



ROLE OF CHIEF INFORMATION COMMISSIONER IN IMPLEMENTING RIGHT TO INFORMATION ACT, 2005

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The enactment of the Right to Information Act, 2005, has ushered a new era in the history of Indian democracy, which is meant to protect citizens' right to information. The right to inform and to be informed is enshrined in the constitutions of many countries of the world.¹ But in Indian Constitution, it is not explicit, though it has been recognized in general as part of the right of freedom of expression under Article 19(1) (a) of the Constitution.² The credit should be given to the NGO-Mazdoor Kissan Shakti Sangathan (MKSS) of Rajasthan for carrying on an agitation in 1994-95 against the government to make available information of the work done in their villages under the funds sanctioned for various development projects; and sensitizing the rural people about the need for it (the right to information). The slogan was: Hamara paisa, Hamara hisab (our money, our account). The Rajasthan Government ultimately introduced a version of an Access to Information Bill in the Legislative Assembly.³ Taking the cue from Rajasthan, Madhya Pradesh followed the suit. Ultimately the Central Government initiated the Bill under the Common Minimum Programme.

¹ Robin Bell & Helen Watchirs, "Freedom of Information: The Commonwealth Experience", *Australian Journal of Public Administration*, Vol.XLVUU, No.4, December 1998, p.297.

² N.K. Jain & Dr. M.L.Khurana, *Right to Information: Concept, Law and Practice*, New Delhi, Regal Publications, 2007.p.9.

³ Noorjahan Bawa, "A Comparative Study of Freedom of Information Acts in India", *Indian Journal of Public Administration*, Vol. LV, No. 3, Delhi, Indian Institute of Public Administration, July-September, 2009,p.623.

The new RTI Act, 2005 is a radical improvement of the Freedom of Information Act, 2002. One of the outstanding features of the Act is the provision for setting up of Information Commissions both at Union and State levels which are meant to be independent and high level bodies. It is a commendable step to ensure an open democracy as it would give the public at large an opportunity to participate in government activities. However, the Act has brought to limelight many cases of clash between the people's access to information and preserving confidentiality in public interests.

Since this law was put into effect, it was meant to ensure transparency and accountability in the working of public institutions which have been plagued by the growing politics of criminalization and corruption. The Right to Information Act—which is a radical and refined version of the Freedom of Information Bill, 1997 and Freedom of Information Bill, 2002—is meant to make the people fully informed about the functioning of our government, which hitherto have been kept 'secret' and 'confidential'. This is a new right of citizen to know about 'governance' and to ensure meaningful participation of people in the working of democratic institutions, as the Act required public authorities to respond to queries within a stipulated period (30 days) failing which they may face penalties.

ROLE OF CHIEF INFORMATION COMMISSINOR

Under the RTI Act, the Chief Information Commissioner (CIC) hears complaints against the public official for not providing appropriate information to the citizens. He is the head of a quasi-judicial body. Presently, it is headed by Shri Satyananda Mishra. The two groups of NGOs-Parivarthan and Delhi Right to Information Manch-headed by Magsaysay award winner, Arvind Kejriwal, came out to record people's experiences who have been dissatisfied with the working of Chief Information Commissioner's style of functioning.⁴ By the end of January 2013 as per CIC records, there were 1375 cases of complaints and the CIC office failed to redress grievances as per expectations of the Act.⁵ Their complaints were based on the scope of Section 8 of the Act that has exempted certain information from being made 'public'. It demanded to widen the scope of the Section 8 itself, as many complaints

⁴ Pramod Kumar, "Correcting Distortions in Governance", *The Tribune*, Chandiragh, December 21, 2011, p.12.

⁵ Aruna Roy & Ruchi Gupta, "The Right to Information Act", *The Tribune*, Chandigarh, January 31, 2013, p.10.

have been dismissed on that basis, i.e. the information asked for was of a 'fiduciary nature', or hurt the personal or institutional interests of the organization.

Some of the previous developments and verdicts given by the CIC have been hostile in dealing with RTI applicants and aggrieved parties, leading to RTI activists to knock at the doors of High Courts of the country. They were frustrated in not getting justice in view of the disposal rate of pending cases in these courts.⁶ This has increased an additional burden on the judiciary. The question is: Is the CIC a quasi-judicial body under the RTI Act? Unfortunately, High Courts have entertained writs against the CIC decisions, whereas, according to the member of CIC, the office lacks the infrastructure to effectively fight its cases in these courts. This situation has undermined the common man's faith in the Act. The fact is that till this date, the CIC office has shown no presence in any court at the time of admission against its decisions. Therefore, the CIC should review its own cases and provide cover to public authorities to reinstate the faith in the Act.

Secondly, the media has also not constructive role in highlighting important CIC decisions. It has failed to introduce elements of transparency and accountability in administration and contain corruption. It has refrained from bringing wide-spread corruption to light. If properly utilized, the RTI Act can perhaps work as effectively as sting operations. In fact, the media has failed to take up social issues which could result in bringing about systemic changes which is one of the major objectives of the RTI Act. The law is arguably the single most powerful piece of legislation enacted in Independent India.

RTI has raised the hopes and aspirations of people. Applications under RTI law have increased in almost geometrical proportions. If CIC continues to be under siege from activists, courts and the media; it will only serve the bureaucracy's purpose of crippling CIC by creating a jungle of hurdles.

In the absence of proper support from the government, the CIC may well tread on a path that would render the RTI movement ineffectual. A controversy cropped up in the affairs of Municipal Corporation of Delhi (MCD) and the Jarnia Hamdard University, New Delhi in September 2012 about the lenient view of the CIC on imposing monetary penalties on them. The penalty matter exposed a schism between the CIC and its member on a waiver of a fine, raising the question: Is CIC just a paper tiger?

⁶ O.P.Kejriwal, "For Your Information", *The Times of India*, New Delhi, July 18, 2007, p.12.

PERFORMANCE OF CHIEF INFORMATION COMMISSIONER

The implementation of RTI Act in various states reveals the fact that a handful of states have sincerely put RTI Act in operation. Even the states with high literacy levels like Kerala, Mizoram and West Bengal have not used it for proper awareness, nor they have given appropriate infrastructure to the offices of CIC. They lagged behind in RTI compliance. This is all due to the 'design' that most of the Information Commissions—though independent appellate authorities—are packed with retired bureaucrats, whereas the Act has provisions to include professionals and representatives of civil society groups in its set-up. Thus, these RTI bodies have not been able to function as watchdogs of the state machinery. This picture has brought forth conflict interests and overcrowding heap of files, as examples given ahead will show.

1. The campaign for an RTI Act was started by grassroots movements. The idea was to empower people with legislation and an administrative apparatus that would keep a check on government. Our RTI Act is considered to be one of the best in the world, but it will be effective only if the independence of RTI commissions is maintained. The attempt to block access to file nothings was defeated by a sustained popular campaign. A similar effort may be needed to preserve the autonomy and independence of Information Commissions. An overhaul of Information Commissions is necessary. They have to be rid of the babu mindset. The penalty clause meant to haul up officials refusing to give correct information has to be effectively used. It is revealing that the Central Information Commission has not one case to show where an erring official has been penalized. The Commissions have to put in place a transparent mechanism where complaints are heard so that decisions are not made on arbitrary or subjective grounds.⁷ Proper reporting of the proceedings at the Information Commissions would ensure accountability. It is in the collective interest of the nation that RTI becomes an effective tool to ensure good governance.
2. Unfortunately, the implementation of the RTI could not inject an element of transparency to governance in a way that was imagined at a time of its enactment. Now it has become a weapon in the hands of bureaucrats. A host of government

⁷ Jayatilak Guha Roy, "Right to Information: A Key to Accountable and Transparent Administration", Alka Dhameja (ed.), *Contemporary Debates in Public Administration*, Prentice Hall of India, New Delhi, 2003p.313.

institutions like the Supreme Court, UPSC, CBI, Delhi Metro, etc. have now sought exemption from RTI.

3. The Supreme Court's application for exemption is at odds with its role. The courts are meant to be a sentinel of democracy, providing a check on the other organs of government. It has stood up for citizen's rights against encroachment by the state. But the Supreme Court is opposed to disclosing information about how judges are appointed as well as the status of complaints against particular judges. The Apex Court is already under the scanner for an application under RTI about a complaint against a high court chief justice. The Supreme Court's logic that it must be exempted from RTI on the grounds that its authority would be undermined holds little justification. The court must be the most accountable institution in any democracy because of its vital role as a watchdog.⁸ In fact, judges must hold high standards and serve as models for other government officials. The people do not know about the appointment of the judges as well as the status of complaints against them. This can change if RTI Act is made applicable to the Supreme Court. That will ensure that the Court, like any other institution, is accountable to the people.
4. It is strange that in a landmark decision, the CIC has ruled that judicial proceedings of all courts and tribunals are beyond the purview of the RTI Act. This judgment was given in September 2007. Likewise, the Supreme Court has asked the Government of India to amend the RTI Act to take out of the purview of CIC-which is too an autonomous body and provide a provision that Chief Justice of Supreme Court can stop any release of information. This approach is tantamount to violation of RTI Act; as such exemptions and privileges would put a veil on the transparent functioning of judiciary in public interest. It is further regretted that most of the High Courts have not yet appointed PIOs as required under the RTI Act. This is clearly a violation of Section 8 of the Act.
5. In many cases involving the People's Union for Civil Liberties (PUCL) versus the Union of India, the Apex Court has supported the plea of the state dispensation not to release the desirable information under Section 8(1) of the RTI Act, 2005. It is power

⁸ Jayatilak Guha Roy, "Open Government and Administration Culture in India", *Indian Journal of Public Administration*, Vol. 36, No. 3, Delhi, Indian Institute of Public Administration, July-September, 2010,p.493.

in the hands of the government wings, because of phrase 'secret' confidential activity, national interests. In dealing with disclosing marks of aspirants in institutions like CAT, IIMS, UPSC, the Central Information Commission (CIC) has favorably responded to RTI applications under section 25(5) of the Act. A thick curtain of secrecy and bureaucratic mindset of functioning in RAW and IB has weakened to meet the growing challenge of internal security—both within India and in its neighbourhood due to the existence of the Official Secret Act, 1923. It helps to suit politicians to play politics with intelligence.⁹ In fact, their recruitment, training, promotion and performance need to be made transparent so as to strengthen the spirit RTI Act. Unfortunately, the administrative culture of secrecy in India—a colonial legacy of the British rule—still prevails. That is why; the right to information has not been effective in checkmating the widely prevalent corruption in public life.

6. In a daring move, the Bihar is the first state to introduce/launch helpline service for RTI applicants. Now, instead of writing an application for seeking information under the RTI Act and submitting it to concerned departments, all one has to do is to dial and sends an application to the concerned official. According to CM of Bihar, Nitish Kumar, the purpose of the RTI helpline is to empower people and bring transparency as well as accountability in the Bihar's administration. It operated from January 29, 2007. He is not bothered about opening a Pandora's Box in a problematic state by launching this helpline. His plea is that the people of the state have a right to know about the fate of ongoing projects, reasons for delay, amount spent or status of loan applications, etc. He hoped that the helpline will act as a deterrent against corruption in public life.

SUGGESTIONS TO STRENGTHEN THE RIGHT TO INFORMATION ACT

- i) The law needs to be given a 'human face', because it is all about empowering the common man or *Aam Aadmi* in words of our PM. It is in accordance with the Preamble "We, the People of India". Hence, bureaucracy should be made sensitive to human sufferings. The Act must insist that people/institutions give reasons for seeking information and people having ulterior motives in demanding information must be penalized in case of non-

⁹ S.L. Goel, "Right to Information and Administrative Reforms", *Indian Journal of Public Administration*, Vol. LIII, No. 3, Delhi, Indian Institute of Public Administration, July-September, 2007, p.549.

compliance of the CIC's directives. Therefore, there must be a new penalty provision and no officials/ heads of public institutions be allowed to shirk responsibility.

- ii) The RTI needs to create greater public awareness and more people's involvement. There is no corrective mechanism to deal with information received through the Act. So it should ensure corrective action in a specific time-frame.

In this regard, the Chief Information Commissioner suggested that the RTI Act should be amended to do away with the conflict between the Official Secrets Act (OSA) and the RTI Act, as the OSA has no place in a democratic set-up. Unfortunately, it is still a tool, in the hands of bureaucrats, who with the alliance of their political bosses guard their interests at the cost of democratic ethos. In fact, the OSA has been a big hurdle in rooting out corruption by the country's premier agency—CBI. It is necessary for democracy to set free the whistle-blower (CBI) from the shadow of the OSA.¹⁰ Even the Second Administrative Reforms Commission, has asked the government for scrapping the OSA, taking the plea that the privileges of the citizens' 'the right to know' over the public officials' 'right to secrecy' should not be subjected.' Hence, there is a need to give the teeth to the RTI Act.

- iii) The Act is meant to give voice to the civil society and to create a watchdog independent of the state, which is possible only if Information Commissioners are representatives of the diversity in society, instead of the exclusive domain of bureaucrats. At the moment, they—in the states as well as at the Centre—have become parking lots for retired bureaucrats. This nature of appointments has defeated the purpose of the RTI Act. Therefore, professionals should also be included in the list of appointments.

- iv) The CIC has proposed to have 'paperless affair' i.e. 'E-administration of government's departments so that public records are accessible online and can be used to provide information under the RTI Act. When implemented, this would mean that a person can file an RTI application online, and the department's PIO would be able to access government records on the internet and send a reply, thus reducing delays and increasing transparency within the system. Bihar is said to be the first state to take a step in this

¹⁰ Jayatilak Guha Roy, "Right to Information Initiatives And Impact, Occasional Paper", *Indian Journal of Public Administration*, Delhi, Indian Institute of Public Administration, July-September, 2010,p.14-15.

direction by accepting RTI applications on phone. At present, the CIC is the only agency that receives online appeals under the RTI, but because of rudimentary information, it continues to face delays.

- v) The first report of the (Second) Administrative Reforms Commission (ARC) on RTI, submitted to the Government of India in June 2006,¹¹ has given some concrete recommendations to strengthen the Act.

These include the recommendations

- a) to replace minister's oath of secrecy by an oath of transparency,
- b) make the provision for giving full and accurate information asked for,
- c) the establishment of public records offices under the overall control of Information Commissions,
- d) making *sue moto* disclosures available in printed form and earmarking funds for updating records.
- e) It has also pointed out the importance of imparting training in RTI not only to the Chief Information Commissioner/Public Information Officers, but to all civil servants.
- f) It also recognizes that the quantum of fees prescribed should not become a limiting factor and recommend uniformity.
- g) Of particular significance is the recommendation aimed at facilitating the access of various types of information from private agencies, and of generally strengthening hands of the central and state Information Commissions. Equally significant is the recommendation that the selection of Information Commissioners be done by a committee consisting of the Chief Justice of the Supreme Court (in case of Chief Information Commissioner) and of the

¹¹ Government of India, Second Administrative Reforms Commission, *First Report on Right to Information: Master Key to Good Governance*, June 2006, para 1.1.1, p.1.

respective High Courts (in case of Public Information Officers).¹²

However, some of the recommendations like refusing a request for information if it is frivolous or vexatious or if the work involved in processing the request would substantially and unreasonably diverts the resources of the public body, have generated controversies in various quarters.

While the government should accept the positive recommendations forthwith, it should deliberate upon the controversial recommendations with members of civil society and RTI activists before taking the final decision.

Looking at the overall scenario, one can say that the RTI Act has definitely made a beginning in the direction of creating a transparent, accountable and corruption free democracy in the country. However, a lot needs to be done to strengthen the law and safeguard its encroachment by the vested interests.

¹² Jaytilak Guha Roy, "Second Administrative Reforms Commission on Right to Information: A Critical Review", *Indian Journal of Public Administration*, Vol. LIII, No.3 Delhi, Indian Institute of Public Administration, July- September, 2007, p.560.