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RTI IN INDIA

Introduction

“Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing.”

-Justice P N Bhagwati

Democracy requires an informed citizenry and transparency of information which are essential to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to be governed.

Right to Information (**RTI**) Act aims to provide for a regime where any citizen of India may request information from any **Public Authority**. It also requires every public authority proactively disclose certain categories of information so that the citizens need minimum recourse to request for information formally.

Since **RTI** is implicit in the Right to Freedom of **Speech and Expression** under **Article 19** of **Indian Constitution**, it is an implied fundamental right of any citizen of India to know what is happening with the government. Every individual has the freedom to seek any government related information through this RTI act 2005. **The Right to Information Act (2005)** is one of the key legislations enacted by the parliament which guarantees the right and freedom of every citizen of India to get the information related to our government dealings, both at center and the states. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The act is a big step towards making the citizens informed about the activities of the government.

Section 2(j) : “Right to information” means the right information accessible under this act which is held or under the control of any public authority and includes the right to:

- Inspection of work, documents, records;

- Taking notes, extracts or certified copies of documents or records;
- Taking certified samples of material;
- 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 in any other device.

Section 2(f) : The act defines “Information” as any material in any form, including records, documents ,memos, e-mails, opinions, advice, press releases, circulars, orders, books, contracts, reports, papers, samples, models ,data material held in any electronic form. It also includes information relating to any private body which can be assessed by the public authority under any law for the time being in force.

Importance in a Democracy

The number of RTI applications luminously expanded in the open working bodies. Debasement developed because of the centralization of managerial and political power in the guideline of social and monetary assets. Vote based system thus needs answerability and accountability in investment of residents in administrations. A right to information will ensure that individuals can consider open bodies responsible without having to lay the whole weight on their chosen delegates who are themselves regularly unfit to get the data looked for however every one of the assets is in their direction. Ideal to information is gotten from our key right of articulation under **Article 19**.

Vote based system rotates around the essential thought of citizens being at the focal point of administration and a standard of a people. Regularly it is assumed that whatever is finished by the legislature is accomplished for the general society for open welfare with ideal advantages from the assets utilized. In any case, the fact of the matter is another route round, as lately; there are numerous frequencies of abuse, misappropriation and furthermore reckless utilization of open assets. To check it, a total straightforwardness in every open managing is required. RTI Act, 2005 has the impact of destroying the way of life of mystery and changing the attitude of civil servants and legislators and made conditions for taking educated choices. There are some points mentioned below shows importance for democracy:

- i. Makes the executive more accountable to the legislatures, thus enhancing people's voice in governance.
- ii. Empowers people with information to judge the performance of governments. **E.g., many RTI revelations were responsible for the fall of UPA in 2014 elections.**
- iii. It makes corruption a political issue and does improve the working of democracy.
- iv. Allows for citizens' participation in governance.
- v. Information activism in the country is a good sign of democracy.

Origin in India

There is a long history of RTI Act 2005 in India. It took a lot of effort and time to make RTI (Right to Information) a reality for citizens. There were many existing rules contrary to the right to information. Let me provide you with various challenges and events in the evolution of RTI in India.

History of RTI Act 2005 in India: Challenges

In the long history of RTI Act 2005 in India, there were various challenges to overcome. Since British times, there have been many laws that prohibited implementation of right to information. Important laws that prohibited Right to Information in India is produced below:

The Official Secrets Act, 1923: This law was the most important challenge in the history of RTI Act 2005 in India because it prohibited all public servants from disclosing any information to the public.

Section 123 of the Indian evidence Act 1872: No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Oath by the Public Servant: Before joining duty, public servant swears that the information is a state secret.

Rule 11 of The Central Civil Services (Conduct) Rules, 1964: No Employee of the Secretariat shall, except in accordance with any general or special order of the Secretariat or in the performance in good faith of the duties assigned to him/her, communicate, directly or indirectly, any official document or any part thereof or information to any Employee of the Secretariat or any other person to whom he/she is not authorized to communicate such document or information.

Rule 9 of The All-India Services (Conduct) Rules, 1968: No member of the Service shall except in accordance with any general or special order of the Government or in the performance in good faith of duties assigned to him, communicate directly or indirectly any official document or part thereof or information to any Government servant or any other person to whom he is not authorized to communicate such document or information.

Archives Policy Resolution of 22 December 1972: States that all documents are classified for 30 years and thereafter only non-confidential material is available to a restricted range of people. Even unclassified material cannot be communicated to anyone outside the government without permission.

The relevant legal provisions are as mentioned below: ~

The above-mentioned prevalent laws are considered main hurdles to right to information in the history of RTI Act 2005 in India. I have listed below various important events in the evolution of the RTI Act, 2005 that made history of RTI Act 2005 in India.

1977: Janata Government headed by **Morarji Desai** constituted a working group to ascertain if the Official Secrets Act, 1923 could be modified so as to facilitate greater flow of information to the public. The working group recommended that the Act of 1923 should be retained without change.

1986: In the famous case of **Mr. Kulwal v/s Jaipur Municipal Corporation** the Supreme Court gave clear cut directive that Freedom of Speech and Expression provided under Article 19 of the Constitution clearly implies Right to Information as without information the freedom of speech and expression cannot be fully used by the citizens.

1990: Heading the National Front government, Prime Minister V.P Singh, first politician to lay emphasis on RTI, stressed on the importance of Right to Information as a legislated right. He tried to enact legislation in 1989-90. But, due to the political instability at the time, the idea did not materialize and V P Singh was removed from office in 1990, as his government lost the confidence vote in Lok Sabha.

1994: **Mazdoor Kisan Shakti Sanghatan** (MKSS) started a grassroots campaign for Right to Information – demanding information concerning development works in rural Rajasthan. This

movement grew and the campaign resulted in the government of Rajasthan enacting a law on Right to Information in 2000.

1995: Draft Act was formulated in a meeting of social activists at the LBSNAA, Mussoorie, 1995.

1996: **National Campaign for People's Right to Information (NCPRI)**, one among several civil society groups, was founded with the objective of getting legislation on RTI passed. Due to the growing demand for right to information, the Press Council of India under guidance of its Chairman Justice P B Sawant drafted a law which was later updated and changed at a workshop and renamed "The Press Council–NIRD Freedom of Information Act, 1997.

2004: NCPRI formulated amendments to Freedom of Information Act, 2002 and forwarded to the NAC. NAC endorsed minor changes and recommended them to the Government (Prime Minister). There was reluctance among politicians and bureaucrats in adopting these changes. There was an attempt made to re-notify the earlier Freedom of Information Act; This move faced widespread protests by citizens and civil society.

2004: Finally, on 23rd December 2004, UPA Government tabled the RTI Bill **2004**, applicable only to the Union Government. The civil society was not happy with this. Most of the information required by the common man was from state governments. The bill did not serve the purpose of the common man. Some members of the NAC too were unhappy with this. After heavy lobbying by NCPRI and other organizations the Right to Information Act, **2005** was passed with 150 amendments. Bill is now applicable to States also.

2005: RTI Bill was passed in Lok Sabha on 11th May 2005, and in Rajya Sabha on 12th May 2005. It received assent from the President of India on 15th June 2005, and was published in the Gazette of India on 21st June 2005. RTI Act, 2005 came into force with effect from 12th October 2005, and known as Right to Information Act, 2005 (Act No. 22 of 2005).

The above-mentioned list of events does not contain all important events in the history of RTI Act 2005 in India, rather contains only those events that had been influential in the evolution of RTI Act 2005 in India.

Landmark cases

In order to understand the effectiveness of a Fundamental Right, it is important to analyse the various aspects in which the right has been given effect by the Judiciary. A few landmark cases have been taken to highlight the various facets relating to Right to Information:

- ❖ In **Bennett Coleman v. Union of India**¹², for the first time, the right to know as a Fundamental right was realized and consequently the Supreme Court ruled that the right to freedom of speech and expression guaranteed by Art. 19(1) (a) included the right to information.
- ❖ In **State of UP v. Raj Narain**¹³, Justice Mathew thoroughly stated, "It is not in the interest of the public to cover with a veil of secrecy the common routine business, the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."
- ❖ In Secretary, Ministry of I&B, **Government of India v Cricket Association of Bengal**¹⁴, the Supreme Court held that the right to impart and receive information from electronic media was included in the freedom of speech.
- ❖ In **S.P. Gupta v. Union of India**¹⁵, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was illustrated by the Apex Court of India.

- ❖ In People's Union for Civil Liberties v. Union of India¹⁶, the right to information was further elevated to the status of a human right, necessary for making governance transparent and accountable.

Analysis

The Act has been criticized on several grounds. It provides for information on demand, so to speak, but does not sufficiently stress information on matters related to food, water, environment and other survival needs that must be given proactively, or suo moto, by public authorities. The Act does not emphasize active intervention in educating people about their right to access information -- vital in a country with high levels of illiteracy and poverty -- or the promotion of a culture of openness within official structures. Without widespread education and awareness about the possibilities under the new Act, it could just remain on paper. The Act also reinforces the controlling role of the government official, who retains wide discretionary powers to withhold information. Another stringent criticism of the Act is the recent amendment that was to be made allowing for file noting's except those related to social and development projects to be exempted from the purview of the Act. File noting's are very important when it comes to the policy making of the government. It is these notes that hold the rationale behind actions or the change in certain policy, why a certain contract is given or why a sanction was withheld to prosecute a corrupt official. Therefore, the government's intention to exempt the file noting's from the purview of the Act has come in for stringent criticisms.

Conclusion

By enacting the Right to Information Act India has moved from an opaque and arbitrary system of government to the beginning of an era where there will be greater transparency and to a system where the citizen will be empowered and the true center of power. Only by empowering the ordinary citizen can any nation progress towards greatness and by enacting the Right to Information Act 2005 India has taken a small but significant step towards that goal. The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused. Thus, with the enactment of this Act India has taken a small step towards achieving real Swaraj.

Footnotes

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