Right to Information

Why in news?

The government is going to introduce a Bill to amend the Right to Information (RTI) Act, 2005 which will change pay and allowances of information commissioners, who currently enjoy benefits equivalent to election commissioners. The move has been criticised by activists who said it will affect independence and neutrality of the transparency panel.

Historical Background

- The right to information gained power when **Universal Declaration of Human Rights** was adopted in 1948 providing everyone the right to seek, receive, information and ideas through any media and regardless of frontiers.
- The **International Covenant on Civil and Political rights 1966** states that everyone shall have the right to freedom of expression, the freedom to seek and impart information and ideas of all kinds.
- According to **Thomas Jefferson** *"Information is the currency of democracy,"* and critical to the emergence and development of a vibrant civil society. However, with a view to set out a practical regime for the citizens to secure information as a matter of right, the Indian Parliament enacted the Right to Information Act, 2005.
- Genesis of RTI law started in 1986, through judgement of Supreme Court in **Mr. Kulwal v/s Jaipur Municipal Corporation** case, in which it directed that freedom of speech and expression provided under **Article 19** of the Constitution clearly implies Right to Information, as without information the freedom of speech and expression cannot be fully used by the citizens.

Objectives of the Act

- To empower the citizens
- To promote transparency and accountability
- To contain corruption and
- To enhance people's participation in democratic process.

Reasons for Adoption of Information Act

The factors responsible for adoption of information act are as follows-

- Corruption and scandals
- International pressure and activism
- Modernization and the information society

Features of the Act

- **Section 1(2) :** It extends to the whole of India except the State of Jammu and Kashmir.
- **Section- 2 (f):** "Information" means any material in any form, including Records, Documents, Memos, e-mails, Opinions, Advices, Press releases, Circulars, Orders, Logbooks, Contracts, Reports, Papers, Samples, Models, Data material held in any electronic form and information relating to any

private body which can be accessed by a Public Authority under any other law for the time being in force.

- **Section- 2(j) : "Right to Information"** means the right to information accessible under this Act which is held by or under the control of **any public authority** and includes the right to:
    - Inspection of work, documents, records;
    - Taking notes, extracts or certified copies of documents or records;
    - Taking certified samples of material;
    - Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

What is Public Authority?

"Public authority" means any authority or body or institution of self government established or constituted—

- by or under the Constitution;
- by any other law made by Parliament/State Legislature.
- by notification issued or order made by the appropriate Government, and includes any—
    - body owned, controlled or substantially financed;
    - non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

- **Section 4** of the RTI Act requires **suo motu disclosure of information** by each public authority. However, such disclosures have remained less than satisfactory.
- **Section 8 (1)** mentions exemptions against furnishing information under RTI Act.
- **Section 8 (2)** provides for disclosure of information exempted under Official Secrets Act, 1923 if larger public interest is served.
- The Act also provides for appointment of **Information Commissioners** at Central and State level. Public authorities have designated some of its officers as Public Information Officer. They are responsible to give information to a person who seeks information under the RTI Act.
- Time period: In normal course, information to an applicant is to be **supplied within 30 days** from the receipt of application by the public authority.
    - If information sought **concerns the life or liberty of a person,** it shall be supplied **within 48 hours.**
    - In case the application is sent through the Assistant Public Information Officer or it is sent to a wrong public authority, five days shall be added to the period of thirty days or 48 hours, as the case may be.

Importance

- The RTI Act, 2005 **did not create a new bureaucracy for implementing the law.** Instead, **it tasked and mandated officials in every office to change their attitude** and duty from one of secrecy to one of sharing and openness.
    - It carefully and deliberately empowered the Information Commission to be the highest authority in the country with the mandate to order any office in the country to provide information as per the provisions of the Act. And it empowered the Commission to fine any official who did not follow the mandate.
- Right to information has been seen as the key to **strengthening participatory democracy** and ushering in people centred governance.
- Access to information **can empower the poor and the weaker sections of society** to demand and get information about public policies and actions, thereby leading to their welfare. It showed an early promise by exposing wrongdoings at high places, such as in the organisation of the Commonwealth Games, and the allocation of 2G spectrum and coal blocks.

- Right to information opens up government's records to public scrutiny, thereby arming citizens with a vital tool to inform them about what the government does and how effectively, thus **making the government more accountable.**
- **Improves decision making by public authority** by removing unnecessary secrecy.

Challenges

- Different types of information is sought which has no public interest and sometimes can be used to misuse the law and harass the public authorities. For example-
    - Asking for desperate and voluminous information.
    - To attain publicity by filing RTI
    - RTI filed as vindictive tool to harass or pressurize the public authority
- Because of the illiteracy and unawareness among the majority of population in the country, the RTI cannot be exercised.
- Though RTI's aim is not to create a grievance redressal mechanism, the notices from Information Commissions often spur the public authorities to redress grievances.

RTI vs Legislations for Non Disclosure of Information

- Some provisions of **Indian Evidence Act** (Sections 123, 124, and 162) provide to hold the disclosure of documents.
    - Under these provisions, head of department may refuse to provide information on affairs of state and only swearing that it is a state secret will entitle not to disclose the information.
    - In a similar manner no public officer shall be compelled to disclose communications made to him in official confidence.
- The **Atomic Energy Act, 1912** provides that it shall be an offence to disclose information restricted by the Central Government.
- The **Central Civil Services Act** provides a government servant not to communicate or part with any official documents except in accordance with a general or special order of government.
- The **Official Secrets Act, 1923** provides that any government official can mark a document as confidential so as to prevent its publication.

RTI vs Right to Privacy

- Conceptually, RTI and the right to privacy are both complementary as well as in conflict to each other.
- While RTI increases access to information, the right to privacy protects it instead.
- At the same time they both function, as citizen rights safeguarding liberty, against state's overreach.

When the question of harmonising the contradicting rights arises, it should

- give justice to the larger public interest
- advance the public morality

RTI vs OSA

The OSA was enacted in 1923 by the British to keep certain kinds of information confidential, including, but not always limited to, information involving the affairs of state, diplomacy, national security, espionage, and other state secrets.

- Whenever there is a conflict between the two laws, the provisions of the **RTI Act override those of the OSA.**
- **Section 22 of the RTI Act** states that its provisions will have effect notwithstanding anything that is inconsistent with them in the OSA.
- Similarly, **under Section 8(2) of the RTI Act, a public authority may allow access to information covered under the OSA,** "if the public interest in disclosure outweighs the harm to

the protected interest”.

RTI and Political Parties

Why activists want political parties to be brought under RTI?

- To contain corruption
- Huge donations from corporates which lead to favouritism or crony capitalism
- Illegal foreign contribution
- The leader of the opposition is statutorily mandated to be part of the select committees to choose Chairperson for CIC, Lokpal, CBI Director and CVC
- Various members of the opposition are also part of various parliamentary committees
- They enjoy multiple benefits like concessional office spaces, free airtime on DD & AIR from govt

Stand of Political Parties

- PP’s are not public authorities, hence cannot be brought under RTI Act.
- Disclosed information can be misused.
- Can disclose financial information under the IT Act.

Recent Amendments

- The RTI amendment Bill 2013 removes political parties from the ambit of the definition of public authorities and hence from the purview of the RTI Act.
- The draft provision 2017 which provides for closure of case in case of death of applicant can lead to more attacks on the lives of whistleblowers.
- The proposed RTI Amendment Act 2018 is aimed at giving the Centre the power to fix the tenures and salaries of state and central information commissioners, which are statutorily protected under the RTI Act. The move will dilute the autonomy and independence of CIC.
- The Act proposes to replace the fixed 5 year tenure to as much prescribed by government.

Other Issues

- Information commissioners do not have adequate authorities to enforce the RTI Act.
- In case of award of compensation to activist by public authority as ordered by commision, compliance cannot be secured.
- Poor record-keeping practices
- Lack of adequate infrastructure and staff for running information commissions
- Dilution of supplementary laws like the whistleblowers protection Act.

Conclusion

- The Right to Information Act was made to achieve social justice, transparency and to make accountable government but this act has not achieved its full objectives due to some impediments created due to systematic failures.
- As observed by Delhi High Court that misuse of the RTI Act has to be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act".
- It is well recognized that right to information is necessary, but not sufficient, to improve governance. A lot more needs to be done to usher in accountability in governance, including protection of whistleblowers, decentralization of power and fusion of authority with accountability at all levels.
- This law provides us a priceless opportunity to redesign the processes of governance, particularly at the grass roots level where the citizens’ interface is maximum.

PDF Refernece URL: https://www.drishtiias.com/printpdf/right-to-information-1