

Evolution of Right to Information in India;It's Problems and Challenges in Implementation

Ceejun Chandran

Ph.D Scholar, Jamia Millia Islamia New Delhi-(INDIA)

Email:ceejun.rtidelhi2014@gmail.com

Abstract

The present article aim to introduce the readers with national international laws and development that led to the enactment of Right to Information Act, 2005 in India. There were various enactment existed such as Official Secret Act 1923 which made impossible for the citizen to seek information from the government. The access to information and leakage of information by the official and the citizen was a punishable offence.The Article also emphasis on the struggle made by NGO's,Media and Activists in India to bring right to information as a reality.It will help every one to know how national international development led to enactment of RTI law in India.It includes rationale behind the introduction of RTI in India;Scope of RTI;Provisions of RTI;Problems and Challenges in Implementation.

Key Words:

Information; National; International Legislation; Law regarding RTI; Scope; Transparency; Accountability; Problems; Challenges in implementation

Introduction

Right to information Act is not an accident but a deliberate creation by the citizen as wells the policy makers.There were several enactment through which the citizen's access to information was denied by the law makers and as well as the law

implementors .The enactment that debared the Indian citizen from access to information includes Official Secrets Act 1889,The Official Secret(Amendment) Act,1904,The Official Secret Act a 1911,The Official secret Act 1923, Civil Service conduct Rules 1964,The Public Records Act 1993,The Public Records Rules,1997 etc were in existence to forbid the citizens from accessing information in one way or the other.Every time when any new Act was passed the law become more tougher and stricter to keep the citizen away from looking into the work done by the government.There were various kinds of information classification such as top secret,secret,confidential as per The Public records Act 1993. There were strict punishment if any information was leaked or passed by the Officials,which made them working within their limits.Secretcy was encouraged openly by the government as well as the officials working under them,that is a regime of secrecy and openness ,transparency was suppressed and submerged.Openess is no where to be seen or heard.

EVOLUTION OF RTI IN INDIA

Evolution of RTI in India was not a job on one day but it took almost four and a half decade to become a Central enactment.Ever since 1948 there was an objection raised towards the Official

Secrets Act 1923. In India the movement for the demand for Right to Information actually took place during the post independence period between 1970's to 2005 through various Supreme Court judgements, draft bill, States enactment and initiative taken by NGO's, Civil Society, RTI activists etc.

The first political commitment to the came into being after 1977 Lok Sabha Elections during Internal Emergency of 1975-1977. Working Group was formed by the government to look into possibilities of amending the Official Secret Act. Unfortunately the working group did not recommend changes, as it felt the Act related to the protection of national safety and did not prevent the release of information in the public interest. In 1989 a Committee was set up which recommended limiting the areas where government information could be hidden and opening up of all other spheres of information but legislation followed from these recommendations.

Movement to demand RTI in India was very slow but gradually acquired its momentum with the participation of Civil Society, NGO etc. The major was played by Mazdoor Kisan Shakti Sangathan (MKSS) and National Campaign for Peoples Rights In India (NCPRI), Parivartan and human rights activists like Aruna Roy, Nikhil Dey, Shekhar Singh etc. The RTI movement started at Devdungri located at ten kilometers south of the Provincial Town of Bhim, in the Northern pocket of Rajasmand district. MKSS was founded in the year 1990. The activists worked on the issues that influenced every day life of the common people such as guaranteed minimum wages in the State Development Project, Drought Relief, Equitable

distribution in the Public Distribution System (PDS). The demand for Right to information was a part of minimum wages. Almost every activists demanded documents related to minimum wages but the official made an excuse under the Official Secret Act of 1923 (OSA), which guaranteed secrecy and confidentiality. For the first time MKSS organized *jansunwai* on 17th December 1994 in Kot Kirana in Pali district followed by Bhim and Vijaypura both in the district of Rajasmand district itself and On 25th April, 1995 at Jawaja in Ajmer district. MKSS managed to get documents which pointed irregularities in certain development projects. The muster rolls of a number of construction projects had names of people who did not work on the construction site. It was found that in Bhim itself Rupees 36 lakhs had been made fraudulent company which existed only in the form of bank account. Such discrepancies existed in other region also.

On 5th April 1996 MKSS organized a *dharna* in the town of Bewar in Ajmer to put pressure on the government to access to information. It was an important demonstration by over five hundred people. The State Government set up a Commission to look into the benefits and risks of access to information. The Arun Kumar Committee submitted its report on 30th August 1996. The Right to information became a topic for Rajasthan Assembly Elections in the second half of 1998. Ashok Gehlot, the candidate of Congress party for the post of the Chief Minister, supported the demands of the MKSS and included it in his election manifesto. The State Assembly passed the Rajasthan Right to Information Act, 2000 in January 1999, which came into force in June 2000.

The first major draft legislation on the Right to Information was circulated by the Press Council of India in 1996. This was based on the draft prepared by an earlier in a meeting of social activists, civil servants and lawyers at Lal Bahadur Shastri National Academy of Administration, Mussories in October 1995. The aim was to affirm constitutional position to right to information already exists under the Indian constitution in Article 19(1)(a) Freedom of Speech and expression.

The Government of India then constituted a Working Group under consumer activists Late H.D. Shourie. The Working Group submitted the draft Bill on Freedom of Information in May 1997. This draft widened the scope of exclusions to enable Authorities to withhold 'information the disclosure of which would not subserve any public interest'. It also narrowed the definition of Public Authorities by excluding the private sector and those NGO's that are not substantially funded or controlled by the government. Also no penalty provisions in the event of default against erring officials was made. Appeals were allowed to Consumer Courts. Thus many of the positive aspects of the Press Council draft were let down.

Press Council of India prepared a draft Bill in 1996 to make provision for securing right to information. The Institute of Rural Development, Hyderabad also prepared a Bill in 1997. Inspired and encouraged by the exercise taken up by the Press Council of India, Working Group, Central and State Government. Also yielded under popular pressure and started preparing draft legislation on Right to Information.

Prime Minister Deve Gowda favoured Freedom Of Information to combat undue secrecy in the government and the idea of social audit as an instrument of greater accountability. The Conference resolved the coordinated efforts of the Central and State Governments on a number of themes, including transparency and the right to information. The government agreed to take steps, in consultation with States to introduce Freedom of Information Legislation along with amendments to the Official Secrets Act and accessible computerized information centres to provide information to the public on essential services and speeding up efforts to computerize governmental operations.

The Fifth Pay Commission in its report in 1997 advocated amendment in Official Secrecy Act to ensure transparency in government functioning. United Front Government constituted a committee to look into the matter and give necessary recommendations.

The Consumer Education Research Council (CERC) proposed freedom of information legislation in India, in line with International Standards, it gave the RTI to everyone, except "alien enemies", whether or not they were citizens. It required public agencies at the federal and State levels to maintain their records in good order to provide a directory of all records under their control, to promote the compensation of records in inter connected networks and to publish all Laws, Regulations, Guidelines, Circulation issued or to be issued by the government department and any information concerning welfare schemes. The draft provide for out right repeal of the Official

Secret Act. This draft didn't make it through Parliament either.

In 1997, a Conference Of Chief Ministers resolved that the Central and State Governments would work together on transparency and Right to Information. Following this Centre agreed to take steps, in consultation with the States, to introduce Freedom of Information Legislation along with amendments to the Official Secrets Act 1923 and the Indian Evidence Act, 1872 before the end of 1997. The Central and State also agreed to a number of other measures to promote openness. These included establishing accessible Computerised Information Centres to provide information to the Public on essential services and speeding up ongoing efforts to Computerise Government Operations. In this process, particular attention would be placed on Computerisation of Records, Passports, Investigation of Offences, Administration of Justice, Tax Collection and The Issue of Permits and Licenses.

After all these efforts Tamil Nadu was the first State to set an example by introducing the Right to Information Act on April 1996; Goa was the second State to enact Right to Information Act. Goa Act had peculiar provisions which allow the State to withhold information without sustaining reasons for it. The Act did not mention about the competent authorities who would furnish the information. Maharashtra Right to Information Act 2002. The Maharashtra Act had nine sections in all, with twenty two categories of exempted informations. It did not provide for an Appellate Authority to review the Appeals filed by the applicants. It did not have provisions for

providing information proactively, penalty for withholding information. Delhi Right to Information Act, 2001. The Delhi Act contains standard exemptions and provided for an independent body. It also established a State Council for Right to Information. The Delhi Government also enacted Delhi Right to Information Rules, 2001.

LAWS TO BRING RTI LEGISLATION IN INDIA

First political commitment to the citizens to bring right to information was during the Lok Sabha elections in 1977 by the Janata Party. It was seen as a resentment against suppression of information, press censorship, abuse of authority during the internal emergency of 1975-77. The Janata party was founded by Lok Prakash Narain, who promised an "open government and declared that it would not 'misuse the intelligence services and governmental authority for personal and partisan ends'. Pursuant of this commitment government headed by Morarji Desai constituted a working group comprising officials from the Cabinet Secretariat, Ministries of Home Affairs, Finance, Defence labored for months to recommend that the Act of 1923 should be restrained without change.

In the year 1989 The National Front Government in its election manifesto emphasized on "open government". In December 1989 Prime Minister V.P. Singh addressed to the nation said right to information shall be guaranteed through constitutional provisions.

In India various laws provided access to information in relation to specific

contexts. Section 76 of the Indian Evidence Act, 1872 contains what has been termed 'Freedom of Information Act in embryonic form'. This provision requires Public Officials to provide copies of Public Documents to any one who has a right to inspect them.

The Factories Act 1948 provides for compulsory disclosure of information to factory worker "regarding danger including health hazards and the measures to overcome such hazards", arising from their exposure to dangerous materials. The Environment (Protection) Act 1986 and the Environment Impact Assessment regulations provide for public hearings and publications of the executive summary of any proposal for any project affecting the environment by the person seeking to execute the project.

In Bennet Coleman & co. v. Union of India :- The petitioner, a publishing house bringing out one of the leading dailies (*Times of India*), challenged the government's Newsprint policy which put restrictions on the acquisition, sale and consumption of news print. This was challenged as restricting the petitioner's right to freedom of speech and expression. The court struck down the news print control order saying it directly affected the petitioner's right to publish and circulate the paper. In that it violated their right to freedom of speech and expression. The judges also remarked: 'It is indisputable that by freedom of the Press meant the right of all citizens to speak, publish and express their views' and 'freedom of Speech expression includes within its compass the right of all right of all citizens to read and be informed.'

In State of Uttar Pradesh v. Raj Narain and others 1975 :- Supreme Court ruled that the Right to information is implicit in the right to freedom of speech and expression explicitly guaranteed in article 19 of the constitution. In this case the respondent had summoned documents pertaining to the security arrangements and the expenses therefore then Prime Minister. In this case the Court ruled: "In a government of responsibility like ours, where all agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, every thing that is done in a public way by their public functionaries. They are entitled to know the particulars of every public act, every thing that is of speech, though done in a public way by their public functionaries. They are entitled to know, which is derived from concept of freedom of speech, though not absolute is a factor which should make one wary secrecy is claimed for transactions, which can at any rate have repercussion on public security.

S.P. Gupta vs Union of India 1982 (popularly known as Judge case) :- Supreme Court Of India summed up that "Where society has chosen to accept democracy as its faith, it is elementary that the citizens ought to know what their government is doing". The people of this country have right to know every public act, every thing, that is done in a public way, by their functionaries. They are entitled to know the particulars of every public transaction in all its bearings". The concept of an open government is the direct emanation from the right to know under Article 19(1)(a). Therefore, disclosure of information in regard functioning of government must be

rule and secrecy as much as possible consistent with the requirement of public interest bearing in mind all time that disclosure also serve as an important aspect of public interest". It was stated that, "A modern government state being answerable to the people are entitled to know what policies and programmes, how and why are being followed by the government. It is essential that powers are exercised for public good, not improperly and for the purposes of which the powers are conferred. This objective can be achieved by access to how the government exercises its power in individual cases. Since the power tends to corrupt and absolutely, there is a danger that the vast powers available to the executive may be used not for public, but for private gain, or for corrupt motive. It is therefore essential for the people to have as much information about governmental is bound to act as a powerful check on the abuse or misuse of power by the government.

In the case *Narendra vs Manikrao 1977*:- Supreme Court said that "Real democracy cannot be worked by men sitting at the top. It has to be worked from below by the people of every village and town. That sovereignty resides in and flows from the people to people. So said the Father of the Nation in whose name we swear, therefore who will watch the watchman?" is the vexed question before our democracy. For this people's participation at all levels is a must".

Supreme Court in *R.L.E.K. Dehradun vs State of UP* it was stated that "the question involving issues relating to environment and ecological balance, brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in larger

interest of the people residing within the area and the country. Therefore it cannot be said that action groups are trying to muddle in the affairs of Cantonment Board or are claiming any extra legal authority".

Dinesh Trivedi, M.P. vs Union of India: The Court held that freedom of speech and expression includes rights of citizens to know about the affairs of government. In the case cannot exist unless the citizens have right to participate in the public affairs of the policy of the country. The right to participate in turn calls for informed decisions and provided foundation for healthy democracy. One sided information, disinformation, misinformation and non-information is monopolized either by the authority or private institutions or oligarchy organizations. This judgement gave a new dimension to right embodied in Article 19(1)(a) through a creative approach dictated by need to improve and refine the political process of election.

In the case *T.N. Sheshan, Chief Election Commission of India vs Union of India* The Supreme Court held that the democracy is the basic structure of our constitutional set up and the right of a voter to know the bio-data of the candidate is the foundation of democracy. There have been numerous cases favouring disclosure of information and transparency, but this was easily one of the strongest formulations on right in all its manifestations. The overall impact of these decisions has been to establish clearly that the right to freedom of information or the public's right to know is embedded in the provisions guaranteeing fundamental rights in the Constitution.

INTERNATIONAL DEVELOPMENT THAT LED TO THE ENACTMENT OF RTI

Right to Information or Freedom of Information is universal human right. It has been approved or accepted as an Act not only in India but in many Asian, European, African countries has adopted it as a part of constitutional provision as well as Fundamental Human Right. It has also been adopted through various International convention of United Nations (UN). UN General Assembly in its first session in 1946 adopted resolution 59(1) which states: 'Freedom of information is a fundamental human right and touch stone of all the freedoms to which the UN is consecrated'. Article 19 of Universal Declaration of 1948 provides that every person shall have the right to free expression and to seek and impart information. Right To Information is also guaranteed in the international law as a part of freedom of speech and expression in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). It declares that every one has Right to Freedom of Expression 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. Paragraph 2 of this Article carries with it special duties and responsibilities. It may subject to restrictions, but these shall only such as are provided by law and are necessary and include: 'For respect of the rights or reputations of others; For the protection of national security or public order, of public health or morals.

Article 13 of the American convention on Human Rights establishes that the Right to

Freedom of thought and expression includes freedom to seek, receive and impart information and ideas, regardless of frontiers and through any medium.

Article 14 of the Inter-American Charter states that transparency in government activities, priority, responsible Public Administration on part of governments, respects for social rights and freedom of expression and of the press are essential components of the exercise of democracy.

United Nations Educational and Scientific Cultural Organisation (UNESCO)'s MacBride recommendations tabled at the Belgrade session in October, 1980 enumerated the following considerations as the basis of the New International Economic Order:-

- Elimination of the imbalances and inequalities which characterise the present; elimination of the negative effects of certain monopolies, public or private and excessive concentrations;
- Removal of the internal and external obstacles to a free flow and wider and better balanced dissemination of information and ideas;
- Plurality of sources and channels of information order;
- Freedom of press and information;
- The freedom of journalists and all professionals in the communication media, a freedom inseparable from responsibility;
- The capacity of developing countries to achieve improvement of their own situation notably by providing their own equipment by improving their personnel by

improving the infrastructures and by making their information and communication means suitable to their needs and inspirations;

- The sincere will of developed countries to help them attain these objectives;
- Respect for each people's cultural identity and the right of each nation to inform the world public about its interests, its aspirations and social and cultural values;

The Baghdad resolution adopted by the Inter-governmental co-ordination council for Information of the Non-Aligned countries, on June 5-7, 1980 laid down more specific points for inclusion in the New International Information Order:-

- The fundamental principles of International law notably self determination of people's sovereign equality of States and non-interference in the internal affairs of other States;
- The right of every nation to develop its own independent information system and to protect its national sovereignty and cultural identity, in particular by regulating the activities of the transnational corporations;
- The right of people and individuals to acquire an objective picture of reality by means of accurate and comprehensive information as well as to express themselves freely through various media of culture and communication;
- The right of every nation to use its information to make known world wide its interests, its aspirations and political, moral and cultural values;

- The right of every nation to participate on the governmental and non-governmental exchange of information under favourable conditions in sense of equality, justice, and mutual advantage;
- The responsibility of various actors in the process of information for its truthfulness and objectivity as well as for the particular social objectives to which the information activities are dedicated.

In 1991, The United Nations Economic Commission on Europe (UNEC) began working on promoting access to environmental information and transparency. In 1992 UN Conference on Environment and Development (The Earth Summit); Rio Declaration on Environment and development called on notions to adopt improved access to information and participation.

The Harare Declaration of 1991 recognises "the individual's inalienable right to participate by means of free and democratic political process in framing the society in which he or she lives".

In 1993 the United Nations commissions on Human Rights appointed a special Rapporteur on Freedom of Opinion and Expression declared that Article 19 of the ICCPR imposes positive obligation on States to ensure access to information, particularly with regard to information, particularly held by government in all types of storage and retrieval systems.

In 1994, the Fourth European Ministerial conference on Mass Media Policy adopted a declaration which recommended that the Committee of Ministers will instruct its

Steering Committee on Mass Media to explore the possibility of “preparing a binding legal instrument or other measures embodying basic principles on the right of access of the public information held by the Public Authorities. As a result, the Council of Europe’s Committee of Ministers on 21st February, 2002 adopted new recommendations for the members on the access of official documents. It says that member States should guarantee the right of every one to have access on request to official documents held by public authorities. The recommendations provide for limitations as well but it clearly lays down the limitations should be set down precisely in law and should be necessary in a democratic society and be proportionate to the aim of protecting national security, defence and international relations, public safety, privacy, prevention, investigation of criminal activities etc.

The Common Wealth Freedom Of Information Principles of 1999 held at Durban meetings:-

- Member countries should be encouraged to regard freedom of information as a legal and enforceable right.
- There should be presumption in favour of disclosure and government should promote a culture of openness.
- The right of access to information may be subject to limited exemptions but these should be narrowly drawn.
- Government should maintain and preserve records.
- In principle decisions to refuse access to information should be subjected to independent review.

Rio-10 World summit on Sustainable Development held on 2002 at Johannesburg called upon governments to ensure access at National level to Environmental information judicial and administrative proceedings in Environmental matters.

MEANING OF RIGHT TO INFORMATION

Right to information or Freedom of information means right of the citizen to access information held by the Public authorities relating to decision of the government, plans, policies and ongoing development project etc. It is a universally adopted fundamental right. It is known by different name in various countries such as Right to Information, Freedom of Information, Public Information etc.

‘Information’ as a term is derived from the Latin words ‘Formation’ and ‘Forma’ which means giving shape to some thing and forming a pattern, respectively. According to Justice P.B. Sawant “the single most cause responsible for corruption in society is the barrier to information. It facilitates clandestine deals, arbitrary decisions, manipulations and embezzlement. Transparency in dealings and every detail exposed to the public view should go along way in curtailing corruption in public life. Sunlight is the best disinfectant. Access to information will provide an effective deterrent and potent disinfectant”.

Information as per this act means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, lig books, contracts, reports, papers, samples, mo

dels,data material held in any electronic form and information relating to any public authority under any law for the time being in force.

Right to information means accessible to documents held by the public authority and includes 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 through print outs where such information is stored in computer or in any other device.

In Judges case Justice Bhagwati said “Now it is obvious from the Constitution that we have adopted a democratic form of government,where a society has chosen to accept democracy as it creedal faith ,it is elementary that its citizen ought to know what their government is doing.The citizens have a right to decide by whom and by what rules their conduct.No democratic government can survive without accountability and the basic postulate of accountability is that the people know how government is functioning that they can fulfill the role which democracy . ”A popular government without popular information or the means of obtaining it is but prologue to a farce or tragedy or perhaps both.The citizen’s right to know the facts,the true facts,about the administration of the country is thus one of the pillars of a democratic state.And that is why the demand for openness in the government is increasingly growing in different parts of the world.

According to Lenin “Even a cook must know to run administration.Thus is a fundamental postulate of a democratic polity that people must possess,as a public right,all the information affecting matters of public concern without which they cannot intelligently direct and control,mould,monitor and superintend the managers and management of government business or private operations with public impact;nor can they participate,with responsibility,in the process of State decision making,directly or vicariously,without the needed know-how.Intelligence without information is an illusion of infalliability even as information without absorption is a deception of erudition.A political community with opportunity for knowledge of public affairs and awakened to it’s power to use it in time is the effective sovereign in a self-governing republic.

PROVISIONS OF THE RTI ACT,2005

After so many efforts by the Central,State governments and by NGO’s,Media,Activists etc right to information became a reality in India when Right To Information Act enacted and received Predsident’s assent on15th June,2005 and came into force within the same on 12th October,2005.

Section 2(h) defines “public authority” means any authority or body or institution of self government established or constituted-

- (a) By or under the Constitution;
- (b) By any other law made by Parliament;
- (c) By any other law made by State Legislature;

- (d) By notification issued or order made by the appropriate Government and includes any-
- (i) Body owned and controlled or substantially financed;
 - (ii) Non-Government Organisation substantially financed

Section 2(i) defines “record” as-

- (i) Any document, manuscript and file;
- (ii) Any microfilm, microfiche and facsimile copy of a document;
- (iii) Any reproduction of images embodied in such microfilm;
- (iv) Any other material produced by a computer or any device;

Section 2(j) defines “right to information” as access to any information which is held by or under control of any public authority and includes right to-

- (i) Inspection of work, documents, records;
- (ii) Taking notes, extracts, or certified copies of documents or records;
- (iii) Taking certified samples of material;
- (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassetts or any other electronic mode or through printouts where such information is stored in a computer or in any other device;

Section 4(1)(a) defines obligation of the public authorities to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information and ensure that all records that are appropriate to be computerized are within a reasonable time and subject to availability of

resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated;

Section 5 (1) defines designation of Central Public Information Officer (CPIO) and State Public Information Officer (SPIO) in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under the Right to Information Act, 2005.

Section 5(3) provides that every CPIO or SPIO shall render reasonable assistance to the persons seeking information.

Section 6(3) provides that if the requests of information made by the applicant is related to another public authority, then the concerned CPIO or SPIO shall transfer the RTI application to the concerned department or public authority and inform the applicant regarding the transfer of his application.

Section 7(1) provides that in normal circumstances the CPIO or the PIO need to provide the information within thirty days; in case of transfer forty to forty five days; in case of matters related to life and liberty the CPIO/PIO has to reply within forty eight hours.

Section 8 provides exemption of information –

- (i) Information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

- (ii) Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (iii) Information, the disclosure of which would cause a breach of privilege of Parliament or State Legislature;
- (iv) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (v) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- (vi) Information received in confidence from foreign government;
- (vii) Information disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (viii) Information which would impede the process of investigation or apprehension or prosecution of offenders;
- (ix) Cabinet papers including records of deliberations of the

Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons therefore and the material on the basis of which the decisions were taken shall be made public after the decision has been taken and matter is complete or over.

- (x) irrelationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the Appellate Officer or Appellate Authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

Section 11 defines that information related to Third party is denied on the ground that information is confidential by the third party.

Section 12 (2) defines the Composition of Central information Commission:-

- (a) The Central Information Commission shall consist of-
- (b) The Chief Information Commissioner and
- (c) Such number of Central Information Commissioners not exceeding ten as may be deemed necessary.

Section 12(3) provides the manner of appointment of the Chief Information commissioner and Other Informationers shall be appointed by the President on the recommendation of a committee consisting of-

- (i) The Prime Minister, who shall be the Chair person of the committee;
- (ii) The leader of Opposition in the Lok Sabha; and
- (iii) A union Cabinet Minister to be nominated by the Prime Minister.

Section 12(5) defines that the Chief Information Commissioner and Information commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

Section 13 (1) provides term and conditions of service:-

It is provided that the Chief Information commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: Provided that no chief Information Commissioner shall hold office as such after has attained the age of sixty-five years.

Section 13(2) Every Information commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, which ever is earlier, and shall not be eligible for reappointment as such Information Commissioner: It is provided that every Information Commissioner shall on

vacating his office under this sub-section be eligible for appointment as Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information commissioner and Chief Information Commissioner.

Section 15(2) defines the composition of State Information Commission. It includes:-

- (i) The State Information Commissioner ; and
- (ii) Such number of State Information Commissioners, not exceeding ten as may be deemed necessary.

Section 15(3) defines the manner of appointment of Chief Information Commissioner and the other Information Commissioner. They shall be appointed by the Governor on the recommendation of a committee consisting of:-

- (i) The chief Minister, who shall be the Chair person of the committee;
- (ii) The Leader of Opposition in the Legislative Assembly; and
- (iii) A Cabinet Minister to be nominated by the Chief Minister.

Section 15(5) defines the qualification of State Chief Information commissioner and Other State Information commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

Section 16(1) defines the term and condition of service of the State Chief

Information Commissioner :-The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment. It further provides that no state Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

Section 16(2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, which ever is earlier, and shall not be eligible for reappointment as such State Information Commissioner.

Section 18(1) enables the Citizen/RTI applicant to complain with the concerned State Information Commission or Central Information Commission as the case may be. It enables the citizens to complain for the following grounds:-

- (a) Who has not been able to file RTI application due to non-appointment of the CPIO/PIO as the case may be;
- (b) Who has been refused to access to any information requested under this Act;
- (c) Who has not been given response within the specified time limit of thirty days;
- (d) Who has been required to pay an amount of fee which he or she considers unreasonable;
- (e) In respect of any other matter relating to requesting or obtaining access to records under this Act.

Section 18(3) defines the power and functions of the Information Commission:-

It is provided that The CIC/SIC as the case may be while enquiring into any matter under this section shall have same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

- (a) Requiring the discovery and inspection of documents;
- (b) Receiving evidence on affidavit;
- (c) Requisitioning any public record or copies thereof from any court or office;
- (d) Issuing summons for examination of witnesses or documents; and
- (e) Any other matter which may be prescribed

Section 19 (1) empowers the RTI applicant to file First Appeal with the First Appellate Authority within thirty days after the expiry of receipt of reply from PIO or denial of information or non-reply or not satisfied with the reply furnished by the PIO within thirty days.

Section 19(3) provides that the RTI applicant can file a Second appeal with the concerned SIC/CIC as the case be within Ninety days of filing First Appeal if he/she is not satisfied with the decision or order passed by the First Appellate Authority.

Section 20(1) Confer the power to both SIC and CIC as the case may be to impose penalty for denying information to the RTI applicant without reasonable cause, refused to receive an application for information or

knowingly given incorrect information, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing information, it shall impose penalty of two hundred and fifty rupees per day and maximum amounting to twenty five thousand rupees.

Section 23 provides that no Court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

Section 25 (1) provides that CIC/SIC shall have the power to monitor and reporting as the case be, shall prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate government.

Section 25(3) states that each report shall report in respect of the year to which the report relates:-

- (a) The number of requests made to each public authority;
- (b) The number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;
- (c) The number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review the nature of the appeals and the outcome of the appeals;

- (d) Particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
- (e) The amount of changes collected by each public authority under this Act;
- (f) Any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;
- (g) Recommendations for reform including recommendations in respect of the particular public authorities for the development, improvement, modernization, reform or amendment to this Act or operationalising the right to access information.

Section 26 provides that appropriate government may to the extent of availability of financial and other resources:-

- (a) Develop and organize educational programmes to advance the understanding of the public in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;
- (b) Encourage public authorities to participate in the development and organization of programmes themselves;
- (c) Promote timely and effective dissemination of accurate information by public authorities about their activities;
- (d) To train Central Public Information Officers and State

Public Information Officers, as the case may be of public authorities and produce relevant training materials for use by the public authorities themselves.

RATIONAL BEHIND INTRODUCTION OF RTI

- The aim of the policy makers to introduce RTI in India was to allow the citizens to access to the information held by the public authorities.
- Do away with secrecy of functioning of government officials
- Desire to bring transparency and accountability in the administration
- Aim to develop citizen centric approach to participate in the governance
- Empower the citizen with information
- As a tool of empowerment
- Empowering the people to demand their human rights
- Knowledge of the policies and programmes of the government
- As a wheel for a smooth and successful functioning of democracy
- As a tool of good governance
- To make the public authority responsible and accountable for all their acts and omissions
- To strengthen the capacity of an individual in participating in decision making
- Supporting free flow of information and independent media
- Exercise right to freedom of speech and expression

SCOPE OF RTI

- The scope of RTI in India is very wide as it is covering all the three organs of the government namely ;Legislature,Executive and Judiciary.All the public authority defined u/s 2(h) of the RTI Act,2005 comes under the purview of the RTI Act.
- Public Private Partnership project also comes under the purview of the RTI
- The Act extends to all the States except Jammu & Kashmir that have it's own Freedom of Information Act.
- Non resident Indian is also allowed to access to information.Department of Personnel Training has initiated e-IPO(Electronic Postal Order) to acheive the same.
- Information as per this act means any material in any form,including records,documents,memos,e-mails,opinions,advices,press releases,circulars,orders,lig books,contracts,reports,papers,samples,models,data material held in any electronic form and information relating to any public authority under any law for the time being in force.
- Right to information means accessible to documents held by the public authority and includes 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 through print outs where such information is stored in computer or in any other device.

- Impose duties and obligation for the public authorities u/s 4 to maintain all records duly catalogued and indexed in a manner and ensure that all records are computerized and connected to one single network through out the country ,such that it can be made available to the applicant when ever the request is made.
- Section 6(3) imposes duty on the public authority to transfer the RTI application to the concerned department or authority to which the information pertains and to inform the applicant as such.
- Section 7(1) provides that information shall be supplied within thirty days in normal circumstances and forty eight hours if the information sought is related to life and liberty of a person.
- Section 8(d) provide information related to commercial confidence,trade secrets or intellectual property if it is in the larger public interest.
- Section 8(e) denies information available to a person through fiduciary relationship.
- Section 8(j) denies information on the ground to protect the privacy and personal information of the concerned person.
- Section 11(1) denies third party information on the ground that information so received is confidential by the third party.
- Section 18(1) allows a citizen to lodge a complaint with the

SIC/CIC if information is not provided within the prescribed time limits;if incomplete,misleading or false information is provided to the applicant;or any other matter related to the access of records.

- Section 18(3) provides that while enquiring into the matter both SIC/CIC has the power of Civil Court.
- Section 19(1) provides that any applicant if not satisfied with the information provided by the PIO or denial of information,the applicant can file a First appeal with the First Appellate Authority.
- Section 19(3) provides right to file Second appeal with the SIC/CIC as the case may be ,if the applicant is not satisfied with the decision given by the First Appellate Authority.
- Section 20 (1) provides imposition of penalty upon the public authorities for not performing the duties as per the provisions of the RTI Act.
- Section 25 empowers CIC/SIC to monitoring and reporting at the end of the year on the implementation of various provisions related to RTI act by different
- Public authorities at different level be it Ministry or Department.

PROBLEMS IN IMPLEMENTING RTI INDIA

- Non-compliance of various provisions of the RTI Act.In many department Public Information Officer (PIO) has not been appointed till date.
- RTI provisions says that the Public Information Officer must assists

the applicant to file RTI whenever possible, but the PIO is not accessible to the people most of the time.

- Section 4 provides digitalization of records and must be connected through single network so that people have less opportunity to file the RTI application. This has not been followed in most of the department, only police department, revenue department, license department, public distribution system, has initiated digitisation.
- RTI Act provides that information shall be supplied within thirty days and in case of life and liberty issue, information shall be supplied within forty eight hours. This has been violated in most of the cases due to citizens unawareness and due to over burden of work by the PIO.
- The government has not much initiative to educate and spreading awareness on RTI as they think that it can be used against them.
- RTI Act provides that rupees ten shall be charged as RTI fees but this has not been followed, many States has it's Act of RTI and the charges differ from State to State. For example Haryana charges fifty rupees per application.
- With regard to First appeal, as per RTI Act, 2005 no fees for filing First Appeal but High Court of Delhi, Gujarat, Madhya Pradesh, Kerala, Patna charges rupees fifty for filing First Appeal. While the RTI provides no fee charges for the First Appeal.
- In rural area and villages people are not aware of the use of RTI due to illiteracy and lack of publicity and advertisement by the appropriate government.
- The PIO is not aware of all the provisions of the RTI Act in order to perform the assigned duty well as they are not trained to carry out the duties assigned to them.
- The PIO/FAA (First Appellate Authority) is an additional burden on the public authorities for which they are not paid. This discourages the public authority to perform the assigned duty to do it whole heartedly. Additional salary and remuneration may create interest to function as PIO/FAA. Some points must be given to the PIO/FAA for the duties carried under the RTI, Act 2005.
- The number of RTI Application and the number of Second Appeal is on high rising, this has over flooded the Central Information Commission. Necessity has arisen to increase the strength of the commission. The present strength does not fulfill to hear all the decision.
- CIC many times pass order or decision without being hearing both the parties. This is violation of the provision of Act.
- There is a necessity for the speedy disposal of the cases. The pendency level is on increase as the number of RTI application filed is on increase. There must be a clear deadline to disposal of cases received under the Second Appeal.

- Department of Personnel and Training which is nodal agency for the implementation of the RTI is not doing much for implementation of RTI ,it just issues guidelines and does not look whether the guidelines has been followed or not.Recently it has initiated RTI Fellowship,to encourage media person,NGO's and Reasearcher's to do reasearch on the implementation.
- There is lack of training and knowledge of the provisions of the RTI Act as a result of which the PIO is not capable enough to carry out the duty assigned to them.
- There is absence of agency monitory and check the RTI implementation.
- There is no research unit to set up to study on the implementation on the problems and challenges of RTI.Some of the NGO like CHRI(common Wealth Human Rights Initiative) and CMS(centre for Media Studies) has been studying on RTI and bring reports.
- RTI cell must be set up in every department/district help the citizen to file the RTI
- Separate network of staff should be set by the government ,who would be given training and remuneration to discharge the duty as PIO and FAA.
- At present appointments made in CIC and SIC are from IAS or IPS background,there is a lack of legal experts and *RTI experts*.
- The hearing at the SIC/CIC takes more than six months,sometimes a year.The time limit to hear the case must be fixed.
- The politician and the government has curbed the power of RTI by exempting political parties from the ambit of the RTI by amending section 2(h) and made it as exempted organization section 22.

Conslusion

Introduduction of RTI has made the people empowered to access the information held by public authority.RTI is one of the tool of good governance which has done away with the regime of secrecy and brought transpanreny and accountability in government functioning.Though RTI was introduced to access information,it has turned as a grievence redressal machinery for the poor and illiterate people.In Public Distribution System it has brought a revolutionary change as the people are geting quality of food grains regularly which was earlier impossible.Apart from this the policy makers became aware of the problem of common people and initiated Food security Bill and introduced E-Public Distribution System in eight Indian States which includes Delhi,Andhra Pradesh,Telangana,Chandigarh,Haryana ,Jammu and Kashmir,Maharashtra,Meghalaya,Pondicherry and Lakshdeep etc .Other Public Service delivery sytem has been improved after the RTI came into being,the time limit for issuance of passport,voter id,licences,ration card,SC/ST /OBCcertificates,Birth Certificate etc has been fixed.The delay of services has been done away with.The citizen get confirmation message in their mobile phone about submission,processes and ground of rejection of it,if it is rejected.RTI has forced to bring Lok Pal Bill and Public Greivence Redressal Bill to run the administration smooth.Slow

governance procedure and complexities in the processes has been removed. The concept of citizen centric approach is replaced by the serving the master and politician. Now citizen is no where subservient to the politician or any government authority. RTI has empowered the common man and made them independent, self dependent and equal footing with the government of the country. It has empowered the citizen to become individual and community empowerment.

References

1. Dr. Ambrish Saxena, Right to Information And Freedom of Information, Kanishka Publishers, New Delhi
2. Faizan Mustafa, Constitutional Issues In Freedom of Information, International perspectives, Kanishka Publishers, New Delhi
3. C.M. Bindal and Mrs. Anshu Bindal, (ed) Guide To Right To Information Act, 2005, Snow White Publications, New Delhi, 2011
4. Sudhir Naib, The Right To Information Act, A Hand Book, Oxford University Press, New Delhi, 2011
5. Dr. S.K. Kataria, Right To Information, Lessons And Applications, Naional Publishing House, New Delhi, 2010
6. Angela Wadia, Global Source On Right To Information, Kanishka Publishers, New Delhi, 2006
7. P.K. Saini And R.K. Gupta, Right To Information Act, 2005 Implementation and Challenges, Deep and Deep Publications, New Delhi, 2009
8. Dr. Manish Kumar Chaubey, Right To Information VARIOUS DIMENSIONS, Regal Publications, New Delhi, 2013
9. Right to Information Act, 2005, Universal Publications