

## Right to Information: Some Reflections and Ruminations

As they say, information is necessary to 'form, perform, conform and reform'. It is so basic to any aspect of human existence, be it learning or acquisition of knowledge, performance of one's duties or any activity, compliance to any rules or laws and reform in any system, subsequent to revelations of deficiencies discovered and changes required. It is subsequent to this realisation that Right to Information Act (the RTI Act) was enacted way back in 2005 in our country. Since its enactment in 2005, the RTI has become a potent tool in the hands of hoi polloi and it has used this Act to further the cause of democracy and democratic rights in this country. Principles of natural justice also subsume the right to fair hearing which presumes a right to information.

The various powers and rights accruing to common people under the Act have been widely used, with positive implications for effective governance in this country. The government and its sundry administrative wings have literally been on toes in the past few years providing various kinds of information to different classes of people. The war against various systemic evils unleashed in the wake of the RTI has been termed as the 'Third War of Independence'. The conservative bureaucracy can no longer hide behind the fig-leaf of the Official Secrets Act, 1923 to deny information to the citizens unless the same could be justified in strict public interest.

Even though the RTI came into existence only in 2005 in this country, it is argued that it has always been there an inalienable part of our democratic ethos. The right to information is said to be implied across many disparate rules and provisions of the Representation of Peoples Act, the Consumer Protection Act, 1986, the Indian Factories Act, 1948, The Constitution of India (e.g., Articles 19, 21 and 22), the Indian Evidence Act, 1941, The Criminal Procedure Code, 1973, The Public Records Act and many judgements of the Supreme Court and High Courts. It has also been part of global discourse due to its inclusion in various international Instruments and Conventions including the Universal Declaration of Human Rights, 1948 and in the Acts/laws of many developed countries.

In fact, for any law or Act to be effective in a democracy, it is very important that the common public is duly informed about the various aspects and provisions. Not only that, these people should also be conscious and conscientised about the need to use their various rights and powers available under the Act. And the RTI is no different. The common people of this country have not only been greatly empowered by the Act, but they are also gradually learning to use the same effectively resulting in more democratisation of the system.

With the increased popular participation made possible by the Act, the overall accountability in the system has also increased remarkably. As almost any and every information is now in public domain, the wily government servant thinks twice before doing anything wrong as he/she is aware that tomorrow he/she might have to account for or explain the action/decision taken by him/her. The RTI Act has definitely made the administration more transparent and accountable than it ever was.

The basic features of good governance include transparency, accountability and predictability. After the enactment of the RTI, these parameters could clearly be seen to be writ large across the governance system in this country. Still, there is a lot which needs to be done to make this Act further effective.

First of all, voluntary disclosure of information and appointment of public information officers (PIOs) as warranted under respective sections 4 and 5 of the Act by various agencies have still not been done suitably and properly. Section 4, sub-section 2 of the RTI Act says, "It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information." The RTI actually implies the 'Theory of Full Belly', i.e., if someone's stomach is full, he/she would never ask for food. Similarly, if information is provided *suo motu*, people shall never resort to RTI.

Again, Section 5, sub-section 1 of the RTI Act says, "Every public authority shall, within one hundred days of the enactment of this Act [i.e., 21st of June, 2005], designate as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act." So, it is important that to realise the objective of this Act, the spirit behind these sections are realised and actualised as early as possible.

Notwithstanding the fact that there are approximately 50,00,000 public authorities in the country, still, these SPIOS and ASPIOS (State Public Information Officers and Assistant State Public Information Officers) have not been notified by many of them. And where they have been so notified, they have not been suitably publicised, resulting in confusion and inefficiency in the disposal of the RTI petitions. At many places, there is a single SPIO for the entire Organisation, something which makes the system very cumbersome because of dependence on a lone person. So, the onus could be suitably and conveniently apportioned among many SPIOs for better performance and speedier disposal.

While in the beginning, the public authorities would complain against the paucity of funds to take various measures as required by the Act including voluntary disclosure of information. However, now there are enough contingent funds under different schemes which could be suitably utilised to realise this basic prerequisite to make the RTI more effective. As there is always shortage of manpower for such work, it won't be out of place to suggest outsourcing of such works. The massive amount of work required towards voluntary disclosure of information could be better executed by professional agencies skilled in such tasks. The care, however, should be taken to ensure that the information is easy to understand and is provided through suitable linguistic media.

Even though we have come a long way in implementation of the RTI in this country, there is still considerable lack of awareness among public and public servants regarding various aspects and provisions of the Act. The ignorance is reflected in the kinds of petitions filed and the responses of various public authorities.

Many of the petitions filed have been found to be motivated. The political parties, as one could say with experience, often use it to literally annoy the local administration, e.g., loads of RTI petitions if you don't listen to them or accede to one or the other of their demands. While the brief of the Act is to supply the information available in public domain, people have actually been seeking action and justice under the Act which is not the brief of the Act. Many of the petitions are filed without any purpose or locus standi. More often than not, the way RTI petitions are filed or the way information is sought also creates confusion among the public authorities who themselves are often not clear as to how to deal with such petitions.

Though anyone and everyone could seek any and every information in the public domain, the information not readily available and which involve disproportionate diversion of public resources need not be provided as per section 7, sub-section 9 of the Act. However, such petitioners could seek the benefit of record inspection subject to the payment of requisite charges. Again, many of the public authorities provide information free of cost even to non-BPL people, something which is not advisable as it encourages the non-serious types to file frivolous and motivated petitions. The SPIOs and ASPIOs should invariably desire RTI petitions to be made along with the payment of the requisite fees as required for the purpose. Not only this, the petitioners should also be asked to fork out the bill for provisioning of information including the inspection charges, Xeroxing charges or charges for providing a CD as applicable.

Sometimes, sending the estimated cost of provisioning information including Xeroxing charges should be sufficient to discourage the non-serious seekers of information to approach public authorities and waste their quality time and energy. In fact, the public authorities could save a lot of their time and energy dealing with such petitions if only they could comply with the directions enshrined in section 4 relating to voluntary disclosure. A good website or kiosk shall do the needful in this regard. The petitioner could just be informed about the website, if one is computer savvy, to access the information required. And for the non-computer savvy ones, the hard copies of such information should be made available in the local libraries.

Many SPIOs and ASPIOs still wait for the approval of their superiors or appellate authorities to finally pass on the information to petitioners, something which delays sharing of information and is completely avoidable. The SPIOs and ASPIOs could right away share information without referring the same to their superiors as should be decided well in advance unless there is confusion with regards to a serious issue or a policy matter. Also, some queries involving lots of manual work could be dealt by requesting or inviting petitioners to come and inspect the records at the payment of requisite charges. The really need shall come forward but the non-serious ones shall never venture forth. But as the burden of providing information within the stipulated timeframe is on SPIO/ASPIO, they definitely should take care to evince enough desire to share the information sought.

There are still many grey areas with regards to implementation of this Act, e.g., 'which information is in public domain and which is not' is still not clear to many. The stipulation of provisioning information within 30 days is still very vague as the same is interpreted differently by public and public authorities. As people living below the poverty line (BPL) are exempted from paying charges for information sought, many petitioners have been filing proxy petitions through BPL people to avoid paying charges of accessing information.

Many vague or abstract petitions are often left undisposed for quite some time, even at the expense of inviting pecuniary penalties from the last appellate authority. It would be more advisable to dispose these petitions early by scheduling a quick hearing or by inviting a written clarification from the petitioner. In fact, one needs to be doubly sure before providing information involving some costs. It is, therefore, advisable to hear the petitioner in person in such cases before supplying the same.

The information relating to judiciary and its activities is still out of bounds for the public, something which is still mired in controversy. When we are talking of democracy, people's rights, none being above law, there is no reason why judiciary should be out of the RTI ambit. One hopes this tangle is resolved early for making the RTI more effective.

Again, there has been confusion as to whether foreigners or non-citizens could be provided information under the Act. The answer is in the affirmative for the rights admissible to them and for the information available in public domain. While many of the information (as per section 8 of the Act) could not be shared including the information relating to purely personal matters and the information held in fiduciary capacity, but property returns or IT returns of public servants are supposed to be in public domain and could be demanded under the RTI. Such petitions should be transferred to the requisite SPIO in time.

The awareness about the various aspects of the Act among public and public authorities need to increase with strengthening of the RTI set up at various levels including provisioning of adequate resources and man power. Given the massive expansion in the welfare state activities, the RTI set up is in urgent need of having dedicated officers and staff members to attend to various queries and requests for information from members of the public.

This would definitely make our service delivery more efficient and effective. Those found deliberately skirting or avoiding sharing of information should be duly penalised. But, there should also be action or penalties prescribed against the motivated petitioners. However, the

provision for penalties should be applied with lots of care and discretion than arbitrarily as seen in many cases. While there is also a need to clarify and define the role of the competent authorities, some observers feel the need to give more discretionary powers to PIOs and appellate authorities to deal with such situations and cases.

### **Salient Points**

- Principles of natural justice subsume the right to fair hearing which presume a right to information.
- The war against various systemic evils unleashed in the wake of the RTI has been termed as the 'Third War of Independence'.
- The RTI Act has definitely made the administration more transparent and accountable than it ever was. Still ; voluntary disclosure of information and appointment of PIOs has still not been done properly.
- If information is provided *suo motu*, people shall never resort to RTI.
- Now there is enough fund under different schemes to realise basic pre-requisite to make the RTI more effective.
- Work of voluntary disclosure of information could be better executed by professional skilled agencies.
- There is still considerable lack of awareness among public and public servants regarding various aspects of the Act.
- Sometimes, sending the estimated cost of provisioning information should be sufficient to discourage the non-serious seekers of information.
- The stipulation of provisioning information within 30 days is still very vague as the same is interpreted differently by public and public authorities.
- There is no reason why judiciary should be out of the RTI ambit.
- Given the massive expansion in the welfare state activities, the RTI set up is in urgent need of having dedicated officers and staff members.

### **Glossary**

**Ruminations:** to chew again or over and over

**Disparate:** essentially different