
Duty regarding publication	Detailed rules and norms pertaining to publication and provision of regular updates to the applicant.	No specific information regarding publication.	Certain information is to be published in the federal register, while other information is available for inspection.

From the above table, it is quite evident that our country's Right to Information Act, 2005 is one of the best legislations in the world. It can be rightly regarded as one of the most significant legislation passed after India achieving independence.

III] Shortcomings of the Act

The RTI Act, 2005 experienced lengthy deliberations and lot of discussion before it officially become an act. A large number of limitations of the Freedom of Information Act, 2002 were overcome by this Act. It is still observed that there are several ambiguities with respect to interpretation of terms of the act, which have caused inconvenience to the information seekers. For instance, definition of the term “Public Authority” is controversial. NGO’s which are substantially or indirectly financed by the government fall under “Public Authority”. However, there is no proper definition of “substantially or indirectly financed by government”. Citizens are at times in a dilemma to request information, owing to different interpretation of the term “Public Authority” by different State Information Commissions.

The Act stipulates that if information is related to life or liberty of an individual, it is required to be furnished within forty eight hours. Citizens get confused what information falls under this category. The amount of fees and procedure involved to seek information under the Act is inconsistent from state to state.

The public servants are safeguarded and ensured of job security as per Article 311 of the Indian Constitution. There are vested political interests and officials are aware that they will not lose their jobs easily. Action that could be taken is transfer to remote places or demotion. Job security becomes an important barrier to curtail the scope of corruption.

At global level, we observe that a large number of laws related to information access have isolated the private sector. The RTI Act, 2005 has exempted private sector from disclosing information. It is not the fault of the citizens if they want to seek information concerning their life, liberty or daily affairs and such organization belongs to the private sector. Privatization is the buzz word today and many sectors are inclined towards privatization. Corruption is deeply prevalent in the private sector too. It is a known fact that big business houses have had close ties with bureaucrats, creating a suspicion in the minds of people regarding corruption.

It has been observed that there is lack of protection and security to the people who expose corruption. No one will put their lives and especially their family lives at stake by exposing corruption, if there are not given adequate security and protection. Whistleblowers can be bifurcated into two categories- internal and external. Internal whistleblowers consist of organization staff. External whistleblower includes third party to organization such as news reporter, lawyer, etc. Nations like UK, Australia, Canada and Japan have strong provisions to safeguard whistleblowers.

In our country only nationalized / public sector banks fall under the ambit of the Act. Today, the number of public sector banks are very less and it goes without saying that banking industry is dominated by private players. In a nutshell, a lengthy list of exemption is stopping the act from achieving its objectives in true sense.

The provisions relating to penalties are not stringent. For example, if PIO provides false or incorrect information, he will be penalized up to Rs.25, 000. Only disciplinary action and no imprisonment of PIO can take place, despite continuous violation of some provisions of the law.

Since only citizens can make application and request information under the Act, corporate organizations, trusts and other organizations are outside the scope of the Act.

IV] Suggestions and way ahead for the RTI Act, 2005

We remember the wise words of Rabindra Nath Tagore:

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

Where knowledge is free;

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

Where words come out free the depth of truth;

Where tireless striving stretches its arms, not last its way into the dreary desist sand of dead habit;

Where the mind is led forwards by the ever wandering thought and action.

Into that haven of Freedom my Father;

Let my country awake”.

The vision of Rabindra Nath Tagore is ideal, however it is currently far from reality. A large number of people are still not having proper awareness regarding provisions of the Act. Paying bribe is a shortcut adopted by large number of people to get their work done promptly in government offices. Hence, to avoid resistance on part of people from filing applications the following suggestions should be implemented-

- Contact information of PIO should be made easily accessible to the citizens.

- In our country, we are far from achieving a high literacy rate. Hence, designing a website and assuming that job is done, is largely of no use. People who are illiterate cannot be made aware regarding the provisions of the act by describing them on the websites. Such websites are of no use to the illiterate people. Communicating in local and regional language can solve the problem here. A workshop at local level must be organized where the attendees (who are illiterate) are communicated about the provisions of the Act in local language. Even if such people are unable to file application, they can take help of others to file the application. This will happen only if greater awareness is created.
- Public authorities must analyze frequently asked questions and proactively display information for the current period regarding the same. This will reduce the number of applications filed under the Act as well.
- As described earlier, certain terms like “public authority” are vague and ill-defined. Amendments to their definition needs to be made.
- A liaison needs to exist between Central Information Commission and State Information Commission as the Central Information Commission is not an appellate body to the latter.
- There must be implementation of a uniform format of application for seeking information under the Act.
- The Act doesn't apply to private sector. Since late 1990's, the policy of LPG has gained momentum and the preference is towards privatization. This is reducing the scope of the Act and its efficacy. Hence, the act must bring private sector under its scope and ask private sector to voluntarily disclose information affecting safety of general public. Provisions regarding penalties to be made more stringent and those organizations who do not comply with the directives must be fined heavily.
- RTI activists who are burning the midnight oil to create more awareness regarding the Act, often end up losing their lives or becoming victims of harassment. Providing adequate protection to whistleblowers and RTI activists is the need of the hour.

The Central/ State Government is expected to perform the following roles, ensuring successful implementation of the Act:

- Create educational programs for the masses, especially for people living below poverty line on the RTI Act.

- Participation of public authorities to be made mandatory for creation, organization and promotion of such educational programs.
- Training to be provided to officers, SOP and detailed guidelines to be created and clearly communicated.
- Create a Reference Manual in simple words avoiding complex legal language, which can be easily understood by layman and circulate it to the public in regional languages.
- Disclose contact information of PIO and remedies/solutions available if application gets rejected under the Act.

V] Concluding Remarks

In South Africa, information can be sought from private organizations, if the matter is related to safeguarding the rights and interests of the people at large. The inclusion of private bodies, even for the limited purpose of enforcement of people's rights, in the domain of information regime, is primarily because of the historical reasons that though the political power has moved to the black majority, the economic power is still retained by the white minority. In recent times, the Bangladesh Ordinance 2008 has made an elaborate definition of public authorities covering non-government bodies or bodies administered with public finance, or conducting public work on behalf of the government, or under contract with anybody of the government. The ordinance takes under its ambit any company, corporation, trust, firm, society, cooperative society, private body, association, organization registered under any existent law of Bangladesh. The proposed Nigerian law also includes private companies performing public functions, reflecting the emerging school of thought about what good access legislation should be.

If it is to remain contemporary and relevant in a globalized world, and retain its present glory of being hailed worldwide as one of the most progressive access legislations, then the RTI Act of India should necessarily extend to private bodies performing public functions, or dealing with public money and trust. Today India is emerging as a potential leader in the continent of Asia. It goes without saying that actions of India taken at the present times are most likely to be replicated by other countries of the same continent. Therefore, keeping in mind the suggestions and concluding remarks, we must introduce the required changes before it's too late.

VI] References

- [1] Baviskar, A. (2010). Winning the right to information in India: Is knowledge power. Citizen action and national policy reform, 130-152.
- [2] Singh, S. (2010). The genesis and evolution of the right to information regime in India. *Transparent Governance in South Asia*, 43-78.
- [3] Khanwalker, V. (2011). The right to information act in India: Its connotations and implementation. *The Indian Journal of Political Science*, 387-393.
- [4] Thomas, P. N. (2014). Public hearings and public spheres in India: The case of the right to information (RTI) movement. *Media International Australia*, 152(1), 133-142.
- [5] Agarwal, P., & Deora, G. (2016). RTI and Democracy in India. *International Journal for Innovative Research in Multidisciplinary Field*, 2, 2455-0620.
- [6] Saxena, P. (2009). Public Authority and the RTI. *Economic and Political Weekly*, 13-16.
- [7] Kannan, P. (2011). Adopting the RTI Act as a mechanism to fight corruption to promote effective aid delivery in India.
- [8] Singh, S. (2010). Promoting e-governance through right to information: A case-study of india. *International Journal of Scientific & Engineering Research*, 1(2), 1-9.
- [9] Routray, P. K. (2022). RTI: A Tool of Good Governance. *Sanshodhan*, 11(1), 38-47.
- [10] Sugumar, P. B., & Biarwa, I. P. (2015). A Study on the Role of RTI. *Cosmos An International Journal of Management*, 4(2).
- [11] Markan, R. (2018). An Empirical Study on the Awareness and Usage of RTI Act 2005 by Indian Students in Northern India. *Productivity*, 59(2).
- [12] Paliwal, L. Right to information problems and perspectives.
- [13] Moitra, S. (2019). Right to information act, 2005: implication, impediments and challenges (Doctoral dissertation, University of North Bengal).
- [14] Suresh, D. (2015). RTI as a Human Right in India. Available at SSRN 2675456.
- [15] Fanibanda, P. V., & Mehta, P. V. (2020). Need for Awareness on RTI and Its Enormous Potential. *Issue 5 Int'l JL Mgmt. & Human.*, 3, 948.

- [16] Srivastava, M. (2009). A Study of Administrative Reforms in India-With Particular Reference to the RTI Act, 2005. Available at SSRN 1461773.
- [17] Bharadwaj, Y. P., & Alam, P. RTI—The Harbinger of a Silent Revolution. Resurging India—Myths & Realities, 304.
- [18] Saxena, P. (2009). Public Authority and the RTI. Economic and Political Weekly, 13-16.
- [19] Sugumar, P. B., & Biarwa, I. P. (2015). A Study on the Role of RTI. Cosmos An International Journal of Management, 4(2).



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