

When Citizens Ask, the State Must Answer: Constitutional Vision Behind the Right to Information

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Abstract

The Right to Information (RTI) Act, 2005 was introduced as one of the most significant changes in favour of more transparency, accountability and involvement of citizens in governance. The Act is founded on the constitutional principle that well informed citizens are vital for the democracy and this Act itself attempts to dismantle the culture of secrecy and grant citizens the right to demand and receive information that is publicly available. However, this Act is under threat because of some administrative and structural barriers. One of the primary concerns is that the tenure of the Chief Information Commissioner and Information Commissioners had decreased from five years to three years in cases where independence and stability of information system is undermined. This reduction in tenure is combined with long vacancies within the commissions, the effect of which is to make the RTI mechanism much weaker and reduced in force, which is virtually a dead letter. There is an increasing number of cases on the docket, and cases being delayed in filled posts further diminish the effectiveness of the Act. This research paper looks at how judicial rulings and landmark cases are influencing the understanding of RTI and more so how The Hon'ble Supreme Court believes that information is an essential component of democracy. It also evaluates that these judicial decision and media coverage are examples of the friction between the vision of the Act and their practical application. At last, the RTI is still an effective weapon within the constitution, however, its future will depend on developing institutional capacity, providing the independence of the commission and the restoration of the culture of transparency. Without these changes the RTI Act would be symbolic and they will never bring about substantive and accountable governance.

Keywords: Right to Information; transparency; accountability; tenure reduction; judicial interpretation; access to information.

Introduction

The Right to Information (RTI) Act, 2005 is considered the backbone of Indian Constitution. The act was enacted on 15 June, 2005 and got Presidential assent on 12 October, 2005 replacing The Freedom of Information Act, 2002. The scope of this Act extends to all public bodies which includes Legislature, Judiciary and Executive and any other institution owned, funded or controlled fully or partially by the State or Union Government. Though not specifically given in The Constitution of India but the right to information is recognised by Hon'ble Supreme Court as a fundamental right stemming from Article 19(a)(1) (freedom of speech and expression).

Constitutional Vision of Accountability

The constitution so in effect means that accountability in the context of the right to information is reduced to the view that all public power is a trust to the people and due to that trust, we must hold it accountable to the people. The Constitution does not literally provide a right to information, but the Hon'ble Supreme Court continues to declare that it is in the same boat as freedom of speech in Article 19(1)(a), since an informed citizen can take the right to govern seriously. The Hon'ble Supreme Court, in a landmark case (*State of Uttar Pradesh v. Raj Narain*, 1975), has rendered the transparency the default rule and the secrecy the exception, thus bringing accountability into a constitutional rule of public administration.

Constitutional Basis of Transparency

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The constitutional prerequisite of transparency under the RTI Act, 2005 simply goes down to the notion that transparency in the governance is a necessity in a democratic society that is ruled by law. The Constitution of India does not expressly spell out the Right to Information, but the Supreme Court their reading has cited that the right to information was implicitly enshrined in the Article 19(1)(a), where they said that freedom of speech and expression literally encompasses the right to information. The Court clarified that the citizens have a right to be told what the government authorities are doing, so openness is the norm and secrecy is an exception, which must be strictly justified. The doctrine of open government established in the case (S.P. Gupta v. Union of India, 1981) and quoted as, "Open government is the new democratic norm, and secrecy is permissible only when strictly justified in public interest." (Shukla, V. N, 2020) reaffirmed that there is no way that the public can be accountable without access to information. The RTI Act, 2005 takes this constitutional principle and transforms it into a statutory instrument, which offers a tangible mechanism that facilitates open administration and also imposes limitations because, "Accountability in public administration is meaningless unless citizens are informed participants in governance." (Sarkaria, R. S, 2016), which check the exercise of the power of the people.

Right to Information as a Fundamental Right

In essence, the right to information is a basic right in India courtesy to the decisions of the courts, and generally, it is under the freedom of speech and expression affirmed in Article 19(1)(a). The Hon'ble Supreme Court has continuously stated that you cannot actually speak openly or participate in a democracy when you do not get the access to the information on how the government is executing their tasks. The Hon'ble Court clarified it in 1975 with a landmark case law (State of Uttar Pradesh v. Raj Narain, 1975), stating that citizens have a right to know any activities of the public officials, and the right to know formally became a part of Article 19(1)(a). This opinion became more firm in a judgement (S.P. Gupta v. Union of India, 1981) where the concept of an open government was banged on the head as a necessary

condition of accountability, and subsequently and more famously with PUCL voter's case (People's Union for Civil Liberties v. Union of India, 2003) in which the court ruled that voters require information to make informed decisions at the polls. Thus, the RTI Act, 2005 is not actually establishing a new right; it provides a practical, legal structure to enforce an already established fundamental right, but it will still allow reasonable restrictions such as given under Article 19(2).

Key Features of the RTI Act, 2005

The RTI Act, 2005 is therefore essentially a rights-based law all about making governments transparent and accountable. It provides the citizens with a legally enforceable right to actually know what the public authorities are up to. The application to submit a request is relatively simple, which is a bonus to those who do not have the time to waste on additional procedural formalities. The act also advocates pro-active disclosure, i.e. Government is compelled to provide information, even prior to you making an enquiry. (Right to Information Act, 2005) It establishes separate Central and State Information Commissions to address disputes and ensure that the officials adhere to the regulations. (Right to Information Act, 2005) Also, when you are a civil servant and make mistakes, you can be punished, making transparency not only a desirable aspect but a legal requirement. (Right to Information Act, 2005) Essentially, it switches the common culture of secrecy and shifts the responsibility of justification to the State.

Scope and Definition of what 'information' is

The phrase 'information' at RTI, Act 2005 is deliberately general to ensure that authorities cannot evade it. Information comprises of anything: papers, emails, opinions, contracts, reports, samples, and data, including that in electronic form. (Right to Information Act, 2005) In that manner one can question the decisions as well as their making. The Act does not make you make up brand-new information, justify everything you knew, and provide answers to imaginary problems, so it maintains the balance between

complete disclosure and administrative effectiveness.

Role and Powers of Public Authorities

The key actors of making the RTI, Act 2005 work are the authorities of the people. They are required to maintain their records in place and to communicate the essential information regarding their responsibilities, authorities, expenditures, and decision-making. (Right to Information Act, 2005) All authorities have a Public Information Officer (PIO) to receive the requests and provide the information within the legal time frames. When a PIO or a state agency does not comply, they are subject to disciplinary measures and fines, which are enough to keep accountability on track and to avoid the tendency to make transparency another boxed-off ritual. (Right to Information Act, 2005)

Time Limited Disclosure and Appeal Process

One of the most significant things associated with the RTI Act, 2005 is that time-bound disclosure since time is of the essence and any delays will ruin the entire concept of transparency. Authorities have to provide the information normally within 30 days and in the cases of life or liberty, within 48 days. The act establishes two levels of appeal: at the first level you are appealing to a superior officer of the same authority and in case this is not sufficient, you appeal to the Central or State Information Commission. This formal recourse procedure offers you a formidable safeguard against refusal, postponement or substandard information, and keeps the right to information actual and not merely a vision statement.

Critical Issues and Watering-Down of the RTI Regime

Although RTI Act, 2005 has an iron-clad constitutional embankment, it is always brought into a snare by the real-life problems that undermine its efficiency. The political will that continues to slip down the radar, the administrative inertia and the continually increasing procedural formalism all of these deplete the transformative impact of the law. RTI, Act 2005 was supposed to be tongue on important citizen, in fact only the box-checking exercise is done in secrecy by some

bureaucrats and not in plain sight as intended in the constitution which has been erased at a sluggish rate. The point is that the institutional erosion of the right to information concept is not a mere myth but a reality that is taking place in the real world. The inability to appoint a Chief Information Commissioner continues to ensure that every time one looks in the news, the Central Information Commission is dysfunctional, and there is a huge backlog of appeals and complaints. Such administrative inertia actually lambastes the time-sensitive structure of the RTI Act and basically eliminates the right of citizens to demand accountability. (Frontline, "article")

Delay, Denial and Bureaucratic Resistance

The worst of the realization check-ups is the duration of getting information. Bureaucrats are resistant and play the secrecy card with ambiguous and vague responses, exemption clauses hyping, or even direct disregard of the request. That latitude kills the time-constrained notion upon which the Act was constructed; and the result comes out to be old, pulpy data can never swing responsibility. (Right to Information Act, 2005) Add in a denial with no substantiation, and one is essentially playing to a disillusioned crowd.

Problems with Implementation and Publicity

Implementation of the RTI Act, 2005 is hampered by insufficient training of personnel, disorganized record keeping and inadequate grassroots infrastructure. The majority of governmental organizations remain paper-based or poorly digitised and thus retrieving information is a pain. Next comes the low awareness issue: not many individuals know how to use RTI, Act 2005, which becomes an obstacle preventing it as a strong mass accountability instrument. This is particularly applicable to the marginalized groups, which have even greater structural obstacles to catching the right info, thereby assassinating the promise of an equal-rights law. In contrast, the Right to Information Act of 2005 has been intended to be a game changer but on the real sense it has been languishing in the middle because the government clearly cannot get it to work. The enforcement wing is to be the Central Information Commission

(CIC) and the State Information Commissions (SICs) but these are virtual shells- important posts remain unfilled over years. On the national level the Chief Information Commissioner position has remained vacant since 2014 and of the ten formal information Commissioner posts, two are even occupied. Most of the SICs have the same nightmare during hiring. With that paralysis, we nearly have four lakh RTIs appeals and complaints on a national backlog. Some states take so long that it would take 7 to 29 years before the case is heard. The entire aspect of the RTI Act- being able to get information in time to hold anyone accountable is completely lost. Legal regulations dictate that we should be ready in advance of new employees, but that is simply ignored. (Thehindu, "article") The Hon'ble Supreme Court has already pointed out at how botched up these implementation laughter-ups are. In a more recent proceeding, the Court also noted that in case the Central and State Information Commissions continue to remain vacant, the RTI Act of 2005 is virtually a dead letter. They made it clear that appointments must be timely and advised the Union and State governments to provide over information about sanctioned strength, existing vacancies, and backlog cases, although they said that many state Info Commissions have become virtually extinct. This court action demonstrates how the lack of action by the administration has seriously impaired the RTI regime. (Ndtv, "rti will become dead letter if vacancies not")

Amendments and Implication on Transparency

New developments in the RTI, Act 2005 cast genuine concerns regarding the transparency and independence of the institutions. The executive undertakes wider grade-control over the courts by making changes to the tenure, pay, and service benefits of Information Commissioners, which undermine the independence of the courts. They were those adjustments that would raise the objectiveness of the dispute resolution and undermine the appeal game. Essentially, pulling the leash on Information Commissions, the very essence of the law which requires transparency unravels and the RTI framework becomes a tainted tool of democratic supervision. (Das, P. K, 2017)

Way Forward & Reforms

It has been an eye-opener to democracy, but to make the RTI Act last we must give it a serious overhaul and not merely an overhaul of the administrative aspects of the same. We ought to target driving a culture of transparency within the public organizations through real reform in institutions, getting politicians to be part of it, and engaging citizens in it. That is, ensuring that authorities think of information as a default right, not a privilege, and integrating transparency into the way we assess government performance. We should also have an open, collaborative mechanism to check on RTI compliance- frequent audits, community RTI statistics and stiffer repercussions to violation. RTI can only be taken away through a complete reform package to retain it as a sound accountability tool.

Analysis of the Act

The Right to Information Act, 2005 is fundamentally a well-grounded law, which is based directly on the constitutional right to have a free speech. It provides us with a time-limited manner of acquiring information, has independent third-party administrators, and even imposes a penalty on non-compliance this is the ideal arrangement to hold governments honest. The issue is not the Act, but the way it is being implemented and the policies that followed it to make the enforcement weakened. The postulations struggle of RTI system is largely structural and administrative. That is why it should be repaired with the idea of strengthening the institutions, not the right to access the information.

Modification in Structure of Chief Information Commissioner and the RTI Mechanism

Restructuring the way the Central and State Information Commissions operate is a major way of injecting new life into the RTI framework. This would be a major victory to revive the original five years fixed tenure of the Chief Information Commissioner and the other commissioners, which was reduced to three years by the 2019 amendment. (Economic times) The longer term is greater stability, less executive play-acting and a more independent voice of the commissions. The re-election of the original tenure would bring the

bodies closer to the initial intention of the law to make them independent. The other solution is to revamp the appointment procedure in a manner that it does not accumulate the vacancies. The selection process must have statutory deadlines of starting the selection process, and the entire process must occur on a regular and transparent basis. Any postponements must become publicised. It must be made mandatory at the central level as well as at the state level and the interim or ad-hoc appointment should be adopted in order to prevent dead-locks only. The RTI machinery can be made to operate more efficiently by adding such easy reforms as virtual hearings, lightweight case-management, and prioritisation of appeals which has been waiting for long.

Recommendation of Policies to Enhance Implementation

A combination of improved disciplinary measures of the administration and sound accountability is needed to make the RTI Act, 2005 successful in practice. Gaps must be punished with great severity, not filling approved posts within proper time frames should result in official penalties. Frequent reporting of vacancies, case backlogs, and rates of disposal to Parliament and to the State Legislatures would increase supervision. Close attention should also be paid to appointments imposed by The Hon'ble Supreme Court, and they should be revised on a regular basis. The capabilities of Public Information Officers must be enhanced by continuous training, establish standard procedures in disclosure, and update record keeping practices. This would be able to reduce initial delays in which the request is not even processed. Application of proactive disclosure under Section 4 of The RTI, Act 2005 should be strict such that individuals do not need to be required to make individual RTI requests to get information that ought to be available.

Conclusion

The Right to Information Act, 2005 reflects the constitutional dream that the power of the government is a trust and thus the citizens should be in a position to keep the state accountable. Although the Constitution makes no express reference to the right to information, the Supreme

Court has persistently regarded it as a necessary extension of Article 19(1)(a)- freedom of speech and expression since transparency is the condition on which effective democratic participation is possible. RTI Act realizes this constitutional principle by making openness a statutory requirement and secrecy an exception and accountability the rule. Nevertheless, there are serious implementation problems of the RTI regime, despite its solid constitutional basis. The bureaucratic resistance, delays in procedures, poor record-keeping, poor awareness of the Act, and institutional erosion undermine the effectiveness of the Act. The greatest risk is the ineffectiveness of the Information Commissions, with lengthy vacancies and huge backlogs transformed the Act into a slow and useless instrument. More recent amendments and administrative restraints have also weakened the independence and authority of the commissions, thus weakening the aim of the Act. Thus, the solution lies in a structural change and not administrative solutions. Information Commissioners should have longer tenures reinstated, the RTI regime should have bolstered institutions, clear and timely hiring procedures, and even more serious disciplinary actions against non-compliance with the regime. The issue of proactive disclosure, more training of Public Information Officers, use of records that are digitized, and constant public awareness are the keys to make sure that the culture of transparency becomes the default culture in governance. It is only at this point that RTI Act, 2005 can realize its constitutional potential and actually put citizens in a position to demand of the state. Last but not least, the RTI Act will be available and useful to all, and this would be ensured by a consistent public awareness campaign and procedural guides. These reforms, combined, can make the RTI framework go back to where it belongs as an effective tool of democracy and not a mere legal token gesture.

References

- Das, P. K. (2017). *The Right to Information Act, 2005: A commentary*. LexisNexis.
- Frontline. (n.d.). *RTI, democracy, CIC headless vacancies*. Frontline. <<https://frontline.thehindu.com/politics/rti->

democracy-cic-headless-
vacancies/article70092048.ece>

NDTV. (2023, October 30). *RTI will become "dead letter" if vacancies not filled: Supreme Court to Centre.* NDTV.
<https://www.ndtv.com/india-news/rti-will-become-dead-letter-if-vacancies-not-filled-supreme-court-to-centre-4527858>

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

Right to Information Act, No. 22 of 2005 (India).

S. P. Gupta v. Union of India, 1981 Supp SCC 87 (India).

Sarkaria, R. S. (2016). *Administrative law in India*. Oxford University Press.

Sharma, N. (2019, October 26). *Centre notifies RTI rules for CIC, ICs; tenure cut to 3 years.* *The Economic Times*.
<https://economictimes.indiatimes.com/news/politics-and-nation/centre-notifies-rti-rules-for-cic-ics-tenure-cut-to-3-years/articleshow/71769584.cms>

Shukla, V. N. (2020). *Constitution of India* (13th ed.). Eastern Book Company.

State of Uttar Pradesh v. Raj Narain, (1975) 4 SCC 428 (India).

The Hindu. (2023, October 12). *Over 3 lakh RTI appeals pending with information commissions.*
<<https://frontline.thehindu.com/politics/rti-democracy-cic-headless-vacancies/article70092048.ece>>