
THE RIGHT TO INFORMATION AND GOOD GOVERNANCE IN INDIA WITH REFERENCE TO RTI AMENDMENT ACT, 2019

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‘Introducing amendments like controlling the appointment of information commissioners will only lead to a dictatorship. I am at a loss to fathom why the RTI amendments were introduced and passed’

- Anna Hazare

ABSTRACT

The good governance is depends upon the legislative policies by the government. The right to know is part of right to information as derived from the Constitutional rights. The right to information considered as integral part of administration of justice. The successful administration is one which should be free from corruption, misappropriation of the economy of the nation. The effectiveness of administration in delivering justice to the public derives from the efficient policies and the execution of the policies. The Right to Information is one of the mechanism to establish effective administration in India.

Key words: Good governance, information, corruption, justice, administration.

1. INTRODUCTION

Modern societies are open society where as the earlier societies were closed societies. The openness in administration is the fundamental aspect of the welfare state. But, few things must be kept confidential in the interest of public security or national interest. Sometimes the law may impose secrecy in the interest of the individual. It is to balance between secrecy and openness in every modern government. The participation by the public in the affairs of administration is the way to ensure transparency in administration. The participation can be done only through the right to information which to be made available to the general public. Denial of right to information amounts to denial of best government to the citizens. People cannot exercise their choice intelligently unless they are given adequate information about the functioning of the government. Openness in government is a powerful check on arbitrary action of the government. The Supreme Court of India in one of the case¹ has been held that, 'Open government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception'.

*In Attorney General vs. Jonathan Cape Ltd*², an action was brought for injunction to restrain the publication of the political diaries of the Late Richards Crossman who was a Cabinet Minister in the Labour Government during 1964 to 1970. Lord Widgery CJ had accepted the proposition that when a Cabinet Minister receives information in confidence the improper publication of such information can be restrained by the Court. The collective responsibility was held to be an established feature of the English form of government and that some matters leading up to a Cabinet decision may be regarded as confidential'.

*In Common Wealth of Australia vs. John Fairfax and Sons Ltd*³, two journalists had obtained a number of foreign office cables and memoranda covering several matters like, Indonesia, East Timer and Anzus defence treaty. The government had applied for an injunction to prohibit publication of the materials on the ground of breach of confidentiality. The court has held that, the national security, relations with foreign countries or the ordinary business of government will be prejudiced, the disclosure will be restrained'.

2. WHAT IS TRANPARANCY?

¹ *S P Gupta vs. Union of India* , AIR 1982, SC-149.

² All ER 485, 1975

³ [1980] HCA 44

Transparency is openness; it is a necessity of democratic governance. It is a stimulus to good governance in combating corruption, nepotism, despotism, anarchism and absolutism. Accountability, responsiveness and transparency are the foundation to public accountability. In a democratic setup the legitimacy is derived from the people. In order to make the accountability of public servants the transparency is ultimate mechanism. One should be liable for his action in an administrative capacity, so right to know about the administration is part and paramount of the modern system.

Administrative authorities must use their power in an effective, impartial and honestly in consonance with the intended and stipulated purpose. Accountability may be to oneself, to society and to organization. Development of excellence and efficiency in one's own field of activity, and achievements including the experienced of growth of one's own personality is an accountability to oneself. To know, *Dharama* to external duty is required in administration to have corruption free society is accountability to society. *Sanatanadharama* for eternal values, time bound duty and responsibility is accountability to organization.

H L A Hart⁴ gave four-fold classification of responsibility they are as follows;

- a) Role Responsibility
- b) Casual Responsibility
- c) Liability
- d) Culpability

The role responsibility is an obligation of public servants, casual represents responsiveness of the authorities. Whereas liability is accountability, culpability is legitimacy of actions. Hence the responsibility probably adds a moral and ethical dimension to the concept of accountability.

3. RIGHT TO INFORMATION IN OTHER COUNTRIES

3.1. In USA

*The Freedom of Information Act, 1966*⁵ is a federal freedom of information law that allows for the full or partial disclosure of previously unrelated information and documents controlled by

⁴ In his treatise, '*Punishment and Responsibility*': *Essays in the Philosophy of Law*' (1968), Oxford University Press, London.

⁵ It was signed by President Lyndon B. Johnson on 4th July, 1966.

the U S Government. The Act defines agency records subject to disclosure, outlines mandatory disclosure procedures and grants nine exemptions to the statute. Act explicitly applies only to executive branch government agencies. The agencies are also subject to penalties for hindering the process of a petition for information.

Certain exemptions are provided by the law ranging from a withholding specifically authorised under criteria established by an Executive order to be kept secret in the interest of national defence, foreign policy, trade secrets and personal privacy.

The Postal Reorganisation Act of 1970, exempts the U S Postal Service from disclosure of information of a commercial nature including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed.

The Privacy Act of 1974, amendments to regulate government control of documents which concern a citizen has been done in 1974. It gives the right to see records about oneself, subject to the Privacy Acts exemptions. The law also provides right to amend the record if it is inaccurate, irrelevant, untimely or incomplete. The right to sue the government, for violation of the statutes also available as an exemption under the law.

The Sunshine Amendment Act of 1976, provides certain exemptions like,

information relating to national defence,

- a) internal personnel rules and practices
- b) Related to accusing a person of a crime.
- c) Information where disclosure would constitute a breach of privacy
- d) Investigatory records where the information would harm the proceedings
- e) Information which would lead to financial institution or endanger the stability of any financial institution
- f) Agency's participation in legal proceedings

The Omnibus Anti-Drug Abuse Act, 1986, provides to address the fees charged by different categories of requestors and the scope of access to law enforcement and national security records. In between 1995-99 the President Clinton had issued the executive directives that allowed the release of previously classified national security documents more than 25 years old and of historical interest as part of freedom of information Act.

The Electronic Freedom of Information Amendment Act of 1996, states that all agencies are required by statute to make certain types of records, created by the agency on or after 1st November, 1996 available electronically. Agencies must also provide electronic reading rooms for citizens to use to have access to records. Given the large volume of records and limited resources, the amendment also extended the agencies required response time to freedom of information Act requests. Formerly the response time was 10 days and the amendment had extended the time up to 20 days.

*The Executive Order-2001*⁶ had restricted access to the records of former Presidents. This order was revoked on 21st January, 2009 as part of President Barack Obama's Executive Order 13489. Public access to Presidential records was restored to the original extent of five years.

The Intelligence Authorization Act of 2002, The Congress had passed the law for Fiscal Year 2003 within the omnibus legislation entitled, 'prohibition on Compliance with Requests for Information submitted by Foreign Governments.'⁷ Another prevailing law is the *OPEN Government Act of 2007*⁸

4. RIGHT TO INFORMATION IN INDIA

The protection of confidential and official secrets was governed by the Official Secrets Act, 1933. Section -5(1) of the Act provides that,

- a) Any person in possession or control of secret official information
- b) Any person obtaining information in contravention of this Act
- c) Any person to whom official information has been entrusted in confidence by any person holding office under the government
- d) Any person obtaining or having access to information owing to his holding any office or holding any government contract or any person holding office under any of these persons

Section-5(2) provides, persons receiving the information: not only is a person communicating the information guilty of an offence under section-5 but also the person receiving it.⁹ It applies not only government servants but also to all persons who have obtained the secret information

⁶ Executive Order No 13233 drafted by Alberto R. Gonzales and issued by President George W. Bush.

⁷ Section-552(a)(3) of title 5, United States Code also amended.

⁸ President George Bush signed the Openness Promotes Effectiveness in our National Government Act of 2007 on 31st

⁹ The punishment under section-5 is imprisonment for a period of 3 years with fine.

in contravention of the Act. The secret information includes any official code, password, sketch, plan, model, document or information etc.

*In R K Karanjia vs. Emperor*¹⁰The news paper Blitz published an article inviting the public to send an official secrets to the editor for which a lavish payment was promised. The question before the court was that, 'whether such an article would fall under section-5(1) of the Official Secrets Act, 1923. The court has held that the said article would fall under section-5(1) of the Act.

In another case¹¹ certain parts of the budget were published in a newspaper before presentation. The Kerala High Court has held that the budget being a secret document of the government, the reception and publication thereof fell within the mischief of section-5(2) of the Act.¹²

5. RIGHT TO INFORMATION AMENDMENT ACT,2019-AN OVERVIEW

5.1. History of the Amendment

Under the Right to Information Act, 2005, an RTI activist asked the PMO to disclose the names of businessmen who accompanied Prime Minister on his foreign trips. Such information is important as one can see from deal struck for 36 Rafale Jets during the PM's visit to France in April 2015, accompanied by businessman Anil Ambani, when the Prime Minister suddenly cancelled negotiations at final stage for 126 Rafale fighters, most of which were to be produced at HAL, Bengaluru, and instead opted to buy 36 'fighters off the shelf' from France and Anil Ambani obtained the 'offset' deal for the purchase made by the Government of India with tax payers money.

In 2018, then Chief Information Commissioner (CIC) R K Mathur directed the PMO to release the information asked for by the RTI activist. The PMO had withheld the information citing on 'national security' concerns. The CIC rejected the stance and directed the PMO to reveal the names of non-government delegates only, thus addressing the security concern. Also on the ground that, such information was readily and voluntarily made available on the PMO website

¹⁰ AIR 1946,Bom.322

¹¹ *State vs. K Balakrishna*, AIR 1961 Ker-25

¹² Section-5(2) provides that, any person voluntarily receiving such information knowing or having reasonable ground to believe that such information is being given to him in contravention of the Act.

when Manmohan Singh was the Prime Minister. In the very first session of Parliament in its new term, the government brought in an amendment to the RTI Act, granting itself the power to set the salary and tenure of the CIC and the Information Commissioner at the Centre and in the States.

In 2005, the UPA government, which passed the RTI law had put the RTI institution beyond the pale of the government by giving the CIC and the IC s the same status as the Chief Election Commissioner and Election Commissioners who in turn enjoy the same status as Supreme Court Judges. That is, de facto Constitutional authority status for the RTI institution.

If the government is linking Aadhar into bank etc which amounts to violation of privacy of the citizens, but the RTI amendment Act of 2019, is excluding the CIC from disclosure of information to citizens, then one can decide the fate of transparency in administration.

5.2. The new idea of transparency is a one-way flow of information, from citizen to govt¹³

The RTI amended to render the institution ineffective. The ministry of Statistics issues gag orders to its officers and experts.¹⁴ The Finance Ministry bars journalists from visiting its offices without prior appointment. And while the government seeks to ensure that no information flows to citizens except what it puts out, the HRD ministry directs universities and colleges to link the social media profiles of all students to the government. And as all this is happening, the Opposition is effectively dead, large parts of the media compromised, and the government is running a huge national security propaganda.

5.3. Govt- Citizen information asymmetry is dangerous¹⁵

Constitutional government means rule by a limited government one whose powers and functions are limited by a Constitution as check against tyranny and authoritarian rule. Unlike in ancient and medieval societies, the power of the State today does not rest solely on brute military power or appeals to religion; information play a key part. When the information is collected and analysed and disseminated within the scope of law and rules, information is necessary for good governance. Government as we know it, would be virtually impossible if

¹³ Deccan Herald, 28th July, 2019, page no-6.

¹⁴ The Ministry of Statistics and Programme Implementation recently notified a ‘Code of professional ethics’ for all members of committees set up by it or by institutions under its control.

¹⁵ *Supra* note no -1 As expressed by Alok Prasanna Kumar.

the State did not collect data and try to make sense of what is going on in the country, and address problems accordingly.

But when the flow of information is purely one way-where the government collects all the information and keeps citizens in the dark about the truth, it is a recipe for tyranny. It is an awareness of this danger that has resulted in laws such as the Right to Information Act, 2005, the regular release of statistics by the agencies concerned and in institutions such as Parliament, where legislators scrutinize and question the government. The effect of amendment to the RTI institution remains to be seen. There are serious concerns with handing over the power of determining the tenure and terms and conditions of service of information commissioners to the Union Government.

6. Sonia Gandhi, UPA Chairperson has rightly made a remark that, ‘The RTI Act has helped usher in a new culture of transparency and accountability in administration at all levels. The foundations of our democracy have, as a result, been strengthened immeasurably. The weaker sections of society have benefitted greatly by the proactive use of RTI by activists and others. This law now stands on the brink of extinction. The Centre’s misuse of legislative majority to achieve its aims will disempower citizens of the country’.

7. CONCLUSION AND SUGGESTIONS.

Thus, it can be concluded that, efficiency, effectiveness and transparency are the main ingredients of the successful administration. The right to know the affairs of the administration is part and parcel of administration of justice. The participation in the affairs of the government by the public is essential part of good governance. Therefore the Right to Information Act is intended to establish the administration to be free from corruption.