

The Greatest Changemaker

Three years of Right to information

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A milestone of great importance in the evolution of Indian democracy, the Right to Information Act, has been in force for over three years. Looking back over the past three years is it possible to conclude that implementation of the Right to information Act has been satisfactory? The Act mandates two ways of information sharing: proactive dissemination and reactive disclosure of information. Though proactive dissemination by many public authorities is not up to the mark, people have been testing reactive disclosure by filing requests and tasting some success.

Nine year old Pranav forced Delhi police to register an First Information Report (F.I.R.) to trace his lost bicycle by filing an application under the Right to Information Act.¹ 70 year old Kaniram got his entitlements of food grain under Public Distribution System (PDS) that was denied to him for one year.²

Krishna Devi got her passport extended³. Nannu got his duplicate ration card, Ashok Gupta got a new electricity connection, Prem Sharma obtained new passport and Triveni her PDS entitlements⁴....Many people found Right to Information useful in obtaining ration cards, passports, driving licenses, water connections, copies of F.I.R.s and so on, without paying bribes! But Indians are not going to stop there.

Right to Information is a fundamental human right and a prerequisite for the realization of other human rights: civil and political rights such as the right to life and liberty, freedom of expression, and equality before the law; and economic, social and cultural rights such as right to adequate food, right to water, right to highest attainable standard of health, right to education. Right to Information has become a friend in need, making life easier and honorable for common people.

¹ Anumeha Chaturvedi, CNN-IBN,with inputs from Amit Pandey<http://www.ibnlive.com/news/india/06_2007/kid-uses-rti-to-trace-lost-bicycle-42517.html>, accessed 11.6.2007

² Aruna Roy ,The Journey begins,<<http://www.cnfonline.org/2005/2005v13n483.html>>

³ CIC/OK/C/2006/00147- 8 November 2006

⁴ http://www.pariivartan.com/stories_list.asp

Krishak Mukti Sangram Samiti in Assam used Right to Information to expose diversion of food grains from PDS allotted to the poor⁵. Women in a small village, Banakhandi, in West Bengal filed more than 100 Right to Information applications to force the administration to start work on supply of drinking water.⁶

Fourteen houses at Pallavaram municipality in Tamilnadu, which had to wage a protracted battle with the civic body for close to one year for getting drinking water connections, finally managed to get justice, thanks to an application filed under the Right to Information (RTI) Act and the subsequent intervention of the state information commission.⁷

It is not enough if you get water. It should be of good quality. Recently, National Consumer Disputes Redressal Commission ordered a Municipal Corporation to publish reports on water quality⁸. The Commission stated, "As per the Statement of Objects and Reasons of the Consumer Protection Act and also Objects of the Consumer Protection Councils, contemplated under the Act, a consumer has the right to be informed about the quality, quantity, purity of goods including water or services which are rendered by the Statutory Authorities or in this particular case by the Ahmedabad Municipal Corporation (AMC) so that it is not hazardous to life or health".

A Right to Information application has forced Guru Teg Bahadur Hospital in the capital to provide free treatment to an old woman who couldn't afford her surgery. Her son Ali alleged that the hospital had earlier sought medicines worth Rs.30,000 for the operation. Ali filed an Right to Information application asking details of drug stocks and bills. When Ali approached the Delhi High Court, the hospital pledged, before the Court, to operate her free of cost.⁹

Students forced Union Public Service Commission (UPSC) to disclose cut-off marks, scaling method and model answers.¹⁰ A recent Decision pronounced by the Central Information Commission (CIC) gives access to, not just your answer sheets, but also your class mate's answer sheets, after evaluation.¹¹

When Rohit Prajapati filed an Right to Information application asking the Gujarat state government details about Internal Complaints Committees to deal with cases of sexual harassment at workplace, in its departments as directed by the Supreme Court in *Vishakha and Others v State of Rajasthan and Others* (1997),

⁵ Samudra Gupta Kashyap, After Right to Information disclosure, raids reveal PDS rice in godown, <<http://www.indianexpress.com/story/254593.html>>

⁶ *Business Standard*, Village women use Right to Information to get drinking water, 3 Oct. 2008

⁷ 'RTI brings water to 14 houses in Pallavaram after a year-long wait', Jayaraj Sivan, *Times of India*, 4 Dec. 2008, <<http://timesofindia.indiatimes.com/rssarticleshow/msid-3790159,prtpage-1.cms>>

⁸ Consumer Education & Research Society & Ors. v Ahmedabad Municipal Corporation & Ors. [Original Petition Nos. 125 & 126 of 1994, 30 April 2008]

⁹ *Times of India*, Right to Information effect: GTB to treat woman for free, 26 Sep. 2008

¹⁰ 354/IC(A)/2006-13 Nov. 2006

¹¹ CIC/MA/C/2008/00221, 9 June 2008

the officials in many departments woke up and formed the committees.¹² A 15-year-old rape victim in Umarkanda in Gujarat used Right to Information to force police to lodge an FIR and take action against the accused.¹³

Intellectuals led by SEZ Virodhi Manch and Goa Bachao Abhiyan in Goa sensibly used Right to Information and obtained crucial documents to launch a successful battle against Special Economic Zones (SEZs) while people lost their lives fighting a similar battle in other states. In the first incident of a reversal of a central policy, eight SEZ proposals in Goa were scrapped by the inter-ministerial Board of Approvals in February this year.¹⁴

About 300 Right to Information applications filed by *Burning Brain Society* about the implementation and enforcement of tobacco control laws and the name of the person responsible for non-implementation made Chandigarh the first smoke-free city not only in India but also in any developing country.¹⁵

Environment seems to be the main beneficiary! Environmental activist Divya Raghunandan fought for more than 20 months for toxicity, allergenicity data that determine the safety of Genetically Modified Organisms -Genetically Engineered (GE) rice, GE mustard, GE okra and GE brinjal from MNCs obsessed with secrecy; she was even asked to personally inspect documents in the presence of a representative. After CIC had decided in favor of disclosure¹⁶, the company dragged CIC to the courts. However, the Supreme Court interfered and ordered disclosure of the safety data.¹⁷ Finally, the Genetic Engineering Approval Committee (GEAC) has published voluminous data on biosafety studies of GE brinjal on its website.¹⁸

The National Environment Appellate Authority quashed environmental clearance accorded to the Polavaram interstate irrigation project, in December last year as the executive summary of the project was not made available to the affected persons in their language.¹⁹

One cannot withhold records simply saying that one lost them. Ministry of Environment & Forests was asked to lodge an FIR to initiate criminal action against those responsible for the alleged loss of documents regarding

¹² <<http://epaper.timesofindia.com/Daily/skins/TOI/navigator.asp?Daily=TOIA&login=default&AW=1209399000546>>, 28 April 2008

¹³ <<http://timesofindia.indiatimes.com/rssarticleshow/msid-3554068,prtpage-1.cms>>, 3 Oct. 2008

¹⁴ Rifat Mumtaz and Madhumanti Sardar, 'Goa: How the battle was won', Info Change News & Features, <<http://www.infochangeindia.org/features475.jsp>>, accessed 23 March 2008

¹⁵ <<http://www.burningbrain.org/>>

¹⁶ CIC/WB/A/2006/00548, 13 April 2007 and 25 Nov. 2007

¹⁷ <www.genecampaign.org>, accessed 23 March 2008

¹⁸ <http://www.envfor.nic.in/divisions/esurv/geac/approved_data.html>

¹⁹ The National Environment Appellate Authority Order, 19 Dec. 2007

environmental clearance and other parameters of the *Maheshwar* Hydro Electric Project, Madhya Pradesh.²⁰

People had complained maximum penalty under the Right to Information Act - Rs. 25,000 was not a figure to deter. But the CIC thought differently. CIC imposed penalty of Rs.125,000 on Public Information Officer (PIO) of Daulat Ram College, Delhi for delay in supply of information in connection with five separate Right to Information applications by Prof. Pramila Sharma.²¹

In a landmark Decision, compensation was awarded to an old woman by the CIC for non-publication of information of beneficiaries on the Old Age Pension Scheme under the mandatory proactive publication.²²

CIC directed the Benaras Hindu University to admit Dhananjay into post graduate course, who was earlier denied admission because he filed a Right to Information application, to ensure that an applicant seeking information from the University under the Right to Information Act is not victimized in future.²³

Another student used Right to Information to get her degree successfully from a university in Tamilnadu. Though she had appeared in an examination along with other students a few years ago, she did not get her results as her answer sheet sent for valuation to a professor of an outside university had been misplaced. When Tamilnadu Information Commission directed it to pay a few lakhs as compensation, the university authorities immediately conducted an examination for the student and awarded her degree after evaluation of her answer paper.²⁴

Culture of Secrecy? ... What is it?

Experts would argue that it is very difficult to break the culture of secrecy and create a culture of openness. It is said that Canada and Australia, which enacted the Freedom of Information laws more than 20 years ago, continue to struggle with this major problem. But that is not the case with India!

In earlier days, employees feared that Right to Information might overburden them. But now none is surprised to find more number applications being filed by the employees themselves. Recently, Directorate of Education (GNCT of Delhi) was asked to pay compensation of Rs. 50,000 to a teacher suspended on false evidence.²⁵

²⁰ CIC/WB/C/2006/00102 ,16 Oct. 2006

²¹ CIC/OK/A/2006/00013, 2 July 2007

²² CIC/WB/C/2007/00803-00806 & 00887-00896,3 March 2008

²³ CIC/OK/A/ 2006/00163,19 Oct.2006

²⁴ <<http://www.thehindu.com/2008/09/20/stories/2008092055370600.htm>>, 20 Sep.2008

²⁵ 1111/IC(A)/2007, 3 Aug. 2007

Evaluated answer sheets, Departmental Promotion Committee minutes, Annual Confidential Reports, transfer guidelines, arrears and what not... Right to Information has become an efficient in-house grievance redressal mechanism. Heather Brooke, FOI activist in U.K., points out, "The current system only rewards the corrupt and inefficient. If you are hard working, it is to your benefit to have transparency."

And it helps you even after your retirement. Shyam Karan Yadav in Azamgarh in Uttar Pradesh used the RTI Act to seek information regarding why the retirement benefits to his paralytic father were held back even after two years of his retirement and got the benefits released.

His father had retired from school in June 2006 but when he claimed his PF funds, the school management did not act on his application. It was only after an appeal was filed with the State Information commission that the management acted on.

The case was finally disposed off by the information commissioner (IC), Brijesh Kumar Mishra on 28 November 2008. The Act provided the man genuine information by way of which he succeeded in restoring the retirement benefits to his father.²⁶

The Prime Minister, Dr. Manmohan Singh sent a very strong message²⁷:

Information contributes to knowledge. Information also confers power. Information is undoubtedly a great economic asset. ... A pro-active policy of disclosure will be in keeping with the spirit of the Right to information Act. Information collected at huge cost, with the tax payers' money, should be made available to the general public without their having to ask for it. This will improve the quality of the data as it will be subject to informed public scrutiny.

Later he restated his commitment at the recently concluded third Annual Convention on Right to Information²⁸:

Our Government takes great pride in the implementation of the Right to Information Act. It is often said that in modern society information is power. By sharing that information with the people at large, we are therefore, proposing decentralisation and participatory governance. It is revolutionary enactment that has placed huge powers in the hands of the ordinary citizen of the country to demand a transparent and accountable administration.

²⁶ *Times of India*, 'Teacher gets PF benefits by using RTI', 3 Dec.

2008, <<http://timesofindia.indiatimes.com/articleshow/msid-3786103,prtpage-1.cms>>

²⁷ Addressing the Conference of States and UTs on Management of Statistics on 9 September 2008

²⁸ The third Annual Convention on Right to Information (RTI) was inaugurated by the Prime Minister Dr. Manmohan Singh on 3 Dec.2008. The theme of the Convention was "Right to Information and its Ramifications for Good Governance."

Beyond the Right to Information Act

The Right to Information Act is not the only law that gives a right of access to information. Beyond the Right to Information Act, there are some stronger provisions in other laws which promote transparency:

The PDS (Control) (Amendment) Order, 2004, which entered into force on 29 June 2004, enables citizens to directly seek information from a fair price shop owner. Punishment for withholding information may extend up to three months imprisonment. This Order is stronger than the Right to Information Act itself.

For getting financial assistance under the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) states should enact a Public Disclosure Law and a Community Participation Law to strengthen people's Right to Know. Last year, Reserve Bank of India advised banks to convey in writing the reasons for rejection of loan applications.²⁹

Another historic law, the National Rural Employment Guarantee Act has built in transparency prerequisites. The nodal Ministry goes one step ahead in facilitating transparency by reducing time limit for disclosure of the records requested under the Right to Information Act to just 'seven days' and further fees for obtaining information to 'photocopying costs'. It is a pleasant surprise to know that the invocation of section 8(1) is not allowed at all.³⁰

Let the Sun shine brightly on Indian administration!

The Road Ahead

Ever since the U.N. General Assembly recognized freedom of information as a fundamental human right in 1946, many nations started adopting laws assuring right to access information held by public authorities. So far more than 80 countries have enacted freedom of information laws, about 70 of which were enacted during the last two decades. (Just 12 countries had FOI laws in 1990.)

Though India took its first step in creating openness by bringing into force the historic Right to information Act on 12 October 2005, a strong regime of transparency needs the following elements in addition to Right to Information law:

²⁹ RBI/2006-2007/280 DBOD.No.Leg.BC.65 /09.07.005/2006-07, 6 March 2007

³⁰ *The National Rural Employment Guarantee Act 2005 (NREGA) Operational Guidelines 2008*, 3rd edition, Ministry of Rural Development. Para 11.1.2 states as follows:

Requests for copies of NREGS-related documents submitted under NREGA should be complied with within seven days. No request should be refused under any circumstances. In particular, no information should be withheld by invoking Clause [section] 8 of the Right to Information Act. All NREGA-related information is in the public domain.

Data Protection law

We do not have a separate law to obtain personal information related to the requester himself. Right to Information Act is being used for both purposes, *i.e.* to obtain personal information as well as non-personal information, which sometimes creates confusion.

In USA, Privacy Act is used to obtain personal information and Freedom of Information (FOI) Act is used for obtaining other information. Similarly in UK, Data Protection Act is used to obtain personal information and FOI Act is used for obtaining other information.

Separate Data Protection or Privacy law is necessary to obtain personal information related to the requester herself and at the same time to protect unnecessary disclosure to others.

Environmental Right to information laws

Environmental Right to information laws provide access to environmental information with fewer exceptions, subject to public interest test covering private bodies. Environmental Information Regulations 2004 are in force in U.K.

USA and Canada have mandatory Pollutant Release and Transfer Registers (PRTR) requiring industries to measure and report toxic chemical releases to air, water, and land, and transfers off-site. The United State's PRTR is the Toxics Release Inventory (TRI) which was associated with a 44 percent reduction (1.6 billion pounds) in reported releases of listed chemicals over the first eight years of reporting.

Sunshine/Open Meetings law

A law which enables the citizens to attend the meetings of public authorities will realize the dream of participatory democracy. [e.g. Sunshine Act 1976 of USA]

Whistleblowers Protection law

Though the Government of India has authorized the Central Vigilance Commission as the 'Designated Agency' to receive written complaints for disclosure on any allegation of corruption or misuse of office, we need a stronger law to provide protection for whistleblowers. Public Interest Disclosure Act 1998 of UK is an example.

Public Records law

Though the Central Government enacted the law on public records, applicable to central authorities, implementation is not satisfactory. State governments have to enact similar law for state authorities. Records officers are to be nominated to discharge the functions under this Act and set up record rooms and place each record room under the charge of a records officer.

National Archives of India, the nodal agency for the implementation of the law opines that records management ensures that Right to Information works well, besides saving time. But very few departments recognized that its implementation is critical to the success of the Right to Information Act.

Waiver of initial application fee

Initial application fee should be totally abolished. Such fee is not charged in other countries such as U.S.A. and U.K. Though requesters in Australia and Ireland are required to pay application fee for access to non-personal information or combination of personal and non-personal information, there is no application fee for personal information.

Twenty fifth Report of the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on Demands for Grants has recommended that the application under Right to Information Act should not be rejected for nonpayment of fee at the initial stage and the fee may be added at the time of providing information in such cases.

Spending openly

How about having a website, where citizens can see where their money goes? This will be an accessible database of Government spending in a simple, easy-to-use interface to provide the public with information about how their taxes are spent honoring their right and need to understand where taxes are spent. The ability to look at Government expenditures, in whatever form, in greater detail builds public trust in government.

US Federal government recently launched the website <USASpending.gov>, as mandated by the Federal Funding, Accountability, and Transparency Act of 2006, initiated by Mr. Barack Obama.

Spending for awareness and 'Infostrucure'

Awareness about the Act is the key to the success of the one of the main objects mentioned in the Statement of objects and reasons of the Right to Information Bill –'to make the Act more participatory.'

A few annual reports with statistics on the number of requests are now available. CIC Annual Report 2005-2006 states that the 837 monitored central public authorities received a total of 33,688 Right to Information requests during 2005-2006 (from 12 October 2005 to 31 March 2006).

Shri Suresh Pachouri, the Minister of Personnel, Public Grievances and Pensions in the Rajya Sabha, stated, "As per information furnished by the Central Information Commission, 207860 applications were received under the Right to information Act by various public authorities under the jurisdiction of the Central Government during the period from October, 2005 to March, 2007".³¹

Maharashtra Chief Information Commissioner Dr.Suresh Joshi has said the state leads in use of the Right to information Act. "Maharashtra leads in use of the Right to Information Act, as in 2007, 3,16,000 Right to Information applications were received from the state." Dr.Joshi said at a press conference. This is 150% increase on the 1,23,571 applications received in the previous year(from 12 Oct.2005 to 31 Dec.2006).³²

Kerala State received a total number of 113187 requests, out of which 105126 were disposed of, during 2007-2008. Andhra Pradesh State public authorities received 31,964 requests during 2007 (1.1.2007 - 31.12.2007), the second year of the Act's operation. This is 260% increase on the 8864 applications received in the previous year (from 12 Oct.2005 to 31 Dec.2006).

The total number of Freedom of Information Act/Privacy Act access requests received by US federal departments and agencies during Fiscal Year 2007 was 21,758,651. This is 346,080 more than the number of requests received during Fiscal Year 2006, an increase of 2%. UK central government bodies received a total of 32978 nonroutine FOI and EIR requests during 2007, with a 2% reduction over the previous year. They received 33688 requests in 2006, with a 12% reduction over the previous year. 38108 requests were received in 2005, the first year of the FOI Act's operation.

The Statement of objects and reasons of the Right to Information Bill says that the Right to information is recognized under Article 19 of the Constitution of India. Government spends money to provide security for many citizens to protect their fundamental right-right to live- guaranteed under Article 21.

Government spends money to provide various subsidies to media to strengthen freedom of press-which flows from the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a).

³¹ <<http://164.100.47.4/rsquestion/ShowQn.aspx?qno=134838>>

³² UNI, August 02 2008, and, <<http://news.oneindia.in/2008/08/02/maharashtra-leads-in-rti-use-joshi-1217620911.html>>

Then, why should not the Government should spend money to strengthen Right to Information, which flows from the fundamental right to freedom of speech and expression guaranteed under Article 19(1) (a)?

Further, Section 26 of the Act advises the Government to organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities.

Government should spend money to strengthen 'infostructure'. Professor Luciano Floridi defines the infostructure as "an organization's information assets that comprise the information base of the organization, including hardware, software, networks, infrastructure, information, and applications".³³

In USA, in Fiscal Year 2007, the total cost of all Freedom of Information Act related activities for all federal departments and agencies, as reported in their annual FOIA reports, was an estimated \$369,431,500.55. Of total costs, \$10,742,105.08, or just 3%, was reported to have been recovered through the collection of Freedom of Information Act fees.³⁴

Ratnaji, a blind man of Rangaru village in Rajkot, was laughed at for being blind at the village panchayat meeting when he had wanted to know the progress of development works. They told him, "You are blind and burden on the village. Stay home and the village will feed you." He used Right to Information to obtain from the district office information that exposed the corruption in village works. The documents showed that many works registered as completed were actually never taken up and remain incomplete. Ratnaji's Right to Information application had turned the one-man battle into a mass movement in the village.³⁵

Right to Information is such a bright tool that can make blind see and deaf hear! Right to Information Act is the booster of empowerment after 1947, which, fortunately, has been working. One of the prime architects of the Indian Right to Information Act, Ms Aruna Roy, aptly comments, "Every villager feels she has become an MLA!" Transparency benefits the poor greatly by protecting their rights and dignity. Information constantly supports their struggle for survival. Any step to strengthen the 'sunshine movement' will ultimately make our democracy more people-friendly. History adores the leaders who make people powerful!

³³ <<http://www.philosophyofinformation.net/>>

³⁴ Summary of Annual FOIA Reports for Fiscal Year 2007, the Office of Information and Privacy, US Department of Justice

³⁵ *Times of India*, Blind man opens eyes of villagers, Vijaysinh Parmar, 10 Sep. 2008