

# ROLE OF INFORMATION IN ADMINISTRATION: AN ANALYSIS OF RIGHT TO INFORMATION ACT, 2005

**Dr. Punamdeep Singh**

Senior Research Scholar

Department of Public Administration

Punjabi University, Patiala

Email: [punamdeepsingh@gmail.com](mailto:punamdeepsingh@gmail.com)

**Abstract:** The Right to Information Act, 2005 has now been universally recognized as landmark legislation which was enacted in India in the year 2005. This act has brought fundamental change in the country. RTI Act helps us to know about the working of the public authority. Before came into existence of this act, citizens were less aware about the working of public authority. RTI Act has helped all over the country at the grass root level. In the country, Central Information Commission (CIC) and State Information Commission (SIC) help in execution of RTI Act. The present study has given the overview of Pre and post-independence scenario of RTI in the country. Further, the study suggests the measures for better results of application of RTI.

**Abstract:** Right to Information, RTI, Open Government, State Information Commission (SIC), Central Information Commission (CIC)

## 1.0 Introduction

The Right to Information has now been universally recognized as a mean for securing transparent and accountable public administration. The traditional concept of invisible government has become absolute in the era of liberalization and globalization. Today, the citizens, the stakeholders, the consumers of public services, the beneficiaries of development programmes, the civil society organizations, the business and commercial houses-demand information from the public authorities, local bodies and government aided organizations relating to their administrative operations and decisions. This is possible only if the administration is made accountable and transparent enough and legally responsible for providing adequate information about their aims, policies, programmes and expenditures (Roy, 2007).

In India, the failure of politico-administrative system has given birth and impetus to transparency regime. The RTI regime in India emerged essentially as a manifestation of desire to move the democratic process progressively towards participatory democracy. The democratic nature of the state also provided a space for growth of the RTI regime by responding to the voices of people who increasingly demanded the facilitation of a right to information. It is a fact that the transparency regime can only blossom in a democratic state. In a parliamentary democracy like India, the party which gets majority in the Parliament forms the government. If the government does not reflect the concerns of the people, especially the oppressed majority, in the process of governance, it will motivate the common people to organize themselves for demanding transparency in the system of governance.

The impetus for operationalizing the right to information, as a fundamental (human) right that is enshrined as such in the Indian Constitution, arose partly due to the failure of the successive union governments to prevent corruption and ensuring effective and empathetic governance and partly due to the pressure generated by international agencies. The Right to Information Act, 2005 in India is widely recognized as the most powerful transparency laws in the world and promises far greater transparency than what is prescribed or required by most international organizations. Though the World Bank has recently revamped its disclosure policy and made it much stronger, it still lags behind the Indian law, at least in coverage and intent.

## **2.0 THE POST-INDIPENDENCE SCENARIO**

In post-independence India, there were sporadic demands for transparency in government, especially around specific events or issues. The various tragic disasters that took place in India from time to time invariably inspired demands from the public and often from people's representatives in Parliament and State Legislative Assemblies, to make public the findings of enquiry committees which were inevitably set up.

The humiliating defeat of India in Indo-China war in 1962 marked the end of the public's honeymoon with the Indian Government. The poor performance of the Indian army in the Indo-China war, and the rapid loss of territory to China, shook public confidence in the government. The euphoria of the freedom movement and independence had finally faded. People started questioning the government for not taking appropriate decision to meet the abnormal situation. Suddenly there were more persistent and strident demands for information and justification. However, it took another thirteen years or so for the Supreme Court of India to take cognizance of public demand for access to information and ruled that the right to information was a fundamental (human) right.

In 1982, the Supreme Court of India, while hearing a case relating to transfer of judges, gave a ruling that the right to information was a fundamental right under the Indian Constitution. The Supreme Court stated that: "the concept of an open Government is the direct emanation from the right to know which seems implicit in the right to freedom of speech and expression guaranteed under Article 19(1)(a). Therefore, disclosures of information in regard to the functioning of Government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest"(Jolly, 2009).

However, despite the judgement of Supreme Court, there was little effort by the government to institutionalize the right to information and to set up a legal regime which could facilitate its exercise by the common citizen. In 1985, following the disastrous gas leak tragedy in the Union Carbide Corporation Plant in Bhopal, various environment groups petitioned the Supreme Court asking for transparency in environmental matters; especially where storage of hazardous materials was concerned.

In 1989, there was a change of government at the national level. The ruling Congress Party lost the elections. The United Front Government at the national level promised to give "Open Government", and declared unequivocally that 'people's Right to Information shall be guaranteed through constitutional provisions'. Reiterating this commitment, the then Prime Minister V.P. Singh, in his first broadcast to the nation in December 1989 said:

*'We will have to increase access to information. If the Government functions in full public view, wrong doing will be minimized. To this end, Official Secrets Act will be amended and we will make the functioning more transparent. Right to Information will be enshrined in our Constitution.'*(Roy, 2003).

But the early collapse of this government and reported resistance by the bureaucracy resulted in a status quo.

## **3.0 MOVEMENTS FOR ENACTING RIGHT TO INFORMATION ACT**

From the early 1990s, the Mazdoor Kissan Shakti Sangathan (MKSS) had started a movement in the rural areas of the state of Rajasthan, demanding access to government information on behalf of the wage workers and small farmers who were often deprived of their rightful wages or their just benefits under government schemes. The MKSS demanded the copies of all the documents released to public works important of which were muster roll, wages due and paid. It was accepted by the Collector, but the village development officer refused to comply. MKSS started *Dharnas* which continued for 52 days (Bhansali, 2008). The MKSS transformed the RTI movement. In the early stage, the movement was confined to urban areas pushed by a few activists and academicians. But later on, it becomes a mass movement that quickly spread not only across the state of Rajasthan but to most of the states of Indian Union.

In October 1995, the RTI activists, professionals and administrators held a meeting at the Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie to discuss and deliberate on the need of formulating an appropriate national body.

In August 1996, a meeting was convened appropriately at the Gandhi Peace Foundation, in New Delhi, where the National Campaign for People's Right to Information (NCPRI) was born. It had, among its founding members, activists, journalists, lawyers, retired civil servants and academics. The NCPRI, after detailed discussions, decided to launch a country-wide movement for pressuring the Union Government for enacting Right to Information Act which shall cover the entire country. Consequently, one of the first takes that the NCPRI addressed itself was to draft a right to information law that could be the basis of proposed national act.

After drafting Right to Information Act, the proposed draft bill was sent to the Press Council of India, which was headed by Justice S.B. Sawant, who was a retired judge of the Supreme Court of India. The Press Council of India examined the draft bill and suggested few additions and modifications. The revised bill was then presented at a large conference, organized in Delhi, which had among its participants, representatives of the various political parties of India. The draft bill was discussed in detail and was enthusiastically endorsed by the participants, including those from political parties.

In 1996, the NCPRI submitted the much debated and widely supported bill to the Government of India, with a request that the Government must consider it urgently, converting it into a law ([www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)).

In response, the Government of India constituted a committee, headed by Mr. H.D. Shourie to examine the drafted Right to Information Bill and make recommendations that would help the government to institutionalize transparency. The Committee worked fast and presented its report to the government after few months of its formation. The Committee succeeded in significantly diluting the draft RTI bill drafted by the civil society groups.

Once again, the Government was confronted with the prospect of introducing a Right to Information Bill in Parliament. Clearly the dominant mood in the Government was against the enactment of the RTI Act. But it was not politically expedient to openly oppose the enactment of RTI Act which ensures transparency. Therefore, inevitably, the draft bill, based on the recommendations of the Shourie Committee, was referred to another Parliamentary Committee.

Inevitably, around this time, various sections of the Government started becoming alarmed at the growing demand for transparency. This also marked the beginning of organized opposition to the proposed bill. Interestingly, the armed forces, which in many other countries are reportedly at the centre of opposition to transparency, were not significant part of the opposition at this stage. This might be because they might be assumed that any transparency law would not be applicable to them.

#### **4.0 FREEDOM OF INFORMATION BILL, 2002**

Meanwhile, a Public Interest Litigation had been filed in the Supreme Court questioning the unwillingness of the government to facilitate the exercise of the fundamental right to information. This case continued for two years from 2000 to 2002. The government used all its resources to postpone any decision. Till November, 2002 no legislation was forthcoming, in spite of the fact that the Supreme Court has directed the Union Government that if the legislation was not passed before next date of hearing (in January, 2003), the court would consider the matter on merits and pass orders. It was further directed that even if the legislation was passed, but court would examine whether the legislation was in conformity with the right to information as directed by the court. Consequently, the freedom of information bill was passed by both the Houses of Parliament in December, 2002 and assent of the President of India was given to it in January, 2003.

The Freedom of Information Act, 2002 watered down the version of original bill drafted by the people. There was wide spread criticism from media, academicians, non-government organizations (Sood, 2008). Seeing the reaction of the civil society, no notification was issued by the Government and said Bill became dead before its enactment. In fact, on several counts, the provisions of the Bill were weak. All weaknesses and deficiencies in the

bill were placed before the Supreme Court for examination. This Bill was severely criticized for permitting too many exemptions, not only under the standard grounds of national security and sovereignty, but also for requests that would involve “disproportionate diversion of the resources of a public authority”. There were no penalties for not complying with a request for information (Jain, 2007). Overall, the bill fails in important ways to conform to the international standards and best comparative practice on access to information. Nor does it reflect a serious attempt to address information issues in the Indian context, as the laws of South Africa and Japan do for their countries (Jain, 2007, p50). Overall, the weakness of the bill reflected the lack of political and administrative will to implement a good information disclosure system.

## **5.0 RIGHT TO INFORMATION BILL, 2005**

In May 2004, the United Progressive Alliance (UPA) led the Congress Party, came into power at the national level, displacing the Bharatiya Janata Party led National Democratic Alliance (NDA) government.

The UPA Government brought out a Common Minimum Programme (CMP), which solemnly pledged, among other things, “to provide a government that is corruption-free, transparent and accountable at all times to provide an administration that is responsible to make the Right to Information Act “more progressive, participatory and meaningful”. The UPA Government also set up a National Advisory Council (NAC), to monitor the implementation of the Common Minimum Programme. This Council was comprised of many such leaders who launched various mass movements relating to enactment of RTI Act (Jain, 2006).

In August 2004, both National Advisory Council (NAC) and National Campaign for People’s Right to Information (NCPRI) proposed 36 amendments in the proposed Right to Information Act with a view to make it more effective and sent the same to the Prime Minister for further action.

Ultimately, the Right to Information Bill, 2004 was tabled in the House of Lok Sabha on December 23, 2004. It was sent to the Parliamentary Standing Committee relating to Employment, Public Grievances, Law and Judiciary Departments for examining it and making recommendations thereon. The Bill aimed to provide basic structure for practical exercise of right to information accredited under Article 19 of the Indian Constitution as well as Article 19 of the Universal Declaration of Human Rights for making the process more dexterous, accessible, progressive, meaningful and particularly to get access to the information or facts. The Parliamentary Committee sought written opinions and recorded verbal hearing on the provisions of the Bill to make it more progressive, participatory and meaningful with a view to ensuring smoother, greater and more effective access to information. Based on recommendations of the Parliamentary Committee, the Bill after intense debate, with 150 amendments (Chadah, 2009), was adopted with a voice vote. The Right to Information Bill was passed by the Lok Sabha on May 11, 2005 and by the Rajya Sabha on May 12, 2005. It got Presidential assent on June 15, 2005 and became fully operational from October 13, 2005 (Gupta, 2005). The Act is an important step in fulfilling the promises made to the people of the country by the UPA Government under the Common Minimum Programme.

In any case, those who thought that the main struggle to ensure a strong legislation was over and that the focus could now shift to implementation issues were in a rude shock when attempt was made by the Government to amend the Act with a view to weaken it. But such a move of the Government was defeated due to the pressure of Civil Society.

## **5.1 RECORD OF ITS IMPLEMENTATION**

The Right to Information Act, 2005 is a powerful weapon in the hands of common people. Like the United States’ FOIA (Freedom of Information Act), the Right to Information Act, 2005 gives Indian Citizens a right to obtain information from the public authorities. The Indian Right to Information Act, 2005 is broader in scope than the United States’ FOIA. While the U.S. law applies only to national government, the Right to Information Act, 2005 in India applies to all Indian states and local governments as well. The Act is intended to be a tool to deepen democracy, accelerate development and help in the eradication of corruption in public services. The RTI Act marks a high water mark in our progress towards a more open, transparent and responsive governance system. It gives a new meaning to the old adage that “knowledge is power.” To improve governance, citizens can use power of ballot once in five years, but they can use the power of information through RTI Act on a daily basis.

The impact of RTI Act can be seen in political, economic and administrative levels. In the political sphere, it contributes to the ability of citizens to become aware of and involved in the activities of government. In the economic sphere, greater transparency promoted a better climate for investment. In the sphere of administration, transparency improved the decision making process of public servants by making them more responsive and accountable to the public and controlled corruption by making it more difficult to hide illegal activities. Access to information not only promotes openness, transparency and accountability in administration, but also facilitates active participation of people in the democratic governance process.

But in the other hand the awareness about the RTI Act is still very low, especially among rural population and among women. The applicants, especially in the rural areas, faced a lot of harassment at the hands of the Public Information Officers who are reluctant in receiving their applications for providing adequate information. In many cases, the applicants had to visit the offices again and again, wasting a considerable amount of time and money, in order to get their applications accepted. There were also instances of applicants being discouraged from filling RTI applications, especially from the weaker segments of society, were often intimidated, threatened and even physically attacked when they went to submit an RTI application.

Foremost amongst the obstacles to effective implementation of RTI Act is that there had been unnecessary delay in appointing Public Information Officers by the public authorities. Some of the public authorities, which are covered under the ambit of the RTI Act as per the definition of the public authority, have so far not taken concrete steps for implementing RTI Act.

Unfortunately, the implementation of the RTI Act could not inject an element of accountability to governance in a way that was imagined at a time of its enactment. Since the law was putting into effect, despite the fact that the RTI Act mandated a penalty shall be imposed every time if information is not provided within 30 days (without reasonable cause). But very few penalties were actually being imposed to any erring officer.

It is strange that the rules framed by Union Government, State Governments, Union Territories, High Courts and Supreme Court have created different sets of rules in the country. In addition, the Information Commissions of different States have also framed their own rules and procedures. Consequently, an applicant is confronted with the often instrumentable problem of first finding out the relevant rules and then attempting to comply with the application form, identity proof, or mode of fee payment requirements, which differ from state to state.

One another problem in implementation process is that the back-log of RTI applications is huge and growing. This meant that applicants had to wait for months in order to get their matter heard and decided upon. On the other hands the Public Information Officers often failed to provide information to the aggrieved citizens within the stipulated period of time due to the poor state of record management in most public authorities. The study indicated that certain public authorities, especially those with extensive public dealing (like Municipalities, Revenue and Police Departments) receive a disproportionate share of RTI applications as compared to other public authorities. In some cases, there is resentment among Public Information Officers as they have to deal with a large number of RTI applications in additions to their normal work.

Another negative feature in the implementation of Indian RTI Act is high level of pendency and behind the delays in the disposal of cases in various departments of the Government, seems to be indifferent attitude of Public Information Officers in the disposal of cases. That type of attitude of PIOs also growing the pendency of cases.

Many PIOs held the opinion that their dependence on the State Government for budgets and sanctions of staff had seriously undermined their independence and autonomy, as envisaged in the RTI Act.

The orders of PIOs are of varying quality, often with poor consistency on similar issues across PIOs. Many orders contain insufficient information for the appellants/complainant to assess the legal basis for, or the rationale behind the order. The Information Commission does not have workable methods of monitoring whether its orders have been complied with or not.

The administration has failed to build mechanism for monitoring the implementation of the RTI Act, receiving and assimilating feedback. The composition of Information Commission has a bias towards retired government servants. At the moment, they –in the states as well as at the Centre- have become parking lot for retired bureaucrats(Gehlot, 2009).

One another negative fact of ineffective implementation of RTI Act is that the public authorities are blatantly violating the provisions regarding effective use of e-governance for effectively making RTI applications.

It has been observed that the common citizens have faced problems in submitting on-line RTI applications. The citizens can send RTI applications on the e-mail address of Public Information Officers. It has been observed

that such a system has not proved successful due to lack of formulating provisions for on-line payments. Moreover no directory of e-mail addresses of the Public Information Officers is available to the citizens.

## **6.0 SUGGESTIONS FOR BETTER RESULTS**

1. The Centre/State Nodal Departments should carry out an annual self-assessment exercise to examine the initiatives taken by the State Governments for implementing the RTI Act.
2. A massive awareness campaign should be launched to educate the citizens about the RTI Act and encourage citizen involvement. The awareness program must especially target the vulnerable categories of citizens such as women, scheduled castes/scheduled tribes, farmers and middle classes, for whom most of the social benefit schemes had been framed by the government. For this purpose, RTI awareness and education needs to be aggressively pursued using the appropriate medium of communication. Adequate budget should also be allocated both by the Union and State Governments for this initiative.
3. Facilitation Centers should be established for improving the usage of RTI Act. To contain growing corruption and to hold Governments and their instrumentalities accountable at a local level, it is imperative to create multiple channels within reach of a common citizen.
4. Provision for standardization of RTI fee payment channels should be created for making it convenient for a citizen to file request for seeking information from remote locations (even outside the State), which is not possible if the fee has to be paid in cash. The respective State Governments should issue instructions or amend rules (as the case may be) to the Public Authorities to include convenient payment channels for submission of RTI applications by the citizens.
5. It is suggested that a Knowledge Resource Centre be created under the Department of Personnel and Training, which shall act as the centre for knowledge repository of all the information/best practices/ model rules & orders etc. concerned with RTI implementation in the Central and State Governments.
6. The composition of the Central Information Commission and State Information Commissions should be such that it should have people with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
7. The appointment of Central Information Commissioner should be made by President of India with the unanimous recommendation of Chief Justice of India, Prime Minister and Leader of Opposition. Similarly, the appointment of State Information Commissioners should be made by respective Governors of the States with the unanimous recommendation of Chief Justice of High Courts, Chief Ministers and Leaders of Opposition.
8. To ensure better service delivery by authorities and officials, third party audits should be institutionalized to support the Information Commission in carrying out responsibilities under Section 19(8)(a), 25(1), 25(2), 25(3f), 25(3g) and 25(5). Institutionalizing regular audit would facilitate the Public Authorities to comply with the RTI Act.
9. The offices of all Public Authorities should display a standard board containing essential information about them under the RTI Act.
10. Decentralize the working of State Information Commissions by creating Regional Offices and Benches.
11. As the Central Departments are located in different parts of the country, the presence of the State Information Commissioners may provide necessary support to the Chief Information Commissioner for processing appeals and complaints for speedy disposal of cases by the Chief Information Commissioner. The modalities of cooperation between State Information Commissioners and Chief Information Commissioner may be worked out with mutual consultation. In effect, thus, the functioning of the Chief Information Commissioner should be decentralized with a view to facilitating faster resolution of disputes between the information seeker and provider.
12. A directory of State Public Information Officers, Assistant Public Information Officers and First Appellate Authorities at the district level should be available with the public authorities to be made available to the information seeker at a fixed price.
13. The Central and State Governments should earmark a certain percentage of budget in each department for implementation of RTI related programmes including publicity, creation of infrastructure, training programmes etc. The departments should be asked to distribute the budget to their district offices to give a push to the RTI related activities and programmes.

14. The Right to Information Act, 2005 should be amended to provide for protection to those seeking information under the Act. A separate chapter, “protection of those seeking information under the RTI Act”, be inserted into the Act. Following protection measures should be included in the amended RTI Act:
  - i. mandatory and immediate registration of complaint of threats, use of force or attacks on RTI activist as First Information Report and placing such FIR before the concerned magistrate/judge of the area within 24 hours for issuance of necessary directions for physical protection to those under threats or their family members, and review such protection measures from time to time;
  - ii. conducting inquiry into the threats and attacks by a Police Officer not below the rank of Deputy Superintendent of Police/ Assistant Commissioner of Police and conclusion of such investigation within 90 days; and
  - iii. trail of accused, if offences made out after investigation, within six months.
15. A module on RTI should be made mandatory (though without credits) in school curriculum for 10+1 and 10+2 classes, and for all undergraduate and postgraduate courses in India.

To be concluded that the success of the Right to information Act in India is an open challenge in our administration culture, public service ability of adjustment and public services’ commitment to the public cause. Let us hope for positive response from our public authorities in the successful operationalisation of the Right to Information.

### **7.0 References:**

1. Jayatilak Guha Roy, “Second Administrative Reforms Commission on Right to Information: A Critical Review” in *Indian Journal of Public Administration*, Vol. LIII, No.3, New Delhi, Indian Institute of Public Administration, July-September, 2007, p.560
2. Stellina Jolly, “Public Accountability and Right to Information: A Critical Legal Overview”, in P.K. Saini & R.K. Saini (ed.), *The Right to Information Act, 2005: Implementation and Challenges*, New Delhi, Deep & Deep Publications Pvt. Ltd., 2009, p.162.
3. Jayatilak Guha Roy, “Right to Information: A Key to Accountable and Transparent Administration”, in Alka Dhameja (ed.), *Contemporary Debates in Public Administration*, New Delhi, Prentice-Hall of India Pvt. Ltd., 2003, p.316.
4. R.S. Bhansali, *The Right to Information Act, 2005*, Jodhpur, Indian Publishing House, 2008, p.15.
5. [www.humanrightsinitiative.org/programs/ai/rti/India/national.htm](http://www.humanrightsinitiative.org/programs/ai/rti/India/national.htm).
6. R.P. Sood, *Right to Information*, Jaipur, Sublime Publications, 2008, p.50.
7. N.K.Jain, *Right to Information: Concept, Law and Practice with Position in Other Countries and Case Studies*, New Delhi, Regal Publication, 2007, p.4.
8. N.K.Jain, *Right to Information: Concept, Law and Practice with Position in Other Countries and Case Studies*, New Delhi, Regal Publication, 2007, p.50.
9. R.B. Jain, “Opening Government for Public Scrutiny”, in *Indian Journal of Public Administration*, Vol. LIII, No.3, New Delhi, Indian Institute of Public Administration, July-September, 2006, p.557.
10. Sapna Chadah, “Implementing Right to Information: A Practical Approach”, in *Indian Journal of Public Administration*, Vol. LV, No.3, New Delhi, Indian Institute of Public Administration, July-September, 2009, p.466.
11. R.K. Gupta, “Some Basic Aspects of Procedure and Constitutions of Administrative Machinery under RTI Act” in P.K. Saini & R.K. Saini (ed.), *The Right to Information Act, 2005: Implementation and Challenges*, New Delhi, Deep & Deep Publications Pvt. Ltd., 2009, p11.
12. N.S. Gehlot, “Right to Information Act: A Review of Its Implementation”, in *Indian Journal of Public Administration*, Vol. LV, No.3, New Delhi, Indian Institute of Public Administration, July-September, 2009, p.720.