

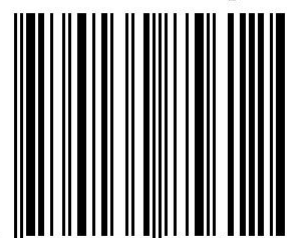


Study of The Right to Information Act 2005 (RTI) and challenges faced by the RTI Act

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Abstract : RTI act 2005 is a law enacted by the parliament of India, giving citizens of India access to records of the central government and state governments. The Act applies to all States and Union Territories of India, except the state of Jammu and Kashmir – which is covered under a State-level law. Under the provisions of the Act, any citizen (including the citizens within

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J&K) may request information from a “public authority” (a body of government) which is required to reply within thirty days. The Act also requires every public authority to computerise their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. Thus, the Right to Information Act is a codification of the important fundamental right (Article 19) of citizens. The Act and its rules define a format for requisitioning information, a time period within which information must be provided, method of giving the information, some charges for applying, and list of organizations exempted from giving information.

The Right to Information Act 2005 (RTI) is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature.

It is an Act of the Parliament of India “to provide for setting out the practical regime of right to information for citizens.” Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009.

Role of the government in RTI –

Section 26 of the Act enjoins the central government, as also the state governments of the Union of India (excluding J&K), to initiate necessary steps to:

Develop educational programs for the public especially disadvantaged communities on RTI.



Encourage Public Authorities to participate in the development and organization of such programs.

Promote timely dissemination of accurate information to the public.

The challenges faced by RTI Act –

The general awareness amongst people about the RTI Act and how it can be used for their benefit is still low. Moreover, there is a lack of sincerity on the part of government officials in disclosing information, who often threaten the applicant or refuse to provide information. Additionally, the Information Commissioners have time and again cited the lack of man power required to comply with all the provisions of the Act.

Recently, the Union Cabinet was contemplating amendments to the RTI Act, which were subsequently withdrawn after pressure from activists. The amendments, if cleared, would have restricted the disclosure of file nothings in government departments under the RTI Act only to the ones related to social and developmental issues.

Also, the selection process for appointments made to public offices would have been concealed from the public. However, the very fact the such an amendment was even considered by the government and moreover, the Supreme Court's judgment in Namita Sharma's case has set the alarm bells ringing as far as the future of the RTI Act is concerned.

Information which is exempted from disclosure –

- 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 offense;
- 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;
- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;



- 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;
- 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;
- Information received in confidence from foreign Government;
- Information, the 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;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. (NB: This provision is qualified by the proviso to sub-section 11(1) of the Act which exempts disclosure of “trade or commercial secrets protected by law” under this clause when read along with Section 8(1)(d))

Loopholes of RTI Act

As much as the Act has empowered the citizen and given them a “weapon” to keep the public officers in check, not everything about it is foolproof. The Act has flaws – Some of them in its implementation, and some in its interpretations. There are also some specific problems with the implementation of Acts in certain states. For instance, Chhattisgarh has increased the fee for an



RTI application to Rs. 500, placing it beyond the reach for a lot of people. This is despite the fact that the Act stipulates a nominal fee.

There is hope though. The Whistleblowers Protection Bill is closely connected with the success of the RTI Act, considering the increasing attacks on RTI Activists who have dared to register complaints against corrupt politicians, and wilful misuse of power by them. The legislations to protect whistleblowers, when enacted, shall provide safeguards to an RTI applicant.

Fallacy in the Act

This act empowers the people to gather information. But the problem is that when 35% of the population is illiterate, then how anyone could expect that people will demand information.

The act lacks necessary teeth for defaulters. In cases where information has been denied without sufficient cause, the penalty is not so harsh enough so as to have a deterrent effect on those who do not want to share information.

The official mindset is a very big obstacle in the progress of this act. No official in normal condition wants to share information. They generally prefer not to share information, and therefore people find it very difficult to secure information from them. The act itself provides for several grounds on which the public information officer turn down the application. Although one is allowed to appeal to next higher authority but this is just making the matter worse.

The act being based on computerized records of data, it may take a long time in computerization of such vast data and therefore the doubt hangs over whether the act would be implemented in a time bound manner.

Conclusion –

Until the introduction of the Right to Information Act, information was the property of those people who are in the ruling side and secrecy was maintained. With the commencement of the Act, now the people have got right to take, see, check and inspect any information, which is not coming under the exemption list. But at the same time it require a lot of awareness campaign among the people in order to utilize the act to combat the corruption and get the services of the State, otherwise the present Right to Information Act 2005 will also become just like any other act.



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