



## TEN YEARS OF THE RIGHT TO INFORMATION ACT, 2005: WHITHER TRANSPARENCY AND ACCOUNTABILITY?

Vol. I | Issue 6 | June 2015

*The Right to Information Act, 2005, hailed as a pre-eminent mechanism of furthering transparency, human rights and democratic governance in India, completes a decade this year. While instances of citizens using this law to take on the culture of secrecy and inefficiency in governance structures are many, this revolutionary legislation has also been mired in legal and political controversies since its enactment. This issue of the Law & Policy Brief provides an assessment of the RTI Act in the last decade and highlights the policy issues that are currently at stake.*

### Introduction

The Indian political system, which is an inheritance of the colonial government, was, and in some ways still is, designed to control and govern the activities of the people towards the ends of the state. This exploitative system has an inherent logic of secrecy and is epitomized in the form of the 1923 Official Secrets Act (OSA). In addition to the OSA, the design and structure of the government is also governed by various departmental guidelines, which casts a veil of secrecy over the activities of the government. The enactment of the Right to Information Act, 2005 (RTI Act) is just one step in the process of lifting that veil of secrecy.

Before the enactment of RTI, the judiciary played a key role in addressing and interpreting several cases which dealt with issues of transparency and accountability. These include cases brought by individuals like Raj Narain and Manubhai Shah and organisations such as People's Union for Civil Liberties and the Association for Democratic Reforms.

The breakthrough case that addressed the question of access to information seriously was *State of UP v Raj Narain* [AIR 1975 SC

865], in which the Supreme Court of India addressed the question whether individuals had access to information regarding the activities of public officials, and whether public officials were required to explain and justify their acts carried out in the official capacity. In this instance, it was none other than the then Prime Minister of India, Indira Gandhi, whose activities preceding the 1971 general elections were in question. The applicant, Raj Narain, sought information regarding the campaigning activities of the Prime Minister, who was up for re-election, to determine whether she had derived any advantage by utilizing public resources in the ensuing elections. When this information was sought, the applicant was denied the information, on the basis that the security of the Prime Minister is an issue of national security.

After its examination at various levels the case ended up in the Supreme Court, which, for the first time, observed the following:

*"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a*

*Law and Policy Research Group, at the Jindal Global Law School, brings the tools of legal analysis and policy analysis in conversation with each other. Its Law & Policy Brief presents inter-disciplinary analyses of Bills pending before the Parliament, recent court judgments, amendments to existing laws, recently enacted laws, and other topical legal issues that have important policy implications.*

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\* JGLS ranked 1<sup>st</sup> among all private law schools in India by **Careers360 Magazine** (2014)

\* JGLS ranked 5<sup>th</sup> among all law schools in India in **Legally India's Graduate Recruitment Rankings** (2014)

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*public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.”*

[Para 74]

After this case, other courts identified additional themes including, removing blanket exemptions to categories of information, severability of information, inspecting documents to determine their disclosure, balancing exercise to determine public interest, medium of disclosure, and the right of the people to know the antecedents of public officials.

Before RTI was enacted, there was a failed law in the form of the Freedom of Information Act 2002. This Act was passed in December 2002 and received the assent of the President of India in January 2003, but never came into effect. Its failure can be attributed to three factors – bureaucratic opposition; absence of strong advocate in the government; and the lack of access of civil society actors to the government.

RTI was successfully enacted in 2005 after the United Progressive Alliance made it a major promise in the Common Minimum Programme with its alliance partners. The new law also contained a self-execution provision which saw the RTI Act come into force on the one hundred and twentieth day of its enactment.

### **Assessing the Content of the Act**

A framework developed by the Centre for Law and Democracy [[www.law-democracy.org](http://www.law-democracy.org)] and Access Info [[www.access-info.org](http://www.access-info.org)] can be used as a basis to understand the content of the law in India. The framework for assessing RTI in a given country is divided into seven main categories: right of access; scope; requesting procedures; exceptions and refusals; appeals; sanctions and protections; and promotional measures.

Right of Access has been recognized as a constitutional right by the Supreme Court on numerous occasions and the RTI Act acknowledges that in the Preamble and Section 3. The scope of RTI is restricted to citizens under Section 3, and the type of material covered is extensive under Section 2(i). The Act is broadly applicable to executive, legislative, and judicial branches, along with other entities which are either owned, financed or controlled by the state, under Section 2(h).

Under Section 6 of Act, a person who desires to obtain information is not needed to provide reasons for their applications, and is to be assisted by the Public Information

Officer (PIO), if needed under Section 5(3). The rules under RTI Act provide for fees but cannot exceed the cost of reproduction and delivery of information. These fees are waived for people below the poverty line. The evolution of RTI laws has brought some consensus that governments can exempt information that pertains to national security; international relations; public health and safety; prevention, investigation and prosecution of legal wrongs; privacy; legitimate commercial and economic interests; legal privilege; conservation of environment; and legitimate policy making. These exemptions are covered under Section 8 and circumscribe the discretion of the government not to release information. When dealing with exempted information, Section 8(2) provides for a public interest override to disclose information and Section 22 overrides the provisions under OSA, making the RTI Act quite progressive.

The provision on appeals becomes the fulcrum for the operation of a law on access to information. The current standard on appeals calls for a two-pronged mechanism – internal appeal mechanism and an external 'independent' appellate mechanism, with powers of oversight, restitution for non-provision of information and imposing sanctions. Section 19 provides for this two-pronged mechanism with an internal appeal in the department and an external appeal to the Information Commission (IC).

The Commission can receive and inquire into complaints made by any person who has had difficulty in obtaining information owing to refusal, non-response, unreasonable charges for information or incomplete, misleading or false information. The Commission is bestowed with powers of a civil court to carry out these functions which include summoning and enforcing attendance of persons, inspection of documents, requisitioning public records and even issuing summons for examination of witness and documents.

These quasi-judicial functions were supposed to provide for an intermediate and effective appellate mechanism to the public who would have had to approach the courts alternatively. The powers of the IC to impose sanctions on officials who have failed to provide information, delayed providing information, provided inadequate or partial information, destroyed information, include, imposing a fine, and recommend disciplinary action against the PIO, under the service rules applicable to the officials.

### **Assessing the Functioning of the Act (2005 - 2015)**

We find that RTI has been utilized effectively and in an innovative manner despite its biggest weakness, which is a lack of awareness about the law among a majority of the population. The primary themes that arise when looking at

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the implementation of the law are in the following areas: usage of RTI arising from the requesting procedures; nature of information sought under RTI; functioning of the appellate mechanism i.e. the ICs; and finally, the oversight of the implementation process.

First, issues relating to the usage of the RTI procedure. The Annual Report of the Central Information Commission (CIC), which only covers the performance of RTI at the Central level, shows that the usage of RTI has been increasing since 2005 with public authorities receiving 8,34,000 applications in 2013-14, a manifold increase from 24,436 applications in 2005-06. While this is heartening, the real issue is that it is still a challenge to submit an RTI application and receive information as the present system heavily relies on procedures which consume time and effort. The requirement of a nominal application fee of 10 Rupees creates a hurdle in submitting the application. This is even higher in some states like Haryana where the application fee is 50 Rupees.

From the information provider's point of view, RTI has placed a burden on public authorities as all section officers were designated as PIOs in central government ministries and more arbitrarily across India. It not only added an additional burden on these public officials but they were also inadequately prepared to interpret and handle the RTI Act. To ameliorate this weakness it is recommended that digital delivery of RTI applications should be implemented at the earliest. Information Communication Technology can be leveraged effectively to implement RTI with respect to processing applications for information; collating information disclosed under *suo motu* requirement of RTI Act; maintaining and updating registers as required under the RTI Rules; monitoring the receipt, processing, and disposal of information requests of various PIOs.

The other important potential for electronic and digital delivery mechanisms of RTI is to reduce the time taken to handle information requests. Similar to the old adage – *justice delayed is justice denied*, we can coin a new one – *information delayed is information denied*. Electronic and digital delivery mechanisms can help in not only handling information in the required 30 day period, it can also ease the transfer of information requests to other departments, which should be done within 5 days after an initial request.

As a first step, the RTI Online portal launched by the Central Government adopts a user friendly technology at a minimum cost and has been replicated recently by the state of Maharashtra. The most important benefit of the portal is the ability to better document and manage the information generated, when handling RTI requests. It also has the potential to implement the latest guidelines from the Central Government that departments should make all RTI replies made available online.

Second, the nature of information. In a recent study carried out by the RTI Assessment and Analysis Group (RAAG) it has been found that the majority of the applications pertain to matters of service delivery i.e. queries about when a particular service offered by the government is expected to be delivered. A very popular instance of ensuring service delivery through the use of an RTI application has been followed while getting a ration card or a passport. The use of RTI route was found to be systematically effective, at times even more so than paying a bribe! Drawing on a field experiment on access to ration cards among New Delhi's slum dwellers, a study demonstrated that RTI Act was almost as effective as bribery in helping the poor to secure access to a basic public service.<sup>1</sup>

To reduce the burden of RTI applications focused on service delivery, electronic means should be prioritised. The Electronic Services Delivery Bill, 2011, which has now

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<sup>1</sup>Peisakhin, Leonid and Paul Pinto. 2010. Is transparency an effective anti-corruption strategy? Evidence from a field experiment in India. *Regulation & Governance* 4: 261–280.

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