

Right to Information: Critical Investigation of Noida and NCR

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Abstract: *When Industrial revolution takes place. Many public sector companies were also formed. People were not aware about the procedure that how to get information about the functioning of companies and how these companies will benefit their interests and if, 1 out of 100 knows about this & tries to get information. He/she either gets ignored by saying that he/she will get information tomorrow or make him/her quiet by threatening. There was an absence of any particular law regarding this because of which no one can take action against this. As a benefit of which, employees of these companies work in their own interest and exploit the general people. Thereby to end this despotic situation and to create transparency in the working of public sector units; National Campaign for People's Right to Information {NCPRI} formulated an initial draft of a Right to Information {RTI} Law. This Draft was sent to the Government of India in 1996 and it came into effect all over India, from 13th October 2005. Due to illiteracy and unawareness many people don't know about this and they get exploited in one or the other way.*

Our main objective to conduct this research is to critically examine that how much people are using the mechanism of RTI successfully in NOIDA and NCR.

We have used Doctrine (Primary and Secondary Sources) Method to know that how much it got successful in public sector units of Noida. After my analysis; we will come to the conclusion and with the help of which, will try to find out some suggestions and mechanism for making the RTI functional and constructive.

1. Introduction

- ✚ Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personal and Training, Ministry of Personnel, Public Grievances and Pensions

to provide a- RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate¹ Authorities, PIOs² etc. amongst others, besides access to RTI related information/ disclosures published on the web by various Public Authorities under the government of India as well as the State Governments.

- ✚ The basic objective of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

2. Description of Right to Information in Indian Constitutional Law

- The expression “freedom of speech and expression” in Art.³ 19(1) (a) has been held to include the right to acquire information and disseminate⁴ the same.
- The right of the citizens to obtain information on matters relating to public acts flows from the Fundamental Rights enshrined in Art. 19 (1) (a). Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore

¹ Appellate Authorities- Appealed against

² PIO's- Public Information Officers

³ Art.-Article

⁴ Disseminate- Spread

the right to information forms an integral part of Article 19 (1) (a).

- Right to Information is a facet of the right to freedom of speech and expression as contained in Article 19 (1) (a) of the Constitution. Right to Information, thus, indisputably is a Fundamental Right.
- But the right does not carry with it an unrestricted right to gather information. A reasonable restriction on the exercise of the right to know or right to information is always permissible in the interest of the security of the State. Generally, the exemptions/exceptions under the laws referred to in Article 19 (2) entitled the Government to withhold information relating to the following matters:
 - i. International relations,
 - ii. National security (including defence) and public safety,
 - iii. Investigation, detection and prevention of crime,
 - iv. Internal deliberations⁵ of the Government,
 - v. Information received in confidence from a source outside the Government,
 - vi. Information, which if disclosed, would violate the privacy of the individual,
 - vii. Information of an economic nature, (including trade secrets) which, if disclosed, would confer an unfair advantage on some persons or concern, or, subject some person or Government to an unfair disadvantage,
 - viii. Information which is subject to a claim of legal professional privilege, e.g. communication between a legal adviser and the client; between a physician and the patient,
 - ix. Information about scientific discoveries.⁶
- In **State of Uttar Pradesh v/s Raj Narain**,⁷ the Supreme Court has held that Art. 19 (1) (a) not only guarantees freedom and expression, it also ensures and comprehends the right of the citizens to know, the right to receive information regarding matters of public concern. The Supreme Court has underlined the significance

of the right to know in a democracy in these words:

“In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct but there can be few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings.”

- In **Dinesh Trivedi, M.P. and Others v/s Union of India**,⁸ the Supreme Court dealt with the right to freedom of information and observed **“in modern constitutional democracies, it is axiomatic⁹ that citizens have a right to know about the affairs of the government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare”**. The Court further observed:

“Democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant”.
- The Delhi High Court in **Association for Democratic Reforms v/s Union of India**¹⁰ has emphasized¹¹ that the right to receive information acquires great significance in the context of elections.

It is now common knowledge that there is criminalization of politics in India. It is a matter of great concern that anti-social and criminals are seeking to enter the political arena through the mechanism of elections to State Legislatures and even to Parliament. Parliament has not yet been able to enact a law to uproot the evil. In this scenario, the Delhi High Court has sought to cleanse the electoral process through the mechanism of the right to know of the people. The Delhi High Court has ruled that from every candidate for election, the Election Commission shall secure for the voters the following information:

⁵ Deliberations- Discussion

⁶ People’s Union for Civil Liberties v/s Union of India, (2004) 2 SCC 476: AIR 2004 SC 1442

⁷ State of Uttar Pradesh v/s Raj Narain, AIR 1975 SC 865, 884: (1975) 4 SSC 428

⁸ [1997] 4 SCC 306: {1997} 1 SCJ 697

⁹ Axiomatic- Related to

¹⁰ AIR 2001 Del 126, 137

¹¹ Emphasized- Special importance

- 1) Whether the candidate is accused of any offence punishable with imprisonment.
- 2) Assets possessed by the candidate, his or her spouse and dependent children.
- 3) Facts denoting the candidate's competence and suitability for being a parliamentarian. This should include the candidate's educational qualification.
- 4) Any other relevant information regarding candidate's competence to be a Member of Parliament or State Legislature.

It needs to be emphasized that through its pronouncement, the Delhi High Court is not seeking to impose any additional qualification on a candidate over and above what the constitution and the relevant law prescribe. What the Court seeking to achieve is that a voter after knowing the background of the candidate will vote properly. As the Court has said, **“Since the future of the country depends upon the power of the ballot, the voters must be given an opportunity for making an informed decision.”** Exercise of the informed option to vote in favour or against a candidate will strengthen democracy in the country and root out the evil of corruption and criminality at present extant in politics.

On appeal, the Supreme Court substantially agreed with the Delhi High Court. The Court has upheld the right to a voter to know about the antecedents¹² of his candidate as a part of his Fundamental Right under Art. 19(1) (a). Democracy cannot survive without free and fairly informed voters. The Court has observed:

“One-sided information, disinformation, mis-information and non-information will equally create a uniformed citizenry which makes democracy a free...freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.”

The Court has ruled that candidates for the Lok Sabha or State Legislature Assemblies would have to disclose their antecedents, assets and educational qualifications to help the electorate make the right choice. The Court has said: **“Votes cast by uninformed voters in favour of a candidate would be meaningless.”** The common man may think twice before electing law-breakers as law-makers.

¹² Antecedent- Existed before

Reiterating¹³ that law-makers are public servants and, therefore, the people of the country have a right to know about every public act by public functionaries, the Court has observed:

“There are widespread allegations of corruption against persons holding post and power. In such a situation, the question is not of knowing personal affairs but to have openness in democracy for attempting to cure the cancerous growth of corruption by a few rays of light”.

3. Description of Right to Information in Constitution of India

- The Right to know receive and imparting information has been recognized within the “Right to Freedom of Speech and Expression”¹⁴. “A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose”¹⁵.
- In **Prabha Dutt v/s Union of India**¹⁶, the Supreme Court directed the superintendent of the thiar jail to allow the representatives of few newspapers to interview two death sentence convicts under Article 19{1} [a]. though with the observation that the right under article 19 {1} [a] is not an absolute right, nor indeed does it conger any Right of the Press to have an unrestricted access to means of information¹⁷. This position has been reiterated in subsequent cases¹⁸.

4. How RTI Got Established

The National Campaign for People's Right to Information (NCPRI) was founded in 1996. Its founding members included social activists, journalists, lawyers, professionals, retired civil servants and academics. One of its primary objectives was to campaign for a national law facilitating the exercise of the fundamental right to information.

¹³ Reiterating- say something again

¹⁴ SP Singh v/s President of India, AIR 1982 SC 149.

¹⁵ Ibid.

¹⁶ {1982} 1 SCC1: AIR 1982 SC 6

¹⁷ Id. At p.2

¹⁸ Sheela Barse v/s State of Maharashtra, {1987} 4 SCC 373.

As a first step, the NCPRI and the Press Council of India formulated an initial draft of a Right to Information (RTI) law. This draft, after extensive discussions, was sent to the Government of India in 1996. The Government finally introduced the **Freedom of Information Bill** in Parliament, in 2002. This was a very watered down version of the Bill first drafted by the NCPRI and others in 1996. Meanwhile, the NCPRI was also campaigning for state RTI Acts and supporting the efforts of the state governments, like Karnataka, Delhi and Rajasthan.

In August 2004 the NCPRI forwarded to the National Advisory Council (NAC) a set of suggested amendments to the Freedom of Information Act 2002. These amendments, designed to strengthen and make more effective the 2002 Act, were based on extensive discussions with civil society groups working on transparency and other related issues and were in response to the undertaking given by the UPA government, in their Common Minimum Programme, that the "Right to Information Act will be made more progressive, participatory and meaningful."

The NAC endorsed most of the suggested amendments and recommended them to the Prime Minister of India for further action. These formed the basis of the subsequent Right to Information Bill, introduced in Parliament on 22 December 2004.

However, this bill, as introduced in Parliament, had many weaknesses. Most significantly, unlike the NCPRI suggestion, it did not apply to the whole country but only to the Union Government. The consequent outrage from civil society groups, including the NCPRI, forced the government to review the changes. The Bill was referred to a Standing Committee of the Parliament and to a Group of Ministers. The standing committee asked several of the NCPRI members to give evidence before it, and ultimately endorsed the stand taken by the NCPRI in most matters. In the next session of Parliament, the bill was passed after over a hundred amendments introduced by the government to accommodate the recommendations of the Parliamentary Committee and the Group of Ministers. Most important, the jurisdiction of the Bill was extended to cover the whole of India. The RTI Act then came into effect all over India, from **13th October 2005**.

5. Scope of Information

1. No Creation of Information: - An inclusive definition of the 'information' to be sought under the RTI Act, it may not be extended beyond the purpose and spirit of the Act. The Information which is available with the public authority has to be imparted subject to the provisions of the Act. The public authority cannot be called to create information which is not available. The CIC (FB) in **Vibhor Dileep Barla v/s Central Excise & Customs**¹⁹ has held that only the information which was available could be provided and the information which was not available could not be forced to be created under the RTI Act. Similarly, the court held that the hypothetical questions also could not be called information under the Act.
2. No Redressal of Grievances: - As a matter of statutory provisions, the Act provides for imparting information being held by the public authority and it does not provide for redressal of grievances or entertaining suggestions for doing or not doing something. Though it aims at reforming the public administration by ensuring transparency and accountability and thus eliminating corruption, it does not provide for the remedy within its purview. It simply helps in unveiling what is happening within the system of Governance through the public authorities. Therefore, there is no scope in the RTI Act to either make suggestions or to seek redressal of grievances.
3. No Suggestions, Clarifications, Directions and Interpretation: - The CIC in **Chhitarmal Mahadev Gupta v/s Western Railway**²⁰ held that there was no scope for making suggestions to an application under the RTI Act. Similarly, in **S.K. Kapoor v/s Deputy Commissioner Police Central**²¹ held that redressal of grievances or initiating the criminal proceedings was not covered under the RTI Act.
4. No Permission or Consultation Required for imparting information under the Act: - It has also been clarified by the CIC (FB) in **Arvind**

¹⁹ Appeal No. CIC/AT/A/2006/00588

²⁰ Appeal No. CIC/OK/A/08/00743-AD

²¹ Appeal No. CIC/WB/A/2007/001523

Kejriwal v/s Dopt. Govt. of India²² that no authority was above the Act Passed by the Parliament and no permission or consultation was required once the Commission directed to impart information. It could be especially in view of the provisions of Section 19 (7) of the RTI Act which provides that the decision of the Commission shall be binding.

6. RTI Act & the Status of the Public Authority

However, it is submitted that the exemption of the judicial proceedings from the applicability of RTI, Act may not be connected to the status of the Courts. It is the function being performed by these courts which is important in this regard. It is because of the fact that the independence of the judiciary cannot be compromised with under the constitution. Otherwise also as submitted the provisions of the RTI Act are very much applicable on the Courts on administrative side and the Courts are bound to provide such information as and when required. While allowing the appeal in **Subhash Chandra Agarwal v/s Supreme Court of India**²³. The CIC (FB) held that Supreme Court was bound to reveal such information which had nothing to do with the judicial proceedings. Again in **Manish Khanna v/s High Court of Delhi**²⁴, the CIC(FB) held that the information available or in existence had to be imparted irrespective of the Status of the Public Authority holding such information. It was also held that even if the information was held for a very short period for which such information was being held by such public authority. The CIC (FB) while deciding this appeal also made another very pertinent observation. The commission observed that once something was transcribed on a document, it becomes a different and distinct document from the original. Therefore, even if the original document had already been circulated, the applicant had a right under the Act to inspect such document or take notes from it or to have a copy of such document under Section 2 (J) of the RTI Act

²² Appeal No. CIC/MA/A/2006/00204, 2007 & 208.

²³ Appeal No. CIC/WB/A/2008/00426

²⁴ Appeal No. CIC/WB/A/2006/00839 & 00900 and CIC/WB/A/2007/01118

7. Investigation results of Noida and NCR

	Special Department for RTI	RTI received from Government	RTI received from General Public	Count of RTI received Annually	Count of RTI replied Annually	Success % of timely response
Company-1	No	Yes	No	50	40	90%
Company-2	Yes	Yes	No	90	90	100%
Company-3	Yes	Yes	Yes	13	10	92%
Company-4	Yes	Yes	Yes	20	15	99%
Company-5	Yes	Yes	No	70	50	95%
Company-6	No	Yes	No	5	5	100%

8. Conclusion

As per the analysis of the project. Majority of PSU's has a special department for RTI. Which is successful in answering the request received within the time limit which is provided by the RTI Act, 2005. But on the other hand; the general public has less awareness related to RTI due to which the application is being received from the government officials only.

9. Suggestions

1. RTI'2005 has become a tool for grievance redressal which is not the basic spirit of the Act. The basic spirit of the Act is impartiality which should be encouraged and practiced.
2. There should be Awareness Camps for the general public by RWA's and government.
3. Monthly or Quarterly Workshops in Schools.
4. Telecast the procedure and advantages of RTI over digital media.
5. Annual survey by the Department of Information to validate the accuracy of the Information being reverted back.

10. References

- [1] Constitution of India
- [2] Indian Constitutional Law
- [3] Right to Information Act, 2005
- [4] On field Survey of various companies
- [5] On field Survey by the general public about their knowledge on RTI.