

Promoting e-Governance through Right to Information

Akashdeep Singh - Research Scholar, Department of Laws, Panjab University Chandigarh, India.

Email - akash194@gmail.com

Abstract: e-Governance initiatives and Right to information (RTI) have been implemented for subtle change in global attitudes. Across the world, these two initiatives with information and communication technologies (ICTs) have ushered an era of information exchange; changing political, economic, and social structure forever. e-Governance and right to information (RTI) are being recognised as potential tools of empowerment. Right to information Act 2005 has been enacted with a view to promote openness, transparency and accountability in public administration. To achieve these objectives it is very important that the RTI Act should provide right to citizens to ask for matters pertaining to governmental functioning through on line. Hence, this paper highlights the use of e-governance as a tool for efficient functioning of the Act. It also discusses that a government which operates in greater secrecy is more prone to corruption as compared to a government which operates in greater openness.

Key Words: e-Governance, Right to Information, Information and communication Technologies, Public Information, Transparency

Introduction:

The Right to Information Act which gave the citizens of India access to records of the Central Government and State Government was thought to be one of the most revolutionary pieces of legislation in modern India which can make India one of the most advanced democracies. Because this Act has given people the right to actually participate in governance, which is the essence of what we call inclusive growth. Armed with RTI, common citizens were empowered to know whatever they deemed worth knowing. RTI and e-Governance are twins and are inseparable. e-Governance will never be complete unless the RTI Act is fully implemented neither will RTI work if there isn't a full-fledged system of computerisation and administration.¹

e-Governance initiatives and Right to information (RTI) have been implemented for subtle change in global attitudes. Across the world, these two initiatives with information and communication technology (ICT) have ushered an era of information exchange; changing political, economic, and social structure forever. The ability of e-Governance to change existing system and provide alternatives where there were none, have made people and government sit up and take notice. Now e-governance and right to information (RTI) are being recognised as potential tools of empowerment. In this realm, governments owe a duty not just to provide services as efficiently as possible but also to make the government operates transparent and civil servants accountable to those they serve.² Consequently the citizen's right to information is being increasingly recognised as an important instrument to promote openness, transparency and accountability in public administration. In fact, invisible government has become obsolete in this age of liberalization and globalization. It has been observed that a government

¹ Shalini Singh, "Right to information: A Case Study of India", *International Journal of Scientific & Engineering Research*, Vol. 1, No. 2, 2010, p.1.

² Kuldeep Singh, Mohit Verma, *E-Governance and Right to Information*, in R.K. Gupta et. al. (eds), "Right to Information Act 2005: Implementations and Challenges", Deep and Deep Publication, New Delhi, 2009, Pp. 349, 350.

which operates in greater secrecy is more prone to corruption as compared to a government which operates in greater openness³.

Official Secret Act, 1923 (OSA)

The most contentious issue in the implementation of the Right to Information Act relates to official secrets. In a democracy, people are sovereign and the elected government and its functionaries are public servants. Therefore by the very nature of things, transparency should be the norm in all matters of governance. However it is well recognised that public interest is best served if certain sensitive matters affecting national security are kept out of public gaze. The Official Secrets Act, 1923 (hereinafter referred to as OSA), enacted during the colonial era, governs all matters of secrecy and confidentiality in governance. The law largely deals with matters of security and provides a framework for dealing with espionage, sedition and other assaults on the unity and integrity of the nation. However, given the colonial climate of mistrust of people and the primacy of public officials in dealing with the citizens, OSA created a culture of secrecy. Confidentiality became the norm and disclosure the exception.⁴

Under the Act If any person having in possession or control of any secret official code or password or any sketch, plan, model, article, note, document or information about a prohibited place, or such information the disclosure of which is likely to affect the sovereignty and integrity of India or which may help an enemy state, or which has been entrusted to him in confidence to him by any person holding office under the office under the government, or which he has obtained owing to his official position, commits an offence if (s) he communicates it to an unauthorised person, uses it in a manner prejudicial to the interests of the State, retains it when (s) he has no right to do so, or fails to take reasonable care of such information he shall be guilty of an offence under the Act.⁵ Government Authorities have used these provisions of the Official Secret Act to declare documents and even areas as secret and therefore, inaccessible.⁶ Any kind of information is covered by this Section if it is classified as secret. The word secret or the phrase official secrets has not been defined in the Act. Therefore, public servants enjoy the discretion to classify anything as secret.⁷

Freedom of Information Act, 2002

To intensify the process of paradigm shift from state centric to citizen centric model of development, the Right to Information Movement in India came into existence in 1990s by resolving a major contradiction between the Colonial Acts, which prevents access to information and the post-independent Indian Constitution, which recognizes the seeking information as a fundamental right to promote transparent, accountable, responsible, participatory and decentralized democracy.⁸ With these objectives, the Central Government appointed a working group under H.D. Shourie and assigned it the task of drafting legislation. The Shourie draft, in an extremely diluted form, was the basis for the Freedom of Information Bill, 2000 which eventually became the law under the Freedom of Information Act, 2002. This Act was severely criticized for permitting too many exemptions, not only under the standard grounds of national security and sovereignty but also for requests that would involve disproportionate diversion of the resources of a public authority. There was no upper limit on the charges that could be

³ Jaytilak Guha Roy, "Transparency and Right to Information Governance Perspective", Bihar Journal of Public Administration, Vol. 10, No. 1, 2013, p. 36.

⁴ First Report of Second Administrative Reform Commission on Right to Information: Master key to Good Governance, Government of India, 2006, p. 4.

⁵ Section 5 of Official Secret Act 1923

⁶ Sairram Bhat, *Natural Resources Conservation Law*, Sage Publication Ltd., New Delhi, 2010, pp. 425, 426

⁷ First Report of Second Administrative Reform Commission on Right to Information: Master key to Good Governance, Government of India, 2006, p. 4

⁸ E. Venkatesu, "Right to Information Movement in India", Paper was presented in national seminar on 'Human Rights in the era of Globalization' held on 3rd & 4th November 2006 in the department of Political Science, University of Hyderabad, Hyderabad, p. 1

levied. There were no penalties for not complying with a request for information. The Freedom of Information Act, consequently, never came into effective force⁹.

Right to Information Act 2005

The Indian Parliament had enacted the Freedom of Information Act 2002 in order to promote transparency and accountability in administration. But due to some deficiency and severe criticism the Central Government has made National Common Minimum Program of the Government which envisaged that Freedom of Information Act will be made more progressive, participatory, and meaningful, following which, decision was made to repeal the Freedom of Information Act, 2002 and enact a new legislation in its place. Accordingly, Right to Information Bill 2004 (RTI) was passed by both the houses of parliament on the may 2005 which received the assent of the president on 15th June, 2005. The Right to Information was notified in the Gazette of India on 21st June, 2005. It became fully operational from 12th October, 2005.¹⁰ Right to Information Act, 2005, enacted to bring in a new era of transparency and open government, on an analysis and comparison with other freedom of information laws across the globe, clearly reveals certain unique features which are provided for to ensure the effective implementation of this right in the Indian Scenario. Access to information has been granted as a right as opposed to being guaranteed as a freedom.¹¹

The legal basis of RTI can be traced to constitution of India though our constitution does not explicitly mention right to information as fundamental right, but the supreme court through various judgements interpreted this right to be flowing from Art 19 (1) (a) which states that “ all citizens shall have the right to freedom of speech and expression”. This means that people have the right to talk about things freely and to express an opinion on anything. This would have included the right to know, because unless we know about something, we could express anything about it or protest against it.¹² In *S.P. Gupta v. President of India and others*¹³ the Supreme Court first time ruled that “no democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy. Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception.”

Again in *L.K. Koolwal v. State of Rajasthan and others*¹⁴ Supreme Court held that “Citizens have a right to know about the activities of the State, the instrumentalities, the departments and the agencies of the State. The privilege of secrecy which existed in the old time that the State is not bound to disclose the facts to the citizens or the State cannot be compelled by the citizens to disclose the facts, does not survive now to a great extent. Under Article 19 (1) (a) of the Constitution there exists the right of freedom of speech. Freedom of speech is based on the foundation of the freedom of right to know. The State can impose and should impose the reasonable restrictions in the matter like other fundamental rights where it affects the national security and any other allied matter affecting the nation's integrity”.

⁹ Yasir Hussain, *Corruption Free India: Fight to Finish*, Epitome book's Publication, New Delhi, 2012, pp. 184, 185.

¹⁰ Anjali Kaushik, “e-Governance and Freedom of Information Act: The Indian Experience”, In Mila Gasco (ed.), *Proceeding of the 12th European Conference on e-Government*, Academic Conference Limited, UK, 2012, p. 362

¹¹ Anshu Jain, “Good Governance and Right to Information: A Perspective”, *Journal of the Indian Law Review*, Vol. 54, No. 4, October-December 2012, pp. 512, 513.

¹² Kuldeep Singh, Mohit Verma, *E-Governance and Right to Information*, in R.K. Gupta et. al. (eds), “Right to Information Act 2005: Implementations and Challenges”, Deep and Deep Publication, New Delhi, 2009, p. 353.

¹³ AIR 1982 SC 149

¹⁴ AIR 1988 Raj 2

I. Provisions for Facilitation of e-Governance:

The new legislation confers on all citizens the right of access to the information. It aims to promoting transparency and accountability in the working of every public authority. It has the widest possible reach covering Central Government, State Government, Panchayati Raj Institutions, Local Bodies and recipient of government grants.¹⁵ Its main provisions are mentioned below:

1. It impose an obligation on all public authorities to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.¹⁶
2. The Act has an interesting variation as it asks for proactive disclosure of information from public authorities. The Act provides that, it shall be a constant endeavour of every public authority to take steps to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.¹⁷
3. It imposes duty on every public authority to designate, within one hundred days of the enactment of this Act, as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.¹⁸
4. It fixes a 30 day deadline for providing information and 48 hours deadline for information concerning life and liberty of a person.
5. There shall be reasonable fees for providing information to the citizens and no fees shall be charged from the people who are living below poverty line.¹⁹
6. If the public authority fails to provide information within time limit to the person, then it shall provide information free of charge.²⁰
7. It carries strict penalties for failing to provide information. The Information Commission shall fine an official Rs. 250 per day (subject to maximum of Rs. 25000) if information is delayed without reasonable cause beyond the stipulated 30 days.²¹
8. This Act shall not apply to intelligence and security organisation²² like Intelligence Bureau, Research and Analysis Wing, Border Security Force, Central Reserve Police Force, Central industrial Reserve Force, Central Economic Intelligence Bureau, Indo-Tibetan Border Police, National Security Guards, Assam Rifles and so on.²³ However, information pertaining to allegations of corruption or violation of human rights will not be excluded.²⁴
9. The provisions of this Act overrides Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.²⁵
10. It repealed Freedom of Information Act, 2002.²⁶

¹⁵ M. Laxminath, *Public Administration*, Tata McGraw-Hill Education Pvt. Ltd., New Delhi, 2011, p. 234.

¹⁶ Section 4 (1) (a) of *The Right to Information Act, 2005*

¹⁷ Section 4 (2) of *The Right to Information Act, 2005*

¹⁸ Section 5 (1) of *The Right to Information Act, 2005*

¹⁹ Proviso to section 7 (5) of *The Right to Information Act, 2005*

²⁰ Section 7 (6) of *The Right to Information Act, 2005*

²¹ Section 20 (1) of *The Right to Information Act, 2005*

²² Section 24 (1) of *The Right to Information Act, 2005*

²³ Second Schedule of *The Right to Information Act, 2005*

²⁴ Proviso to section 24 (1) *The Right to Information Act, 2005*

²⁵ Section 22 of *The Right to Information Act, 2005*

²⁶ Section 33 of *The Right to Information Act, 2005*

Conclusion:

The Right to Information Act, 2005 is major step towards ensuring participatory development process in the country. However, the success of the Act can only be achieved if the public authorities take the Act in right spirit and implement the Act effectively. People should begin to use it as an instrument for pressing transparency and accountability on part of the public bodies. Government should take steps to propagate this Act in the illiterate population living in the village. The state should increasingly use e-Governance and records in the government offices need to be digitized for easy retrieval.²⁷ This sort of arrangement will definitely help in establishing a better state-citizen relationship. It will further, result in bringing transparency in government functioning as the RTI Act is providing right citizens to ask for matters pertaining to governmental functioning. It is also recognising the use of e-governance as a tool for efficient functioning of the Act.²⁸

²⁷ Rajbir Singh, *Right to Information and Good Governance*, Concept Publishing Company, New Delhi, 2010, p. 214

²⁸ Pankaj Shreyasker, *RTI Act in India: Future and Implication*, Tata McGraw-Hill Education, New Delhi, 2013, p. 241.