Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

Right to Information Act - Theory vs Implementation

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Received 21 September 2022; *Accepted* 01 October 2022; *Published* 10 October 2022

The Right to Information Act came into force on the 12th of October 2005. The Act was enacted to empower the citizen of India wherein anyone can seek information from the public authority. Thus, making the Government and its functioning more transparent and accountable. The court pronouncement of the citizen's right to know as a fundamental right in the Raj Narain case and the subsequent movement lead to the enactment of this Act which confers a specific right to seek information upon its citizens. However, a lack of awareness among the public, inefficient record management systems, and the government's unwillingness to accept reforms have utterly affected the efficient implementation of the act that needs dire attention on the part of both the Government and the community as a whole. This paper has sought to identify some of the issues coming in the way of the implementation of the Act and has suggested solutions for the same.

Keywords: *rti, theory, implementation.*

INTRODUCTION

India being a secular, sovereign, republic and democratic country requires its citizen to be informed in order to guarantee equal participation of its citizen in the decision-making process by the government. Such an informed citizenry and participatory democracy can only be created by the free and transparent flow of information and by making the government and its agencies

accountable for their actions. Hence, the right to information act was passed to achieve the same objective of informed citizenry and transparency of information. The Act empowered the Indian citizen to take administrative action by questioning, reviewing, and accessing government actions and decisions and thereby ensuring that their interest is protected and promoted by the government and is consistent with the principles of public interests, good governance, and justice. Though the Right to Information Act was enacted in 2005, the citizen's right to information has always been regarded as the fundamental right guaranteed under the Indian Constitution by various Supreme Court judgments and has been considered a part and parcel of Article 19 (1) (a) together with Article 14[1], 19[2] and 21[3] of the Indian constitution that provides for the right to equality, right to freedom of speech and expression, and right to life and liberty, respectively.

RIGHT TO INFORMATION UNDER INDIAN CONSTITUTION

the preamble to the Indian Constitution expressly states that it seeks to secure to its citizens "JUSTICE, social, economic and political and EQUALITY of status and of opportunity"[4]. Such an objective as enshrined in the Preamble can only be achieved when the citizens are informed and are given equal opportunity in participating in matters related to public interest and governance. The right to Information has not been expressly mentioned as a fundamental right under the Indian Constitution but the court has, through judicial interpretation guaranteed the right of citizens to know as a fundamental right essential in realizing the objective as mentioned in the Preamble.[5]

The court has regarded the Right to information as an essential part of the right to free speech and expression provided under Article 19 (1) (a) through its expansive interpretation of fundamental rights. The People's right to know took shape as a fundamental right firstly in the 1970s, when the majority decision of the Supreme Court in the Bennett Coleman and Co versus

[1] Constitution of India, art 14
[2] Constitution of India, art 19
[3] Constitution of India, art 21
[4] Constitution of India
[5] *People's Union of Civil Liberties (PUCL) v Union of India* [1997] AIR SC 568

the Union of India[6] in1973, held that "freedom of speech and expression includes within its compass the right of all citizens to read and be informed." The Manubhai D. Shah versus Life Insurance Corporation judgment in 1981 emphasized the same point "The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others." In sum, the fundamental principle involved here is the people's right to know. In 1986, the court in the case of Indian Express Newspaper (Bombay) Pvt. Ltd. v Union of India[7] upheld the people's right to know every act and transaction of public nature in any form done by the public functionaries. Again in 1982 Supreme Court while observing the growing demand in different parts of the world for transparency and openness in Government functioning, asserted that the citizen's right to know is an important pillar in a democratic country.

Apart from Article 19, the right to know can also be seen emerging under Article 21 of the Indian constitution. In Essar Oil Ltd v Halar Utkarsha Samiti,[8] the SC held that the right to information emerges from the right to personal liberty guaranteed by article 21 of the constitution. Article 22 (1), Article 22 (5), and Article 311 (2) are some of the Articles that give validity and emphasis to the citizen's right to know and to be informed.

Article 22 (1)[9]of the constitution provides that "the person arrested or detained shall be informed of the grounds for such arrest and also about his right to consult and to be represented by an advocate of his choice."

Article 22 (5)[10] mentions that any person who is detained under the law providing for preventive detention shall be informed of the ground of his arrest as soon as possible and shall also be informed about his right of challenging such arrest by the authority executing such order of arrest.

[6] *Bennet Colman v UOI* [1973] AIR 106
[7] *Express Newspapers (Bombay) Pvt Ltd v Union of India* [1986] AIR SC 515
[8] *Essar Oil Ltd v Halar Utkarsha Samiti* [2004] AIR SC 1834
[9] Constitution of India, art 22(1)
[10] Constitution of India, art 22(5)

Article 331 (2)[11] of the constitution makes it mandatory that "no civil servant shall be dismissed, removed, or reduced in rank except after conducting an inquiry in which he should also be informed about the charges he is accused of and he should be given a reasonable opportunity of being heard in respect of those charges."

However, like every other fundamental right, the right to know or to be informed is not absolute and can be restricted on the grounds of reasonable restrictions as mentioned under Article 19.[12] As can be seen from the above-mentioned paras, the right to information though not expressly provided under the Indian constitution has been given a fundamental status by various Supreme Court pronouncements. Because of these judgments and RTI movements by the citizens, a need for a special Act was felt; hence, in 2005, the Right to Information Act was enacted to translate this right into a reality.

RIGHT TO INFORMATION ACT - THEORETICAL APPLICATION

India is one of the largest democracies and therefore has a duty to ensure that its citizens are fully informed about all the actions and decisions done and taken by public bodies which are of public nature. The Right to Information Act is a landmark for Indian Democracy. This Act seeks to provide a statutory framework for the actual realization of the peoples' right to know. It lays down the procedure of how can a citizen access the information in addition to expressly stating what all information can be disclosed and requested by the public under the Act. It also prescribes information that is exempted under the Act from disclosure, placing a restriction on this right.

The objective of the Act

The Right to Information Act consists of f 31 sections spreading over six chapters and two schedules. As can be seen from the Preamble to the Act, the main objective behind the enactment of this Act was to create an informed and participatory citizenry. It also aims to empower its citizen and promote transparency and accountability in the working of governmental bodies

[11] Constitution of India, art 331(2)
[12] *State of Madras v VG Row* [1952] AIR SC 196

and agencies. The Preamble to the Act states that it seeks "to provide for setting out the practical regime of right to information for citizens 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."[13] In a nutshell, the main objective of the Act is to obligate every public authority to provide every piece of information to the public in every form done in a public way, by their public functionaries which will result in bringing transparency and make citizens more informed.[14]

Definition of Right to Information under the Act

The Right to Information Act under Section 2 (j) provides the meaning of the term 'Right to Information which is in line with many of the earlier Supreme Court pronouncements. As per the section, the right to information means the right to access information that is held by or under the control of any public authority. It includes the right to inspect and take notes, extracts, or certified copies of documents or records or any work and obtaining information in the form of diskettes, floppies, tapes, video cassettes, or in any other electronic mode or through printouts where such information is stored in a computer or any device.[15]

Definition of Information under RTI Act

The term information has been defined under section 2 (f) of the Act. The term has been defined in a very clear manner so that the information cannot be denied for the lack of clarity as to what all information can be provided under the Act. It means any information that is under the control of or held by any public authority. It includes any material in any form, including records, documents, memos, e-mails, opinions, pieces of advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and also include information pertaining to any private body which can be accessed or stored by a public authority under any other law for the time being in force.

[13] Right to Information Act 2005
[14] *Dinkar S Natrajan v State Information Commissioner, Hyderabad* [2009] 79 AIC 453 (AP)
[15] Right to Information Act 2005, s 2(j)

The Supreme Court has been many times called upon to interpret the term Information and to define what all information can be disclosed under the case. One such case is the case of Central Public Information Officer, Supreme Court of India v Subhash Chandra Agarwal[16] wherein the Supreme Court, by relying on sections 2 (h), (j), and (f) held that the office of the chief justice of India and the declaration of assets by the judges to the Chief justice of India comes under the ambit of RTI Act and can be requested for its disclosure by the public.

Authorities under the Act

The RTI Act provides for the public authority both at the central and state level, from whom a request for the disclosure of information can be made, and that public authority is obliged to furnish information so requested. A public authority under the Act includes any authority or body or institution of self-government established or constituted by or under the Constitution, or any other law made by Parliament or by State Legislature, by a notification issued or order made by the appropriate Government.[17]

Information exempted from disclosure

Though the Act was enacted to provide the public the means by which they can access information crucial for their development, growth, and knowledge, there is certain information that is outside the ambit of the Act. In another word, there is certain information that is exempted from being disclosed, and access to such information can be denied if they fall under any of the categories mentioned under section 8 of the Act. The information can be denied if the disclosure of such information infringes upon other rights like the right to privacy or if it is against the public interest or if it may harm the sovereignty or integrity of the nation. The object of section 8 of the Act is to harmonize and balance the two conflicting interests. The first is to ensure the free and smooth flow of information to bring about transparency and accountability. The second one is to ensure that the disclosure of such information does not infringe upon any other public right i.e., the right to privacy or with public interest which includes efficient operations of the

[16] *Central Public Information Officer v Subhash Chandra Agarwal* [2019] SCC OnLine 1459 (SC)
[17] Right to Information Act 2005, s 2(h)

government, optimum use of limited fiscal resources, and preservation of confidentiality of sensitive information.[18]

IMPLEMENTATION OF THE RTI ACT

To promote transparency, accountability, and openness in government functioning the RTI Act was enacted in 2005. However, since its inception, many factors have contributed to hindering the effective implementation of this Act which needs dire attention today. The potential of the RTI Act in realizing smooth access to information lies in two factors. First is the willingness of the government to be transparent and second, is the ability of the citizen to demand and use information as their fundamental right.[19] Constraints in both these factors have resulted in the inefficient implementation of the Act in the Indian scenario. Taking up the first factors, constraints in the government's willingness to fulfill the objective of disseminating information to its citizen can be seen in their resistance to accepting reforms, improper and poor record management practices, and passing amendments that further downgrade the vigor of the RTI Act.

Section 4 (1) (b) of the RTI Act obligates every public authority to provide information suo moto to the public at regular intervals through various means of communication, including the Internet, so that there is a minimum need for the public to use the lengthy process of requesting information provided under RTI Act. However, even after the passage of a long time since the Act was enacted, Public Authorities have not been able to provide information as provided by section 4 of the Act.

In its Annual Report (2012-13), the Central Information Commission (CIC) has shown concern over the lack of participation on the part of the Public Authorities in disclosing mandatory disclosure, despite having good infrastructure for information & communication technology. The report accounted that only 568 public authorities had confirmed the posting of disclosures on their websites as mandated by section 4 (1) (b).

[18] *CBSE & Ors v Aditya Bandopadhyay & Ors* [2011] 8 SCC 497
[19] Dr. S Krishnan, 'Need for the Strong Implementation of Right to Information Act' (2022) 10(1) JRHSS

Ineffective and poor record management practice also contributes to the failure in the effective implementation of the RTI Act. Section 4 (1) (a) includes cataloging, indexing, and computerization of records. It places a duty on the public authority of publishing organization-specific basic information and all the relevant facts used while framing important policy decisions within a specified timeframe and ensuring that such information is disseminated widely and is easily accessible to the public at large. The report by the Department of Personnel and Training on the implementation of the RTI Act stated that "various departments and ministries of the government of India have in the last year posted the requirements specified under Section4(1)(b) on the website. However, the status of the same in the state government departments and websites is significantly poor."

The passage of the RTI (amendment) bill 2019 by the parliament is another example that highlights the government's role in further weakening the law rather than adopting means of upholding the true spirit of the Act of encouraging transparency and accountability. The RTI (amendment) bill of 2019 has attempted to place the Information Commissioner's tenure, salary, and status under the direct supervision of the Central Government. If the bill is passed it will lead to many anomalies. Firstly, it will affect the status of the Information commissioner which is necessary for the maintenance of its independence, issuing orders, and monitoring implementation. Secondly, it will lead to the passage of enormous power to the Central Government in interfering with the everyday functioning of the Commission. In other words, by placing the tenure of the Information Commissioner under the discretion of the Central Government, they can get rid of the Information Commissioner that does not work according to their whims and caprice, thus placing them under the direct command of the Central government.

The constraints in the second factor, which depends upon the ability of the public to demand and use information as a right can be seen from the lack of public awareness. The Act lays down a provision regarding public awareness about how to exercise the rights under the RTI Act through educational programs, especially in disadvantaged communities.[20] The survey

[20] Right to Information Act 2005, s 26

conducted by the Department of Personnel and Training shows only 15% of the respondents were aware of the RTI Act. Between males and females, where 26% of the males are aware of their rights under the Act, and the percentage is 12% in the case of females. Compared to 27% of the general category of citizens, only 14% of the people in the SC/ST/OBC category know how to access information. The vast difference can be seen in the urban and rural scenario, where against 33% of the urban population, only 13% of the rural population know about their right to know under the RTI Act.

SUGGESTIONS FOR EFFECTIVE IMPLEMENTATION OF THE ACT

As can be inferred from the passages above that the Right to Information Act is crucial in the Indian context because of its large democratic set-up and the increasing role of the Government in formulating policies and making decisions concerning the public at large. In such a scenario, the Act empowers the public to question and access those policies and decisions to ensure that the government's action is in the direction of promoting and securing their welfare. Thereby, giving them a platform to participate in the government functioning concerning matters related to the public. Hence, steps should be taken to ensure that every objective with which the Act was enacted is fulfilled and implemented in a real sense.

Amendments that seek to affect the independence and autonomy of the Public Authority should be highly opposed and the Government should work in line with the parliamentary standing committee deliberations during the formulation of the RTI Act. The committee ruled that the salary and perks of central information commissioners should match that of CECs and SC judges to bestow upon the information commissioner's status and autonomy, befitting their post. The major reason for the effective implementation of the Act is the lack of awareness among the public and the poor record management practice. Such an issue can be overcome by digitalizing the information and keeping the catalog ready. Media can play an important role in generating awareness regarding their right to know among the masses.

Strict directions should be issued by the Central Government that mandates all the State Governments /Public Authorities to adherently comply with their obligations laid down under

Section 4 of the RTI Act, 2005. It should also be stupified that the failure in such compliance may lead to penal provisions being invoked against such Public Authority. The Secretary of the Department may be held responsible in this regard and be held culpable in case of non-compliance with Section 4(1) (b).

CONCLUSION

The Right to Information Act, 2005, is one of the biggest tools in the hands of the public to directly question the functioning of the government in the areas concerning the public at large. In such a process it promotes transparency, accountability, and openness of public authorities. Thus, it is a need of an hour that every such action that jeopardizes and nullifies the implementation of an Act is outrightly opposed and sidelined together with an effort of eradicating all the obstacles that come between the full realization of the object of the Act. This can only be achieved by constructive, creative, and decisive action both at the Government as well as at the community level.