

INTRODUCTION

Accountability is the basic postulate of a democratic country. For the establishment of a vibrant democracy, there should be free flow of information accessible to citizens and the government should be transparent and open to criticism of the general public.

We, the people of India, are presently governed by more than 1200 laws and let alone citizens even the enforcement agencies are not aware of all the laws that they are expected to enforce. These laws are often violated due to lack of proper enforcement mechanism. The enforcement agencies are manned by civil servants who work under political patronage devoting their career to the loyalty of ministers resulting in an exploitative, dominant, corruption ridden administrative system. The common man is often left bewildered due to ignorance of the rules and procedures involved in the public administration.

Moreover, a thick curtain of secrecy exists as a colonial tradition under the garb of the Official Secrets Act, 1923 that regulate the power of the government to withhold information. The pre-constitutional statute that was an anti- espionage legislation, kept majority of governmental matters confidential and imposed punishment on spying.

Post independence, the situation did not significantly change as the public officials continued with the secrecy regime as a colonial tradition. Lack of transparency in the public administration denied accountability to the tax payers and led to rampant corruption across the nation. The issues relating to arbitrary use of power by the executive denying the citizens their fundamental right to know were soon brought before the judiciary that played a vital role in elevating the right to information as an integral part of the freedom of speech and expression.

It was with the help of the judicial decisions that the right to information was given the status of a human right, necessary for transparent and accountable

governance.¹ Post the judgements, the citizens were empowered to enforce their fundamental right before the High Courts and the Supreme Court in getting access to information. Although several Public Interest Litigations were filed by various organisations to fight the menace of corruption and upholding the rights of the citizens yet the procedure turned out to be cumbersome for a common man to approach the court each time his right to information was denied.

Meanwhile, in the wake of the growing importance of this right, a people's movement initiated by an organisation –Mazdoor Kisan Shakti Sangathan (MKSS) took the lead in asserting the right to information of the people in a small village of Rajasthan. The movement got unprecedented success in organising *jan suwais* or people's hearing which exposed deep rooted corruption and made the government directly accountable for their misgovernance. This movement was not limited to the state of Rajasthan and soon spread across to the other parts of India to compel the government to disclose information that concerned public life.

Soon a nationwide demand for a statutory recognition of this right began which would formally enable citizens to demand information from the public authorities. In response to the demands from the long struggle initiated by National Campaign for People's Right to Information (NCPRI), an association of the civil society groups, the Freedom of Information Act, 2002 was passed by the erstwhile government in power. Due to several lacunae in the Act, it was severely criticised and could not be operationalised.

Therefore, after making significant improvement and amendments, the Freedom of Information Act 2002 was replaced with the Right to Information Act, 2005 (hereinafter called RTI Act) to strengthen the institutional architecture for curbing corruption, enhancing transparency and accountability in public administration and improving delivery of services to the people.

The Act statutorily empowered the citizens to put questions and demand answers; file complaints and inspect public documents about governance and development issues that affected their lives. It brought in a wave of transparency and

¹ *People's Union of Civil Liberties v. Union of India* (2003) 4 SCC 399

also ensured disclosure of information in the matters of civic action such as roads, sanitation, streetlights, attendance of sweepers in cities, getting easy access to property papers and also information on utilization of MP and MLA funds. It has also unearthed scams worth crores and today getting access to answer scripts, selection and recruitment procedures, retirement benefits, tracking passport delays, ration cards etc. is only made possible through the Act.

Taking into consideration the growing importance of the right to information, several welfare legislations have been enacted mandating transparency and voluntary disclosure of information. The government has also launched various schemes for the economic and social welfare of the general public and ensured openness in the execution of such policies.

Legislations like the Mahatma Gandhi National Employment Guarantee Act, 2005, Food Security Act, 2013 mandate maintenance of proper records containing information and making it available to the citizens. Nevertheless, cases of fraud, scams and incessant irregularities could not be eradicated owing to the corruption that is ingrained in public administration.

Although the Act brings under its purview the legislature, the executive at the Central, state and local levels of government, public undertakings, judiciary, political parties, private sector, stock exchanges, public service commission and other public sector undertakings, the implementation of the Act still remains a major challenge. The resistance from disclosure has been a common trait in all public offices as the wall of secrecy still protects the bureaucrats considerably.

Moreover, the Official Secrets Act, 1923 has not been formally repealed and the Act is still a tool in the hands of bureaucrats as it gives an umbrella protection to the government from disclosure under the garb of exemption. The Evidence Act, 1872, also gives unbridled power to the bureaucrats to continue with the disclosure policy.

In the past, people paid a bribe or an additional fee to get an illegal benefit, but now public servants have to be bribed even for a legitimate demand or for services the

citizens are entitled to.² Corruption in government offices has reached to such an extent that it is almost impossible to root it out of India.

The institutions that were established to curb corruption including Central Bureau of Investigation (CBI), Central Vigilance Commission (CVC), the office of the Comptroller and Auditor General of India (C&AG) work under political control and have lost their autonomy due to which they rarely go against the government in power. The recent removal of the top officials of the Central Bureau of Investigation (CBI) without an inquiry is a glaring example of transgression of power compromising the independence of the agency.³

Furthermore, the Lokpal and Lokayuktas established with the objective of punishing the erring bureaucrats and Ministers of the Central and the State governments including the Prime Minister and the Chief Ministers have rarely brought the offenders to book. Enacted in 2013, it took five years to appoint the first Lokpal in March, 2019 which reflects the laid back approach of the government in giving effect to the Act.⁴

On the other hand, there has been a continuous attempt by the government to weaken the RTI Act. The legislature is leaving no stone unturned to dilute the powers of the citizens and curb their freedom by proposing regressive amendments to the Act. The proposed RTI Amendment Bill, 2018 gives unbridled power to the Central government to regulate the conditions of service of the Information Commissioners including their salary, status and tenure.

Furthermore, the executive under the garb of exemption either refuses disclosure of information or files appeals when such refusal is questioned. This is done at the expense of the tax payers' money that results in unnecessary increase in the pendency of cases. These appeals often reach the High Courts and the Supreme Court and consequently lead to varying interpretations that undermine the authority of the Information Commissions.

² N. Vittal, *Corruption in India: The Roadblock to National Prosperity*, 42 (Penguin Viking, New Delhi, 2003)

³ The Corruption scandal marring India's CBI, BBC News, 26 October 2018 available at :<https://www.bbc.com> (last visited on Nov 5, 2018)

⁴ Former Judge of the Supreme Court, Justice P.C. Ghose has been appointed as the first Lokpal of India.

The judiciary has undoubtedly played a constructive role in ensuring greater governmental transparency and accountability pre and post the enactment of the Right to Information Act but it is depressing that the Indian judiciary now seems to deny accountability when it concerns them. Corruption in judiciary is attributable to factors such as delays in the disposal cases, shortage of judges and complex procedures, all of which are exacerbated by the preponderance of new laws.⁵ To defeat the purpose of the Act, the Supreme Court and the High Courts have framed their own rules to regulate free flow of information.

The functioning of the political parties has always been an area oblivious to public. The citizens of India have the right to know about their elected representatives and their antecedents especially when these political parties comprise the reservoir of candidates whom they have chosen to represent in the Parliament and the State legislature. The political parties have also time and again denied information to the public. The institution was brought under the ambit of the Act by the Central Information Commission but have been reserved for the Apex Court for the final hearing.⁶

The media both print and electronic has played an active role in unearthing cases of corruption and has disclosed various policy decisions of the government which would have never come into light otherwise. Media is always targeted by the government whenever there is such usurpation considered sensitive by the government. It has also come to light that many journalists languish in jails because of publishing information that the government wants to suppress.

The RTI Act has been a boon for the media as it has enabled free flow of information and left no room for the public officials to deny information unless such information is expressly prohibited. However, in the age of paid news where the news agencies are being owned by the private entities backed by ministers, the credibility of the quality of news published and telecasted remains questionable. In this context, keeping media out of the purview of the Act raises enough doubts.

⁵ Farzana Begum, "Right to Information in Developing World" 124 (Rajat Publications, New Delhi 1st edn. (2010)

⁶ *Subhash Chandra Aggarwal v. Parliament of India* CIC/SM/C/2011/000838

The Civil Society Organisations across the globe have played a significant role in the movement for transparency and accountability and have garnered tremendous support of the people by restoring their basic rights relating to health, public distribution system and employment, education etc. The NGOs, as an integral part of the Civil Society Organisation in India are either substantially financed by the government or funded by foreign countries. Since these NGOs are carrying out activities on behalf of the government, they are indeed accountable to public.

The Intelligence and Security Organisations play a critical role in defending the integrity of the nation. These organisations have set a standard for themselves in protecting and preserving the unity and integrity of India and also from foreign invasion. These organizations have been kept out of the purview of the Act for the protection of security of the state. However, cases on corruption and human rights violations by these organisations have not gone unnoticed. Although the RTI Act immunises these organisations from the purview of the Act, information relating to corruption and human rights violations are not exempted from disclosure. These organisations seldom comply with this provision taking advantage of the poor knowledge of the applicants. In the garb of secrecy, many a times innocent lives are lost without any accountability to the public resulting in gross misuse of the Act.

With the emergence of LPG, (Liberalisation, Privatisation and Globalisation) the role of the private sector has increased in leaps and bounds. Today, health, education and telecommunication, transport and other sectors are largely privatised and absence of accountability in these fields gives enough opportunities to these private entities to shirk responsibilities towards the citizens. Although the Act provides express provision for accessing such provision in public interest, citizens are still deprived of this right due to ignorance.

The poor health of the public sector banks and its unwarranted confidentiality has been a major concern for the citizens of India in the recent times. Applications seeking information under the Act relating to the use of public money and policy decisions that affect the economy of the nation including the disclosure of the list of loan

defaulters and also the details of the policy decisions that led to demonetization drive etc. have been refused by the Reserve Bank of India defeating the objective of the Act.⁷

Right to Privacy is another area which is often in conflict with the Right to information. With the increase in publically available personal information and in the absence of a specific legislation focusing on data protection, the right to information has been further diluted by the recent judgment in *Justice K.S. Puttaswamy v. Union of India*⁸ where the Apex Court, overruling the previous judgments, has affirmed that the right to privacy of citizens is a fundamental right under Article 21 of the Constitution. Moreover, the proposed Personal Data Protection Bill, 2018 that provides for protection of personal information significantly dilutes RTI Act.

In addition to this, the half - hearted approach of the government in carrying out of the welfare schemes and policies giving way to corruption and nepotism and the tendency of refusing accountability has emerged as a pandemic. The rising income inequality, poor health care system, unemployment and growing environmental degradation have led to huge discontentment among the masses.

In the light of the above, removing the impediments and further effectively implementing the Right to Information to make the government responsible and accountable becomes imperative for the development of the nation and hence a study in this area becomes very much relevant.

Hypothesis

Despite being a powerful tool in the hands of the citizens, the right is being exercised by only a fraction of people of India is indicative of the fact that implementation of this law has been a substantial challenge. Lack of awareness about the Act among the information seekers (citizens); persistent reluctance of the Information Providers (public authorities) in disclosing information and the failure of the government to fulfill its obligation in ensuring transparency in governance has contributed to the poor implementation of the Act. Unless, the citizens are aware of their power to demand

⁷ "RBI compelled to Disclose Demonetisation Meeting Minutes After CIC's Penalty Show Cause Notice under RTI Act" Available at: www.humanrightsinitiative.org

⁸ Writ Petition (CIVIL) No 494 of 2012

information, the goal to achieve transparency in governance would remain a distant dream .Only change in the mindset of the citizens across all sections and compliance of the responsibilities by the public authorities mandated by the Act can fulfil the objectives of the Act. Having proved the hypothesis, the study also seeks to identify whether making suitable amendments would further ensure efficacy to the Act.

Purpose of the Study and Research Questions

The present research critically reviews and assesses the progress of the Right to Information Act, 2005 and takes into account the failures that has led to its poor implementation. The study seeks to examine and understand the complexities of interpreting the various provisions of this Act and seeks to decipher the challenges that lie ahead in bringing in more transparency and openness in public administration.

Further an attempt is made to answer the following research questions:

1. Has the constitutional obligation of right to freedom of speech and expression ensuring right to information truly fulfilled through the Act?
2. Has the Act brought in transparency or has it given adequate opportunity to encourage secrecy in the garb of exemption?
3. To what extent are the various provisions of the Act implemented by the public authorities under the States and the Central Government of India?
4. The provision of appeal is an important aspect of the Act. What has been the role of the Appellate Authorities (the First Appellate Authority, the Information Commissions and the High Courts and the Supreme Courts) in interpreting the provisions of the Act?
5. How the other countries and international bodies have been implementing the freedom of information laws in ensuring accountability and openness?
6. What has been the role of bureaucrats in complying with the provisions of the Act?
7. To what extent have the judges and the political parties kept themselves outside the purview of the Act?

8. How have the media and civil society organizations impacted the implementation of the Act?
9. The Intelligence and Security Organisations are exempted from disclosure under the Act except for information relating to corruption and human rights violations. To what extent is this provision complied with in practice?
10. What has been the implications of exclusion of private sector under the Act?
11. Right to Privacy has been elevated to the status of a fundamental right by the Supreme Court recently. Therefore, to what extent is Right to Privacy in conflict with Right to Information?
12. Are the Whistleblowers and the RTI Activists adequately protected under the Act?
13. How far does the approach of the citizens and public authorities impact the effective implementation of the Act?

Methodology

The methodology adopted for the research work is a combination of both doctrinal and empirical study.

Doctrinal: The researcher has analysed the literature available in the area of study including the contemporary laws of selected countries. Further, an analysis of the various case laws of the Information Commissions which has brought remarkable changes in bringing transparency and accountability in public administration has been studied. Also, the present research identifies and analyses the factual issues of the cases of the High Courts and the Supreme Court in relation to the effective implementation of the Act.

The researcher follows the historical and analytical approach and delves into the various constitutional provisions, studies the relevant judicial decisions and further analyses the academics' opinions gathered from the books and articles published in the referred journals. The secondary sources of data such as articles, books and electronic resources are used to answer various research questions.

Empirical: The Empirical study has been carried out with the help of primary survey on the basis of both personal and telephonic interview. The researcher explores the research questions enshrined above with the help of structured questionnaire. The Methodology adopted for the survey includes both stratified and purposive sampling. The universe for the present study is finite one comprising of four states from the four corners of India namely- Delhi from the North, West Bengal from the Eastern zone, Karnataka from the South and Gujarat from the Western zone. From the first three states mentioned herein, the capital cities were selected for drawing the sample i.e. Kolkata from the State of West Bengal; Bengaluru from Karnataka; New Delhi from the Union Territory of Delhi and Ahmedabad has been purposively chosen over Gandhinagar, taking into consideration its economic significance in India. While Delhi and Bengaluru both had their state legislations before the Central Act came into force, Gujarat and Kolkata did not have such legislations prior to 2005.

The universe selected for the purpose of study are the Information Seekers i.e. citizens and the Information Providers i.e. the Public Information Officers from these cities. The universe has been divided into two strata from the four cities of India. From each stratum, respondents have been randomly and purposively selected for collection of data. The total number of 50 Information Seekers and 50 Information Providers from each city representing an overall number of 200 (50*4) Seekers and 200 (50*4) Providers from India was randomly and purposively selected for the purpose of the survey. The data has been collected by distribution of two separate sets of structured questionnaire to the respondents meant for the Information Seekers and the Information Providers with closed questions.

Review of Literature

The enactment of RTI Act, 2005 is a laudable step. The RTI Act has many salutary features and mandatory provisions which promise to ensure that people can have information they need. A good number of works has been done on the subject since the inception of the Act analysing the various provisions of the Act, the decisions of the Information Commissions and the judicial interpretation given by the High Courts and the Supreme Court. Since this Act has direct relevance with public administration, books

on these subjects were also referred in the course of the study. For the purpose of study in completion of this research work, the following books were selected:

Dr. Madabhushi Sridhar, 'Right to Information Law & Practice' Wadhwa Nagpur (2007). The book is an important contribution on the issues relating to struggle for the information right. Authored by a widely known expert in the field, it provides a detailed comparison of the Right to Information Act, 2005 with the repealed Freedom of Information Act, 2002 and also highlights the significance of transparency in administration and its various uses.

Dr. J.N. Barowalia, 'Commentary on The Right to Information Act' New Delhi: Universal Publishing Co. (2012). This book is a compilation of all the laws related to the Right to Information and gives an overview of the various aspects of the Act in India. The book provides a deep insight into the subject including the government of India's time to time attempt to provide legislation for its governance of vast democracy in 21st century and gives a clear picture of the growth of the law in great detail.

Justice P.S. Narayana and G.B. Reddy, 'Right to Information and Law' Hyderabad: Gogia Law Agency (2011) gives a lucid interpretation of the right to information and its position in International sphere. The subject has been dealt with, in a methodical fashion and other connected legislations also have been mentioned. The relevant case laws have been furnished at the appropriate places for better understanding.

P.K. Das, 'Universal's Handbook on The Right to Information Act' New Delhi: Universal Publishing Co. (2011) reflects the practice of right to information in the light of other Codes, Acts, Rules, Regulations and guidelines which have been placed separately in different chapters. The various global issues relating to the Act and a wide list of cases categorically mentioned under the Supreme Court, the High Courts and the Central Information Commission makes the book an important source of information on the Act.

N.K. Acharya, 'Commentary on The Right To Information Act, 2005', Hyderabad: Asia Law House (2008). This book deals with the functioning of the Act

and has detailed information on the role of the Public authorities and the Information Commissions. The author has chosen an innovative way of interpreting the various provisions of the Act through easy FAQs. Further, a detailed list of the other relevant Statutes and Rules have been provided for a better understanding. Besides this, the laws operating in the states have been mentioned in the book reflecting lack of uniformity of rules among the states.

S.P. Sathe, 'Right to Information' Lexis Nexis Butterworths (2009). The book presents a comprehensive commentary by tracing history of the Act, the evolution of the right to information as a constitutional right and the administrative process involved in the implementation of the Act. This book gives enhanced clarity on the subject and other contemporary laws.

Sudhir Naib, 'The Right to Information in India' Oxford University Press (2013). The book gives a wider insight of the freedom of information movement from a global perspective and presents an in-depth analysis of the Right to Information Act. It makes a comparison of the law with other countries and focuses on the successes and failures of the Act and suggests measures to improve its implementation.

Prof. Madabhushi Sridhar, 'RTI Use & Abuse', Allahabad Law Agency (2015). Another recent book authored by the Information Commissioner himself, this book reveals his experiences in dealing with the complaints and appeals brought before him highlighting the uses of the abuses of the Act.

Sairam Bhat, 'Right to Information and Good Governance National Law School of India University', Bengaluru 2016 , an edited book by the author who is Professor of the National Law University, Bangalore gives comprehensive knowledge on the various issues that influences the implementation of the Right to Information Act.

N.Vittal, Ending Corruption? How to clean up India, Penguin Viking (2012). The book authored by former Central Vigilance Commissioner delves upon the various institutions of a democratic nation including the judiciary, bureaucracy, media, NGOs etc and suggests measures for making India a corruption free nation.

Madhav Godbole, Public ‘Accountability and Transparency, The Imperatives of Good Governance’, Orient Longman (2004). This book deals with the concepts of accountability and transparency as the essential elements of good governance. It covers a wide range of institutions governmental and non-governmental and critically analyses their shortcomings and weaknesses in the governance and suggests measures to address these issues.

Mool Chand Sharma, ‘Globalisation Democratisation and Distributive Justice’, Universal Law Publishing (2015). This book presents a picture of the emerging trends and challenges of the Indian democracy and focuses on its various institutions and their roles. The book also gives an insight into the rising inequalities and the steps towards distributive justice.

C.Raj Kumar, “Corruption and Human Rights in India” Oxford University Press (2011) presents a new approach for analysing corruption and delves deep into the inherent deficiencies in the existing institutions, mechanisms, laws and law enforcement agencies and suggest various measures to combat corruption.

In the last decade various socio-political developments have taken place which had a serious impact on the implementation of the Act. Human rights violation, corruption and invasion of autonomy of the institutions and agencies of the government, frequent refusal of public authorities to entertain RTI applications, unwillingness of the judiciary and the political parties to come under the purview of the Act, ambiguities in the policies of the government ,the rising conflict between the right to privacy and right to information and several other ancillary factors that have not been adequately dealt with, in the above mentioned books. The proposed research work seeks to fill up these gaps.

Brief Overview of the Chapter of the Study

To testify the hypothesis, the researcher goes ahead to discuss different issues under various chapters. Apart from Introduction, the whole work is divided into five chapters.

Chapter 1 revolves around the historical perspective of the growth and development of Right to Information Laws in India. The chapter delves upon the journey from secrecy to transparency and focuses on the evolution and development of this right and its subsequent transformation into a statutory right that has been bestowed upon the citizens of India. It also highlights the role of judiciary in giving a wider interpretation to this right and brings into light the various state laws and rules that existed before the Central law was enacted and its present position.

Chapter 2 focuses on the scope and applicability of the Act and critically analyses the various provisions of the Act. The Act makes a comparative study on the application of the Act by the state governments and throws light on the proposed amendment and its impact on the autonomy of the Information Commissions.

Chapter 3 introspects into the evolution of the freedom of information as a fundamental human right, analyses the implementation of the disclosure policies adopted by the various international organisations and also makes an assessment of access to information laws of select countries across the globe.

Chapter 4 of the present research delves upon the most important part of the research i.e. the impediments and challenges that obstructs effective implementation of the Act. The Chapter brings into the fore the various institutions and agencies and their reluctance in disclosing information. It also highlights factors that has contributed to the present situation where despite possessing such a powerful tool, the citizens are powerless.

To check the authenticity of the facts and to further explore the issues discussed in the above mentioned Chapters, a study was carried out with the help of primary survey to find out the perception of the Information Seekers and the Information Providers and the obstacles faced by both the demand and supply side. The survey is conducted by a structured questionnaire and the data received therefrom has been analysed in Chapter 5.

Finally, the whole research work was concluded with suggestions in Chapter 6 of the present research work.