

Authors Affiliation

¹Deputy Editor, South Asian
Journal of Socio - Political Studies
(SAJSOSPS). ²Dean, School of
Social Sciences and Head,
Department of Public
Administration and Policy
Studies, Central University of
Kerala, Kasargod, Kerala-671316,
India.

Reprints Requests

M.R. Biju,
Dean, School of Social Sciences and
Head, Department of Public
Administration and Policy
Studies, Central University of
Kerala, Kunia Campus, Periyar
(P.O), Kasargod, Kerala-671316,
India.
E-mail: mrbijueditor@yahoo.com

Received on 11.12.2017

Accepted on 01.12.2018

Right to Information: Global and National Dimensions

M.R.B. Anantha Padmanabha¹, M.R. Biju²

Abstract

Over the past few years, RTI has gained increasing importance in the human rights discourse as well as the larger democratic discourse. Since a democratic government must be sensitive to the public opinion for which information must be made available by it to the people. Effective accountability rests on the peoples' acquaintance with the information. A system that operates in secrecy tends to lose the faith of the people as much as its own legitimacy and credibility. Openness and full access to the information are the two pillars of the democratic state. It will equip the citizens to participate meaningfully in the democratic and political process. Governance is undoubtedly strengthened by the RTI. That is why the RTI has been recognized as an essential requirements of the good governance. The enactment of the RTI Act, 2005 is a bold step. The Act covers not only the public sector but also the NGOs and the private sector to some extent. In addition to this, it has various other positive features like provision of First and Second Appellate Authorities. It is also one of the toughest legislations in the world, as it is the only RTI Act imposing penalty for any contravention of the provisions of the Act. Over the past few years, RTI has gained increasing importance in the human rights discourse as well as the larger democratic discourse. Since a democratic government must be sensitive to the public opinion for which information must be made available by it to the people. Effective accountability rests on the peoples' acquaintance with the information. A system that operates in secrecy tends to lose the faith of the people as much as its own legitimacy and credibility. Openness and full access to the information are the two pillars of the democratic state. It will equip the citizens to participate meaningfully in the democratic and political process. Governance is undoubtedly strengthened by the RTI. That is why the RTI has been recognized as an essential requirements of the good governance. The enactment of the RTI Act, 2005 is a bold step. The Act covers not only the public sector but also the NGOs and the private sector to some extent. In addition to this, it has various other positive features like provision of First and Second Appellate Authorities. It is also one of the toughest legislations in the world, as it is the only RTI Act imposing penalty for any contravention of the provisions of the Act.

Keywords: Right to Information (RTI); Human rights; Governance.

Introduction

Transparency seems to be the only means for

sustaining democratic governance. That is why the right to information has been legislated in about 70 countries of the world, and another 30 countries are in the process of legislation. It was in this context

that the RTI was enacted in India in 2005. The experience of 5 years shows that the response to this Act has been very positive and optimistic. It has also been widely welcomed by the people at all levels. They have been seeking various types of Information from different authorities. The RTI Act confers on all citizens the right to seek information and makes it the duty of the public authorities to disseminate the same for better governance and accountability. It covers the central, state and local governments and recipients of Government Grants but does not apply to the intelligence and security organisations except if the information released to the allegations of corruption. Against this back drop, an attempt has been made here to discuss the linkage between RTI and Good Governance.

Comparative Position of RIT in Various Countries

In most of the countries where large scale administrative reforms have been carried out, emphasis has been laid on liberalizing the extent to which initiatives are made available to the general public. In the U.K. Citizen's Charter in the Official Secrets Act, 1911 to narrow the scope of official information falling within the ambit of the Act. Besides, a White Paper guaranteeing a statutory right of access to personal records held by the government has also been implemented in April, 1994. Canada has an access to Information Act which gives all Canadian Citizens, as well as people and corporations present in Canada, the right to have access to federal government records that are not of a personal nature. The government has taken steps to ensure the information about its activities are broadly available to the people with exceptions being limited and narrowly defined, and provisions for resolving any disputes over the application of such exceptions independently of the government. An Information Commissioner has been appointed to investigate complaints from members of the public arising from the above-mentioned Act. Government of Malaysia has also taken various steps to provide an open and transparent government in terms of decision-making. These include publication of reports on public complaints, progress of administrative efforts undertaken by the government etc.

As would be clear from the above, there is a trend worldwide to have increasing openness in the system of governance. Various factors like changing socio-economic milieu, increased awareness of the public about their rights, the need to have a fully accountable and responsive administration and growing public opinion which views efforts at secrecy as enhancing the chances of abuse of authority

by government functionaries, have led to a demand for a greater transparency in governmental functioning. However, complete openness is neither feasible nor desirable. Accordingly, a balanced approach to openness in government functioning has to be devised.

Openness to the Public and Administrators

All governments in the world practise studied concealment of information from the people though the nature, degree and extent thereof varies. While capitalist and democratic countries have a higher degree of openness *vis a vis* authoritarian regimes, nowhere in the world in government functioning totally open. The effort is to satisfy public demands as far as is reasonable and practicable. Transparency also has to be fully compatible with the constitutional and parliamentary system of the country and the cost of sharing information should be commensurate with the benefit to the public. It may also not be practicable to give information about any proposal under consideration while it is yet to be finalized, as this is likely to bring into play several pressure groups with attendant increase in corruption. Thus, what we need in the country today is a limited openness in government functioning, which would make available *ex post facto* information about various, but not all, government decisions to the citizens of this country. While anything that is detrimental to the interests of the nation, the security of the state or its commercial, economic and other strategic interests, may not be made public, nothing should be held back just to subserve the interests of individual bureaucrats and politicians.

Experience of other countries shows that we will have to initiate the process by passing a Right to Information Act, somewhat on the lines of Canada and the United Kingdom. Adequate safeguards will have to be built into the legislation to ensure the primacy of the national interests as also the privacy of the individual citizen. At the same time, an independent authority will have to be constituted to decide whether a document can be made public or not.

Public relations wings, which already exists in most of the government departments, should be converted into Public Relation-cum-Information Wings. Their functions should include dissemination of information to citizens on payment of a prescribed fee. People should be able to inspect Government papers and, if necessary, take photocopies of desired documents. No extra staff should be employed for this work, as the existing staff of PR. Wing can take on these duties additionally. Departments should

also publish information for the general interest and keep copies of these in their libraries for general consumption. They should put information on computers with linkage to Internet and other global networks.

Every important government decision involving a shift in policy should invariably be accompanied by a White Paper in the nature of an explanatory memorandum.

A new kind of office structure, with a counter system, as in the case of banks, should be adopted in all field offices involving public contact. This has already been used with success in the Ahmed Nagar Experiment wherein the district office was restructured, demystified and made more open so as to facilitate the work of the general public. We have to move towards a government office which gives a clear-cut time-limit for disposing of any request of a member of the general public. An individual, if he so wishes, should be made aware about the exact stage of his case at any point of time. In such a system, an applicant is given a fixed time-limit, at the time of submission of his application giving the date on which the final decision on his request would be conveyed. The Passport Officer has already initiated a system, where the status of an application can be ascertained at any point of time.

Openness also implies that the reasons for Government decisions are placed on record in black and white. For this purpose, formulation of criteria that would be used for decision making is a must. Accordingly specific rules, criteria and norms have to be laid down for every activity of the Government.

Part - I

The Genesis and Evolution

The Evolution of the Act may be traced to the following developments and factors.

Effectiveness of the Good Governance

The access to information is cardinal to good governance and the whole mechanism of governance in the country has been vitiated owing to lack of it. According to a paper prepared by the Human Rights Initiative, good governance has eight major facets. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It is an ideal which is difficult to be achieved in its totality. However, to ensure sustainable human development, action must be taken to work towards

this ideal. Access to information is a vital factor for achieving the goals of good governance. It promotes transparency and public accountability in the working of government functionaries.

Emergence of New Forms of Democracies

Since the 1980s, the emergence of new democracies after the collapse of authoritarian regimes has given rise to new constitutions that include specific guarantees of the Right to Information. At the same time, older democracies such as the United Kingdom too are seeing the wisdom of enacting such legislation. International bodies like United Nations Organisation, the Commonwealth, Council of Europe and the Organisation of American States have drafted guidelines or model legislation to promote freedom of information.

Access to Information and Governance

Access to information is the basic requirement in democratization of governance. Despite the LPG regime's stress on curtailing the role of the state, the functions and powers of the government have grown many-fold. These are not always for public good and public interest. There are instances of its use for private gains. In such a scenario, there is always a conflict between power and justice. Therefore, some control mechanism needs to be evolved to discipline the arbitrariness of power to promote justice, equity and fair play.

Participation of the People at All Levels of Administration

Governance in a democracy implies that people should participate in the process of governance. For this, they must have the necessary information to make informed choices between available options. The RTI is also expected to improve the quality of decision-making by removing unnecessary secrecy in the decision-making process. The citizens would be enabled to participate in the processes of decision-making and policy formulation on issue of their concern and to know the criteria applied by government agencies for making these decisions.

New Models of Administrative Accountability

The RTI is necessary to promote a culture of accountability. Accessibility of information pertaining to finances, proceedings and decisions of all the social actors whose activities have an impact on the public, is the guarantee that such actors shall make them accountable. It shall check

mismanagement, abuse of discretion, bribery, other forms of corruption and malpractices.

Empowerment at the Grassroots

Right to information has a rights perspective as well since correct information at the right time reduces the chance of misuse of resources and lessens corruption. It also helps governance function better, makes service providers accountable for their actions, creates participatory and transparent environment for people to contribute in policy formulation and establishing rule of law. It also gives people a legal right to demand entitlements and monitor the use or misuse of funds meant for them. Right to Information regime is also a means for government to empower the poor and inform them about pro-poor policies and safety-net programmes.

Put an End to the Corrupt Practices

The most effective systemic check on corruption is to enable the citizens to take the initiative to seek information from the state, and thereby to enforce transparency and accountability. The RTI is, therefore, likely to reduce corruption and increase administrative efficiency. This is because it provides every citizen the enforceable right to question, 'examine, audit, review and assess government acts and decisions, to ensure that these are consistent with the principles of public interest, probity and justice.

Discretionary Powers should be Minimized

Officers are given discretionary powers for carrying out their duties effectively, and they don't have to depend on seniors for approval. Officials can abuse their discretion to suit various political or vested interests or to misappropriate funds. In absence of legislation on Right to information they tend to be hidden from disclosure. Although it is possible to seek courts intervention to compel disclosure of the information in practice it is not possible for the poor, villagers, due to cost, distance and delays involved.

Efficiency in Administration should be Assured

As far as administrative efficiency in government is concerned, it comprises of conducting the administration without unnecessary delays. It should not have ulterior or corrupt motives while passing orders.

New and Vibrant Society

There can be no democratic participation in decision making without transparency and sharing of information. Secretive government is nearly always inefficient. The free flow of information is essential if problems are to be identified and resolved. Furthermore, a secretive governing culture fosters suspicion and encourages rumors and conspiracy theories.

Preserving Liberties

The Right to information is also essential for protecting liberties of citizens by making it easier for civil society groups to monitor wrong doings like custodial deaths and abuse of preventive detention legislation.

To achieve Development Goals

Legislation on right to information is fundamental to furthering the effective development of society and eradicating poverty. Effective anti-poverty programmes require accurate information on problems hindering development to be in the public domain. Meaningful debates also need to take place around the policies designed to tackle the problems of poverty.

On Government Schemes

In rural areas, numerous schemes for providing food, housing, employment and education are run by the Central and State Government. These schemes meant for the poorest of the poor in the rural areas are routed through the network of government agencies.

There is widespread criticism of these funds being routinely misappropriated or misused on Right to Information and Good Governance a large scale. In most cases, people do not know about the existence of these schemes. Even if they know, they fail to derive the benefits of these schemes. Furthermore, records are often tampered because no one outside the administration has access to them. By providing entire information on these schemes to the public would make the administration more accountable.

Right to Information as a Fundamental Right

That the RTI is a Fundamental Right flowing from Art. 19(1) (a) of the Constitution is now well-settled. Over the years, the Supreme Court has consistently ruled in favour of the citizen's Right to Know in a

number of cases. like: Bennett Coleman vis-a-vis Union of India, 1973; Raj Narain vis-a-vis Government, of Uttar Pradesh, 1975; S.P. Gupta vis-a-vis Union of India 1982 and People's Union for Civil Liberties (PUCL) vis-a-vis Union of India, 2004. In all these cases, Supreme Court pronounced that the citizens of this country have the Right to Freedom and Speech under Article 19(1) (a) of the Constitution and this Right is not complete unless and until the citizens have the Right to Know. The Right to Information was further elevated to the status of a Human Right by the Schedule Caste in 2004 case of 'People's Union for Civil Liberties vis-a-vis Union of India' judgment.

Media's Effectiveness

The citizens resort to the media like newspaper, radio, television etc. for day to day information about government activities. The media serves as a link between the citizens and government.

So, it is essential that media have access to information. The media's right to information is not a special privilege, but rather an extension of the public's right to know. The lack of a right to access official information causes many problems for the media. Balanced reporting becomes difficult when denied the primary sources of information. In absence of exact information they provide biased news, suppress or distort information. By providing right to information, media 12 Right to Information and Good Governance and citizens would together make the government more accountable.

Movement for Transparency

The Right to information has not come on a platter and there have been many activists and citizens' groups whose continuous struggle and efforts and movements have brought about this change. A mass based organization, called the Mazdoor Kissan Shakti Sangathan (MKSS), movement led by Aruna Roy, in May 1990 took an initiative to organize people, in a very backward region of Rajasthan: Bhim Tehsil, to assert their Right to Information by asking for copies of bills and vouchers and names of persons who have been paid wages mentioned in muster-rolls on the construction of school, dispensaries, small dams and community centers.

It spread quickly to other areas of Rajasthan and to other States. The attempts of Harsh Mandar the then Divisional Commissioner of Bilaspur, Madhya Pradesh in 1996 to throw open the registers of Employment Exchanges and the records of Public

Distribution System to the citizens or the agitation led by Anna Hazare in Maharashtra in 2001 are some the examples.

Part – II

Right to Information: The International Perspective

At present, the RTI exists in about 70 countries either in the Constitution or through specific laws. Another 30 countries are in process of enacting such legislation. However, there are still many states, including democracies, where people are still denied access to information. UNDP's conditional laws have compelled many countries to enact the relevant Right to Information : Genesis and Evolution legislations. It has been of the view that people's awareness on RTI directly impacts the life of the people.

United Nations

Freedom of information was recognised as a Fundamental Human Right by the UN at the first session of the UN General Assembly in 1946. It adopted Resolution 59(1) which states: "Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated."

In ensuing international instruments on Human Rights, freedom of information was made a part of the Fundamental Right of Freedom of Expression, which included the right to seek, receive and impart information. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR) which guarantees Freedom of Opinion and Expression: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." This declaration recognizes freedom of expression' including Freedom of Information and free press as Fundamental Human Right.

Article 19(2) of the International Covenant on Civil and Political Rights adopted by General Assembly in 1966 states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Article I of the UNESCO Declaration of 1978 on 'Fundamental Principles Concerning the Contribution of Mass

Media to Strengthening Peace and International Understanding, to the promotion of Human Rights and to Countering Racism, Apartheid and Incitement to war demand a free flow and a wider and better balanced dissemination of Information.

Part – III

Legislating the Right to Information in India

Objections to the Official Secrets Act have been raised ever since 1948, when the Press Laws Enquiry Committee recommended certain amendments. In fact, the Act has been used time and again to suit the purposes of the government.

In 1977, a Working Group was formed by the Janata Party government to look into the possibilities of amending the Official Secrets Act. Unfortunately, the Working Group did not recommend changes, as it felt that the Act related to the protection of national safety and did not prevent the release of information in the public interest; despite overwhelming evidence to the contrary, Official Secret act remained unaltered.

In early 1989, V. P. Singh's National Front Government came to power and declared its decision to make Right to Information a fundamental right.

Later a Committee set up in 1989 by the National Front Government recommended limiting the areas where government information could be hidden and opening up of all other spheres of information. As most of the members of the Committee were bureaucrats, something different was not expected, so no legislation followed from these recommendations.

Finally, the focus of citizens' groups shifted from demanding merely an amendment to the Official Secrets Act, to its replacement by a comprehensive legislation towards the Right to Information. The initiative for the Right to Information was taken by a mass based organization, the Mazdoor Kisan Shakti Sangathan (MKSS) in early nineties in a very backward region of Rajasthan – Bhim Tehsil. This agitation for transparency was started by asking for copies of bills and vouchers and names of persons who have been paid wages mentioned in the muster rolls for the construction of school, dispensaries, small dams and community centers in the Block Development & Panchayat Officer, office. After years of knocking at officials' doors and despite the usual apathy of the State Government, MKSS succeeded in getting photocopies of certain relevant documents. Misappropriation of funds was clearly obvious.

MKSS organized several Jan Sunwai (People's hearing), between December 1994 and April 1995, in Rajasthan. This grassroot movement spread very fast to other areas of Rajasthan and to other States establishing firmly that information is power and people should have the right to official information.

Subsequently, the National Campaign for People's Right to Information (NCPRI) formed in the late-1990s became a broad-based platform for action. As the campaign gathered momentum, it became clear that the right to information had to be legally enforceable. It was demanded that information that cannot be denied to Parliament or state legislatures cannot be denied to a citizen either.

In 1996, Justice P.B. Sawant, the Chairman of the Press Council of India, drafted the bill keeping in view the dire need of the day and the observations made by eminent persons that in a democracy, it is the people who are the masters and those utilizing public resources and exercising public power are their agents.

The Press Council of India and the 1998 Resolution

The Press Council of India, the Press Institute of India, the National Campaign for People's Right to Information and the Forum for Right to Information unanimously submitted the Resolution on February 20, 1998 to Government of India for amending the proposed bill.

Main Points of the 1998 Resolution are as Follows

- i. The Right to Information should also be extended respect of companies, NGOs and international agencies whose activities are of a public nature and have a direct bearing on public interest;
- ii. The law must contain strong, penal provisions against willful and wanton withholding or delay in supplying information or deliberately supplying misleading or inaccurate information;
- iii. The law must contain an appeal mechanism of an independent nature to provide reliable redress to any citizen dissatisfied with any decision of a public authority under this law;
- iv. The categories of information, which can be restricted or -withheld by the Government, are too wide in the draft Bill. In particular, the restriction on disclosing internal notings and official correspondence between public officials and offices has no justification whatsoever;
- v. Similarly the restriction on confidential

communications between the State and Centre and their agencies have no justification, unless they harm public interest; and

- vi. The restriction on disclosure of the record of discussions of Secretaries and other public servants also needs to be removed. However, this draft also went into cold storage due to the fall of two United Front Governments;

Freedom of Information Bill 2000

The BJP led National Democratic Alliance reworked on the Shourie's draft to finalise the Freedom of Information Bill, 2000. It was introduced in the Lok Sabha on July 25, 2000. However, after the president's signature this Act could not be notified in the Government Gazette.

This Freedom of Information Bill included some provisions that were not in the Shourie draft, such as the requirement that urgent requests in cases involving life and liberty should get a response within 48 hours. Various provisions of the Act were similar to that of the RTI Act except on the points on which it has been criticized.

The Act has been criticised on the followings main points: It reinforces the controlling role of the government official, who retains wide discretionary powers to withhold information. For example, requests for information involving "disproportionate diversion of the resources of a public authority" can be shot down by the public information officer. This leaves open the danger that government officials might be transformed from gatekeepers of the Official Secrets Act to gatekeepers of the Freedom of Information Act.

The most scathing indictment of the Act has come from the critics who focus on the sweeping exemptions it permits viz. restrictions on information relating to security, foreign policy, defence, law enforcement and public safety. The Act also excludes Cabinet papers, including records of the Council of Ministers, secretaries and other officials. Information shared between the Centre and States were not subject to disclosure. These exemptions effectively shielded the whole process of decision-making from mandatory disclosure.

Part IV

RTI Act 2005

The Parliament of India passed legislation on Right to Information in 2005. It is a landmark legislation in Indian context. It is in consonance with

provisions of International Covenants on the issue and has brought India in line with other development democracies of the world. Right to Information Act, 2005 was passed by both the Houses in the Summer Session of the Parliament and received assent of President on June 15, 2005. Around 150 amendments were introduced in the original draft. The Act replaces relatively weak and ineffective legislation, the Freedom of Information Act, 2002.

Salient Features

- The Act provides all citizens the right to information, subject to the provisions of the Act.
 - It covers all the three tiers i.e. central, state and local government and also the three branches i.e. legislative, executive and judiciary of the government.
 - It applies to "Public Authorities" established or constituted by or under the Constitution; by any law made by the appropriate Government or, any other body owned, controlled or substantially financed directly or indirectly by the appropriate Government and includes non-government organization substantially financed by the government.
 - The ambit, covers even the private bodies and their information can be accessed through the controlling public authority.
 - The Act provides that information of the third party can be accessed after giving ten days notice to the third party.
 - It casts an obligation on Public Authorities to grant access to information and to publish certain categories of information. Public Authorities are also supposed to maintain their record in the indexed and cataloged manner. The responsibilities about *suo-moto* disclosure/publication 'by public authorities have been considerably enlarged.
- The Act lays down the machinery for the grant of access to information. The Public Authorities are required to designate Public Information Officers and Assistant: Public Information Officers for dealing with requests for information and – also to assist persons' seeking information.
- Provision has been made for transfer of a request by a public, authority to another public authority, wherein the subject' matter/ information is held by the latter.
 - A time limit has been prescribed for compliance with requests for information under the Act, viz.

30 days for normal information; 40 days for third party information; life and liberty information in 48th hours and information relating to human rights violation in 45 days.

- The Act provides that in case PIO rejects the application, he/she is bound to give reasons of such rejection; the period within which can appeal against such rejection may be referred as well as the particulars of the appellate authority.
- The Act excludes the time taken for calculation and intimation of fees from the time frame.
- The Act prescribes for reasonable fee for providing information. Also, no fee to be charged from persons who are below poverty line. Further, information to be provided free of charge where the response time limit is not adhered to.
- Certain categories of information have been exempted from disclosure. The categories, by way of illustration, include, information likely to affect security of the State, strategic, scientific or economic interests of the State, detection and investigation of offences, public order, conduct of international relations and Cabinet papers. Trade or commercial secrets, information the disclosure of which would cause breach of privilege of Parliament of State Legislature and personnel information which has no relationship with public activity and could cause unwarranted invasion of the privacy of any person are also exempted from disclosure. However, exemptions provided are not absolute and -withholding of information must be balanced against disclosure in the public interest. Information is to be released even if harm is shown to the public authority if the public benefit in knowing the information outweighs the harm that may be caused by disclosure.
- The Act contains a provision for reveal of certain information, which is otherwise, exempted from disclosure on completion of 20 Years after the incident.
- The Act also incorporates the principle of severability.
- Envisages creation of an independent non-judicial machinery, viz., Central Information Commission and State Information Commissions comprising a Chief Information Commissioner and Information Commissioners to decide 2nd stage appeals. At the same time, there is no hierarchy of Commissions.
- Legal framework for exercise of powers by the Commission defined in the Act.
- The Commission while inquiring into any matter has the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure.
- The Act provides a two-tier Appellate Forum. First appeal to the departmental officer assigned the responsibility of the Public Information Officer. The second appeal to be made to the Commission.
- On a request for information being refused, the applicant can prefer an appeal to the prescribed authority within 30 days of the decision; the time limit for disposal of appeal being also 30 days extendable to 45 days. The second appeal can be made within 90 days of the decision of the first appellate authority.
- In case of a grievance at PIO level, there is a provision for making a complaint directly to the Commission.
- Intelligence and security agencies specified in Schedule II to the Act have been exempted from being covered within the ambit of the Act. However, the exemption is not absolute; agencies shall have the obligation to provide information in matters relating to corruption and human rights violations.
- The decisions of the Commission are binding.
- The jurisdiction of subordinate courts has been barred.
- The provisions of the proposed Act have been made over-riding in character, so that the scheme is not subverted through the operation of other minor Acts.
- Under the provision of the Act CIC/SIC can impose a penalty of Rs.250 per day on PIO. This penalty can go up to a maximum of Rs,25000.
- There is a provision of disciplinary action against PIO for any contravention of the Act. A disciplinary action can be recommended as per the service rules applicable to the PIO.
- The Act provides that there is no criminal liability of the PIO and the PIO is immune from the actions done in good faith.
- Central Information Commission and State Information Commissions to monitor the implementation of the Act and prepare an Annual Report to be laid before Parliament/State Legislature.
- Rule making power for effective operationalisation of the Act is with the competent authority i.e. Central/ State Government subject to

the approval of Parliament and Assembly respectively.

- The Act repeals the Freedom of Information Act, 2002.

Deficiencies in the RTI Act

In spite of being very exhaustive and with all its positive features, the RTI Act suffers from some weaknesses which has impeded its uniform and effective implementation during the last three years. These deficiencies are discussed below:

Substantial Financing

The Act does not define the word “substantially financed”. Though some Information Commissioners both at the Centre and the State level are of the view that since the word control is there in the definition of public authority so why the need of the definition of substantial financing has not aroused as one can have the information of public authority even if it has not been financed because it is controlled by some agency or department under certain existing Act. However, the substantial financing has created a lot of confusion for the user and providers of information under the Act. Therefore, it should have been amplified by way of an explanation. This omission will result in different interpretations of the term by different states and public authorities.

NGOs

There is another dimension to this issue. The expression Non-Governmental Organisations as used in the Act is ambiguous. The NGOs, are a class and category apart from the other private sector organisations. The use of the phrase ‘Non-Governmental Organisations’ creates an illusion that the Act is applicable only to NGOs because they receive funds under various projects and schemes of the Government as partners in implementation. There are many other private institutions specially the Government aided private schools and colleges who believe that they should not be designated as public authority on the spurious argument that they belong to the private sector.

Lack of Clarity on Public Authorities

The Act also imposes certain obligations on public authorities in Section 4. Primarily, these relate to (a) proper maintenance and upkeep of records, and (b) suo motu dissemination of information through publication of information directories about the

functions and functioning of each public authority. But, the public authorities, have generally been treating this provision as optional rather than compulsory. The dictionary meaning of obligation is binding power, written bond, duty, some thing that obligates one to a course of action, etc. But it appears that in the absence of any penalty clause, the task is not viewed as an obligation, which gives rise to the question: What option the Information Commission has if the Public Authority does not comply with this provision? Unless enforced, these obligations will remain only on paper.

On Life and Liberty

The Act does not define the information falling under life and liberty. Sikkim has defined life and liberty in its RTI rule as if the information requested relates to a person's confinement, internment, arbitrary detention, imminent death at the hands of the State or another individual, torture or violation of due process rights. Moreover, there is no provision for relatively speedier disposal of appeals/ complaints regarding information pertaining to ‘Life and Liberty’ unlike 48 hours time stipulated for providing such information. The Act should be amended to include such provisions.

On First Appellate Authority

The Section 19(1) provides for the designation of an appellate authority at the Public Authority level who is an officer senior in rank to the Public Information Officer (PIO). However, the Act is silent about the powers and functions of the first appellate authority. As a result, there is confusion about the role and responsibility of the first appellate authorities. Moreover, the Act does not in a way, make the first appeal mandatory when it says that any person aggrieved by the decision of the PIO may prefer an appeal to such officer who is senior in rank to her/him. In general perception, an applicant is supposed to appeal with the Information Commission only after she/he has exhausted all options. The Act does not support this perception. It is not clear whether the information commission can entertain an appeal when the first appeal has not been preferred by the appellant.

On Appeals and Complaints

The grounds of a complaint under Section (u/s) 18 and for an appeal u/s 19 are overlapping. Separate grounds should be there for appeals and complaints. Three clauses of Section 18 (1) i.e. Clause (b) relating

to refusal of access to information; (c) relating to no response to the request for information within the stipulated time; and (e) relating to giving incomplete, misleading or false information may be deleted as these ground's are basically for exercising appellate powers u/s 19.

Contempt Provisions

Section 19(7) of the Act, states that the decision of the Information Commission shall be binding. But it is not supported by 'Contempt of Court' provision to enforce compliance of its decision by the public authority. Due to the absence of such a provision there are instances of non-compliance of orders passed by the Commission.

On the Powers of Civil Courts

Information Commissions have been conferred powers of a civil court u/s 18(3) under the Civil Procedure Code, 1908. The powers of civil court u/s 18(3) have been given only for limited purposes. These do not cover powers concerning execution of decrees and recovery of fine etc. The ICs powers of civil courts may be incorporated into a separate section within the same Chapter V so that it becomes applicable to all proceedings (including enquiry, appeal and penalty proceedings). Similarly, the provisions under Section 19(7) and 19(8) may be incorporated in separate sections in Chapter V so that these powers can be applied in case of all proceedings before the Commission. Similarly, there is no uniformity of procedure of enquiry, the procedure for hearing under Section 19 and for conducting enquiry u/s 18 which points should be clearly outlined.

Time frame for the Information Commissioners

Unlike the time limit for the First Appellate Authority for giving decisions on appeals, the Act does not provide for any time limit to decide the appeal. Due to the absence of this provision, ICs are very often not giving the decisions on appeals on time and not only this the disposal rate is also not very good. To avoid any delay in disposal of appeals, there should be a provision regarding the time limit in the Act.

Part V

Concluding Observations

Every citizen has the right to know how the government is functioning. Right to information

empowers every citizen to obtain information from the government. It is duty of public authorities to maintain records for the easy access and to publish within 120 days the name of the particular officers who should give information and in regard to the framing of the rules and regulations. All information shall be disseminated widely and in such form and manner which is easily accessible to the public. It has been provided that it is required that the request to be disposed of within 30 days provided that where information sought for concerns life or liberty of a person, the same shall be provided within 48 hours. If a request is rejected it shall be communicated giving reasons and specifying the procedure for appeal and the designation of the appellate authority. The Act also exempts granting information where it would disproportionately divert the resources of the public authority or would be detrimental to the safety and preservation of the record in question.

Knowledge and information is the prerequisite for the enjoyment of this right because the lack of authentic information on matters of public interest leads to the wild rumors. Freedom of speech and expression includes the right to receive and collect information. Since the democracy is the government of the people who are the sovereign masters. There can be no government by the people if they are ignorant of the issues to be resolved, the argument for and against different solutions and the facts underlying those arguments. The taxes collected by the government belong to the people. They have the right to know in what manner they are being governed and how their money is being spent. The business of the government should be a participatory process. The fact should be made public. Only a fully informed citizenry can be better equipped for the performance of these duties.

The Right to Information Act enables the citizens to get the required information for the redressal of the grievances within a specified time from the date of filing application. Any citizen can ask for information under this law by applying in writing or through electronic means to the Public Information Officer (PIO). Specifying the particulars of the information sought for. The right to information has been judicially recognized as a part of the fundamental right to speech and expression. Information is sine qua non for the efficient functioning of democracy. It keeps the people informed about the socio-political and economic affairs and issues. In a developing country like India, the availability of the information is required to be assured to the people in a simple and speedy manner because the development process depends on it.

Over the past few years, RTI has gained increasing importance in the human rights discourse as well as the larger democratic discourse. Since a democratic government must be sensitive to the public opinion for which information must be made available by it to the people. Effective accountability rests on the peoples' acquaintance with the information. A system that operates in secrecy tends to lose the faith of the people as much as its own legitimacy and credibility. Openness and full access to the information are the two pillars of the democratic state. It will equip the citizens to participate meaningfully in the democratic and political process. Governance is undoubtedly strengthened by the RTI. That is why the RTI has been recognized as an essential requirement of the good governance. The enactment of the RTI Act, 2005 is a bold step. The Act covers not only the public sector but also the NGOs and the private sector to some extent. In addition to this, it has various other positive features like provision of First and Second Appellate Authorities. It is also one of the toughest legislations in the world, as it is the only RTI Act imposing penalty for any contravention of the provisions of the Act.

However, mere conferment of the right is not enough. Its successful implementation in the true spirit is needed. The revision and review of legislations contrary to this right is required. Suitable amendments in the conduct rules for public servants, attitudinal change in the behaviour of the bureaucracy, creation of efficient information management system, more frequent use of this right by press and will of the citizens are also required. Many loopholes need to be plugged. However, despite the weaknesses, it is a

Magna Carta for introducing reforms in the governance in the country and will go a long way in strengthening the roots of democracy by introducing transparency and accountability in governance.

References

1. R.S. Dhaka, Right to Information and Good Governance, concept, New Delhi, 2010.
2. Sapna Chadah, Right to Information Regime in India, IIPA, March 2006.
3. J.G. Roy, Right to Information Initiatives and Impact, IIPA, New Delhi, March 2006.
4. S. Pande and S. Singh, Right to Information Act 2005, NBT, New Delhi 2008.
5. M.R. Biju, Democratic Political Process. (Ed.) Mittal, New Delhi, 2008.
6. M.R. Biju, Democracy in the Modern World: The Indian Experience-Two Volumes Kanishka, New Delhi, 2009.
7. M.R. Biju, Strategic Management, Social Security and Banking Sector Reforms: Issues and Concerns, Authors Press, New Delhi, 2010.
8. M.R. Biju, Development Issues in Contemporary India, Concept, New Delhi-2010.
9. B.L. Fadia and K. Fadia, Public Administration, Sahitya Bhavan, 2004.
10. M.M. Semwal and Sunil. K, Right to information and Judiciary, IJPS, Volume LXIX, No. 4, Dec 2008
11. Harinderjit Kaur, Right to Information, South Asia Politics, Vol 8, No : 12, April 2010.