

**RTI Act, 2005**  
**Citizen Empowerment & Curbing Corruption**  
**Part I – Citizen Empowerment**

**Introduction**

As per GOI Guidelines ([http://www.epfindia.com/sites/pdf/RTI\\_1.pdf](http://www.epfindia.com/sites/pdf/RTI_1.pdf)), the basic objects of the RTI Act are as follows:

- a. Empower citizens.
- b. Promote transparency & accountability.
- c. Contain corruption.
- d. Improve governance & make democracy work for the people in the real sense.

If you notice carefully, the error in formulating the objects of the RTI Act is obvious. Do we really want to ‘contain corruption’ or do we want to eradicate it?

Right to Information is a priceless right of the citizens. It is a precious tool to ensure good governance. Good governance presupposes public participation. However, public participation does not mean only electing public representatives. If the owner, that is, the public, does not know what the public servant is doing, there cannot be either public participation or public supervision. More importantly, information does not belong to the State, the government or the civil servants; it belongs to the public. The government generates information for the benefit of the public and out of public funds. Hence, the government cannot unreasonably keep such information back from the citizens.

Once citizens are armed with information, their empowerment follows because there is then transparency in governance. Transparency is a great deterrent to people who indulge in corruption.

**How do Citizens get empowered?**

The reluctance to give information to the citizens is a legacy handed over to us by more than 1100 years of foreign rule, out of which about 200 years were by the British. The principle always was, “need to know” and in the opinion of our foreign rulers, there was no need for Indians to know the extent of their wealth that the rulers were looting. One finds a striking similarity in applying this principle of “need to know” by our ruling elite even after 66 years of independence. The reason is the same i.e. to hide from the public the extent of loot of country’s resources; 2G, CYG, CG, Coal, irrigation etc. Our rulers have gone one step further. They now deprive the common citizen (*aam aadmi* as they fondly call him) of his rightful share in the country’s resources by diverting these resources to their vote banks. The most common form of discrimination is to develop areas around the vote banks of influential politicians. We see all over India politicians developing areas from where powerful ministers are elected with the funds at their disposal. The most striking example is of Baramati in Maharashtra and Rae Bareilly in UP. A more recent trend is to exempt VIP constituencies from load shedding (<http://www.dnaindia.com/india/1822534/report-vips-leave-aam-aadmi-sweating-in-up>).

During the past over seven years of the RTI regime, the negative attitude has no doubt diminished. However, having become uncomfortable with the inroads that the RTI Act has made to uncover big time corruption, our political and official class has evolved a new principle of ownership i.e. virtual ownership of the segment of India, which elects them. This has resulted in the principle, "You tell me the person and I will tell you whether the law is to be applied in the case". In other words, it is up to them to decide which laws the citizens should follow and what information should be made available and to whom. The most recent example is of Mr. Jitendra Awad of NCP in Thane prohibiting the authorities from demolishing unauthorised structures, which ultimately collapsed and killed more than 70 persons. In his view, the law did not apply to his vote bank and what he said was the law no matter how many valuable lives it cost for him to get their votes. He also questioned as to why the authorities gave water and electricity connections if the structures were unauthorised! We come to the more important point of the present state of the RTI Act.

### **Is the RTI Act already dead & with it the Citizen Empowerment?**

A report in the Indian Express dated 9 April 2013, (<http://www.indianexpress.com/news/a-year-on-rti-applicant-still-awaits-education-department-response/1099647/0>), narrates vividly the plight of Dinesh Suryawanshi who has been denied information for more than a year. His initial requisition was on January 12 last year related to seats reserved for SC/ST candidates in class XI admissions across colleges in Pune. Even after two appeals and a show cause notice issued by the Director of State Primary & Secondary Education to the Deputy Director on 2 November 2012, Suryawanshi is still waiting in April 2014 for a response from them. It is clear that the authorities are trying to cover up the discrepancies. The appellate authority delayed the hearing of his first appeal for four months on flimsy grounds. It is sad but true that such delays have become routine and there are delays going up to two years with information commissioners.

A new trend with information commissioners is not to penalise the public information officers and not even order an inquiry as stipulated in the RTI Act, but to give any number of chances to these officials to provide information. Some consider this as a slow death of the RTI Act planned by a conspiracy between netas and babus.

The confusion got confounded by one Namit Sharma filing a PIL under WP (Civ) 210/12 Vs Union of India. The judgment by the Supreme Court, inter alia, says that all information commissioners should be law qualified and former judges of the high courts. Additionally, a two-member bench should hear all appeals. The judgment has created an impasse. Commissions at Rajasthan, Jharkhand, Manipur, Madhya Pradesh and Goa have stopped working. There are no commissioners in Madhya Pradesh and Goa. Even in other States, the process of appointing information commissioners has almost come to a halt. In Uttar Pradesh only 3 ICs out of 11 are working. Hence, Mr. Shailesh Gandhi has filed a review petition requesting the Supreme Court to consider directing the Governments concerned to make the requisite appointments to fill up the

vacancies in a transparent manner keeping in view the noble objective of the RTI Act 2005. However, the impasse continues and RTI is still in ICU!

Last week on Shailesh Gandhi's intervention in the matter of Namit Sharma, the Supreme Court refused to stay the entire judgment. It stayed some parts of it. Implementing the new SC order is likely to cause further delay in disposing of RTI cases. To further elaborate on the matter:

Last year Supreme Court in its order in Namit Sharma case had said, *"The Information Commissions at the respective levels shall henceforth work in Benches of two members each. One of them being a 'judicial member', while the other an 'expert member'. The judicial member should be a person possessing a degree in law, having a judicially trained mind and experience in performing judicial functions. A law officer or a lawyer may also be eligible provided he is a person who has practiced law at least for a period of twenty years as on the date of the advertisement. Such lawyer should also have experience in social work. We are of the considered view that the competent authority should prefer a person who is or has been a Judge of the High Court for appointment as Information Commissioners. Chief Information Commissioner at the Centre or State level shall only be a person who is or has been a Chief Justice of the High Court or a Judge of the Supreme Court of India."*

Supreme Court had also said, *"The appointment of the judicial members to any of these posts shall be made 'in consultation' with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be"*.

After the judgement in Namit Sharma case, the Union Government filed a review petition. SC has given a stay on the above two points but it also directed, *"Wherever Chief Information Commissioner is of the opinion that intricate questions of law have to be decided in the matter coming before the Information Commissioners, he will ensure that the matter is heard by a Bench of which at least one member has knowledge and experience in the field of Law."*

The Chief Information Commissioners (CIC) have now to decide whether an intricate question of law is involved in matters before the Information Commissioners (IC). Hence, ICs will have to consult with the judicial member. In Maharashtra where there are three one-IC benches outside Mumbai, this will only delay matters because first the non-legal member will consult with the legal member to ascertain whether intricate matters of law are involved and then put the matter up to the State CIC in Mumbai. For hearing such cases, the judicial member will have to travel to either Pune, Aurangabad or Nagpur for the hearing by Bench of two members. Appointments of judicial ICs will happen only when vacancies arise unless the State Government creates a post of an additional IC, which looks unlikely. In effect, this means that all ICs should preferably be with legal background to judge whether a matter involves intricate questions of law.

## **Dichotomy between Governance and Grievances**

Statistics show that 26 lakhs persons used the Act in 2012 in India and the leading state Maharashtra had 8 lakh users. Over 98 % used the Act for redressal of personal or institutional grievances. True public interest requisitions for empowering the citizens, for providing transparent governance or eradicating corruption are as low as ½ to 1 % i.e. about 26000 applicants for the whole country and 8000 for Maharashtra in 2012. This shows that the public grievance lodging & monitoring system has totally failed (<http://pgportal.gov.in/>). In practice, the RTI Act has replaced the grievance redressal system and improving governance has taken a back seat. It is a vicious circle of lack of good governance, resulting in a large number of grievances, which in turn is hindering efforts to improve governance.

There is good news though. The government is to enact The Right to Grievance Redressal Bill, 2011 shortly. This act is on the lines of the RTI Act specifying time frames within which to resolve individual grievances and a framework for appeals and penalties. We hope that the load of resolving individual grievances that falls on the RTI Act will then reduce and the RTI Act will be truly in a position to empower citizens by bringing in transparency in governance and eradicating corruption.

However, the big question that still remains unanswered is, “Will the new Right to Grievance Redressal Bill, 2011 meet the same fate as the RTI Act?”

### **How Lack of Information Adversely Affects Democracy**

If the citizens do not have information on the performance of the candidates in elections, they have no basis on which to make a choice. This is normally the case and even educated people vote only on their perceptions and many on caste and religion basis. Again, it is a common sight for politicians to claim credit for whatever good that happens in their constituencies. Hence, there is all the more reason that the citizens exercise their right to information to find out the truth about these politicians.

Citizens do not know how they are being governed, how narrow parochial interests are being served and how vote banks are being created because of lack of information. The voters rely on tribal, clan, caste, religion or class affiliations. That is why castiest, communal and vote-bank secular parties are thriving. It is indeed impossible to find a truly secular party in our country today. Add to this the vice-like grip of corruption in every facet of our lives including in elections. Our morality has hit new lows because we now create vote banks on the strength of basic necessities of life i.e. water by making it selectively available to certain segments of society. It has become a matter of “You tell me the constituency and I will tell you how much water to give”. A live example is diversion of water for sugar cane cultivation in Maharashtra at the cost of drinking water and for other crops. A simple question: how can there be a draught for all crops except for sugar cane?” This is how the ruling class creates vote banks at our cost. Additionally, when there is lack of governance, there is violation of laws at the behest of the politicians who have no regrets even after killing more than 70 people as in Mumbra.

More than the citizens, it is the duty of the media and the NGOs to use the RTI Act to measure the performance of public representatives. The media has taken a cautious step forward. We read in the newspapers almost daily the names of NGOs who expose various scandals but there are very few NGOs who take the information that they obtain to its logical and rightful end to book the culprits or rectify the slippages in governance. I shall come to the reasons for this in the part dealing with corruption.

## **Part II - Corruption**

### **Ill-effects of Corruption**

The World Bank estimates that corruption reduces a country's growth by 0.5 to 1 percentage point per year. This translates into yearly loss of about Rs. 550 Thousand Crores for India. Developing countries lose \$1trillion yearly due to corruption as per Global Financial Integrity. Transparency International grades countries by an index called Corruption Perception Index (CPI) reflecting how the citizens perceive their rulers in corruption.

Out of the ten top countries in Transparency International's Annual Corruption Perception Index (CPI), eight have effective freedom of information legislation. These are Denmark, Finland, New Zealand, Sweden, Singapore, Switzerland, Australia, Norway, Canada, Netherlands and Iceland. Of the ten worst countries (Haiti, Venezuela, Iraq, Turkmenistan, Uzbekistan, Myanmar, Sudan, Afghanistan, North Korea and Somalia), not even one has a functioning access to the information regime. There is thus an inverse relationship between the right to information and corruption. Transparency International's CPI highlights the fatal link between poverty, failed institutions and graft.

India's performance has not been all that good. One should ponder over the fact that in spite of the RTI Act since 2005, India's ranking in CPI is going from bad to worse.

#### **India's Ranking and Scores in CPI**

Year	CPI Rank	CPI Score
2005	72	2.9
2006	72	3.5
2007	72	3.5
2008	85	3.4
2009	84	3.4
2010	87	3.3
2011	95	3.1
2012	94	3.6

### **Accountability Tools**

We have several accountability tools such as, citizen report cards, social audits and budget analysis. For these tools to succeed, the use of the Right to Information Act should be very strong and potent. Along with the RTI, India needs to improve mechanisms to hold the civil and judicial services accountable to the people.

### **If there is no Corruption**

Magoo Strategic Infotech Pvt Ltd worked out the benefits that will accrue if India succeeds in eradicating corruption or reduce it substantially. A no-corruption environment will bring in a transparent investment regime and triple FDI flows reaching up to US \$ 75 billion by 2017. It will catalyze US \$ 1.7 trillion in infrastructure by 2020 with investment multiplier effect on the Indian economy of US \$ 5.1 trillion by 2025. There will be a reduction in project delays & costs and improvement in the quality of work. There will no longer be any bumps on the road.

### **How to Identify Corruption**

Fighting corruption entails peeling back layers of bureaucratic red tape and political sleight of hand to bare 'hard facts'. RTI identifies and exposes corruption. It is very difficult to get hard evidence of corruption through RTI Act. Only circumstantial evidence is possible in a large majority of cases. Hence, it is in the rarest of rare cases that RTI can provide hard evidence of corruption for the anti-corruption agencies to take up the cases.

Citizens have to resort to other laws to bring the corrupt to book by prosecuting them. To do so, needs bureaucratic & judicial support and strong political will with sustained public pressure. Most of these conditions are lacking in India. That is why corruption is thriving.

Citizens have to be vigilant and on the lookout for the indicators of corruption, which are:

- a. Delaying decisions,
- b. Lack of transparency in decision-making,
- c. Plain denial of facts, and lastly
- d. Discrimination in applying laws to or showing special favours.

### **Section 4**

Implementation of Section 4 is one of the most neglected aspects of the RTI Act, 2005. If Section 4 were rigidly implemented, the number of requisitions would drop drastically. We suggest the following to be put on the website of all public bodies:

- a. Copies of all decisions taken on day-to-day basis, e.g. circulars, notifications etc issued by the public body.
- b. Complete dockets of all proposals put up to the competent authority in the public body as soon as the proposals are released to the members of the competent approving authority. As soon as the competent authority approves the proposal, a copy of the approval should be on the website. All annexes/appendices/sketches/maps should be included along with financial details.

- c. Draft budget of the local body before and after approval. Any appropriations made to the budget should be updated.
- d. List of all PILs/Writs etc where there is involvement of the public body, all judgments in the cases and action taken to implement court orders; giving the name of the person responsible to implement the court orders.
- e. List of all beneficiaries under all schemes with latitude and longitude of their address.

#### **Present Practice in Pune for Section 4 Implementation**

- a. All departments are open for inspection of the files every Monday in Pune Municipal Corporation and the revenue department of the Collector's office every Friday. The timings are from 3 p.m. to 5 p.m. and in case of a holiday, the offices are open for Section 4 the next working day.
- b. Any one wanting a copy of a document has to fill a RTI requisition, pay the requisite amount and collect a copy.
- c. Citizens have to carry identity cards and can take only writing material inside the premises as a precaution that documents do not go missing.
- d. PMC has opened a RTI library where it attempts to place all documents as per Section 4 for the public to access. The library is open during working hours. Any one wanting a copy of a document has to fill a RTI requisition, pay the requisite amount and collect a copy.

#### **Drawbacks in the Present System of Section 4**

- e. The above practice is generally working and is better than nothing. The most important drawback is that the PMC still does not keep documents pertaining to the financial approvals presumably because large finances are involved. The worry is that the citizen could bring out the lacunae and proposals may get shelved. However, Section 4 loses much of its sting because of this missing link.
- f. Another adverse fall out of this process is that the PIOs have now started informing all requisitionists even when proper written requisitions are made, to visit the office, inspect the file and collect the documents on payment of the requisite fees. The greatest disadvantage of this procedure is that the public body is in a position to hide documents that it does not want to give and at the same time take the stand that they had given full access to the citizens to all documents.

#### **Case Studies**

I am giving a few case studies to show how RTI can help in exposing corruption by identifying it and relentlessly acquiring information. Here again, the final indictment has to come either from the political or bureaucratic bosses or in the ultimate analysis from

the judicial process. We will see how all these three agencies are either averse to penalise the corrupt or the system is so designed that the guilty largely go unpunished.

*Nagrik Chetna Manch* has three PILs and one WP in the Bombay High Court and one PIL in the Supreme Court. We observe that there are not enough judges to hear cases, as vacancies remain unfilled. Matters are put on board but do not come up for hearing due to the volume of cases. There is corruption too in getting dates for hearing or getting your PIL 'high on board'. As we play straight, our matters go on for years without a judgment. We are told that some bureaucrats delay matters so that they retire before the verdict. It could be months and years before God is kind enough to get us the hearings and a miracle if we get a judgment in our lifetime.

*Nagrik Chetna Manch* is also fighting two civil suits and one criminal suit in the municipal court in Pune in public interest. Our experience is that the institution of the 'bailiff' is either the most inefficient or the most corrupt because it literally takes years just to serve summons on the defendants. A period of two to three years has become normal. No amount of pleading in the court is persuasive enough for the judges to proceed with the case when summons do not reach or are deliberately not reached to the defendants for years. Things are so bad that even RPAD letters sent by the Courts do not reach the defendants while citizens' personal experience with the post offices is otherwise. If one dares to ask for permission to put an advertisement, the courts are not prompt in giving their assent. Once the hearings start, there is generally less delay unless the advocates connive in delaying the hearings, which too is rampant.

These delays are causing frustration amongst litigants. Anti-social and rogue elements break the law knowing fully well that hearings will not commence for years on end. Thus, in a majority of cases, these law-breakers achieve their ends. There are persons in the legal fraternity who have specialised in delaying issuance of summons by dubious means and in delaying matters by asking for "dates upon dates"!

Having said this about our judicial system, one must analyse the reasons why the courts are overburdened with cases. The main reason is that the political masters with the active connivance of the bureaucracy, do not give justice to the citizens, do not resolve their grievances and do not take decisions that are within their purview mainly because of corruption and favouritism towards their own electoral constituencies. This has two adverse consequences; 1. The RTI is taken up fully with the resolution of personal grievances as we have seen before and 2. The courts are totally occupied with ensuring that the public authorities obey the existing laws.

Our analysis shows that there is a deep-rooted collusion between the netas and babus in conspiring to ensure that the citizens are kept in the dark and that the judicial system becomes ineffective. This is the only manner in which the neta-babu nexus can keep looting the country's resources without being brought to justice. It has, therefore, suited the ruling elite not to carry out judicial, administrative and police reforms for the past 66 years since independence. Even after the landmark judgment dated 22 September 2006 by the Supreme Court in WP (Civ) 310 of 1996 Prakash Singh Vs. the Union of India Police, there is no sign of reforms taking off. The judgment directed to



free the police from political interference, separate investigation from law & order, fix minimum tenure for police officers etc. It also directed the formation of State Security Commissions to, inter alia, prevent unwarranted influence or pressure on the state police. However, our worthy neta-babu combine has implemented the judgment to an extent that it has not had any beneficial impact even after close to seven years.

If one takes a holistic view, it becomes obvious that is absence of good governance and those who have to deliver it do not do so because there can be no accountability without reforms. The current laws are adequate to administer justice. All the brouhaha about Lok Pal, Anti-Rape Law, Right to Recall, None of the above etc sounds a bit hollow making laws without any intention to implement them is plain hypocrisy and deception.

### **Use of RTI Act in Case Studies**

I am giving below a few instances of how we clinched crucial evidence of corruption by using the RTI Act, 2005 and how the bureaucracy are nixing the cases:

- a. **Vaishno Devi:** Visit to MCD but MCD said no one came from PMC, no report.
- b. **BRTS:** Purchase of 12 Volvo buses @ cost of Rs. 85 Lakhs per bus.
- c. **Parking Norms:** Not followed by hiding the amendments made in DP '87.
- d. **TDR:** Original report of ACB obtained in which senior officers indicted.
- e. **Kondhwa:** Legal opinion from GoM saying that RF can be relaxed by GoM.
- f. **Flyover:** Fudged consultant's reports.

### **Conclusion**

In sum:

- a. Unless the objective is clear, it is not possible to achieve any thing.
- b. There is a dichotomy between "governance" and "grievances". It is likely that the percentage of citizens using the Act for public interest will increase if The Right to Grievance Redressal Bill, 2011 is enacted to reduce the load on RTI Act.
- c. There is a concerted effort to kill the RTI. It is already in 'slow-death' mode.
- d. The public must wipe out the ruling elite syndrome of, "Tell me the person & I will tell you the law".
- e. Corruption is detrimental to India's growth and its secular structure. Causes big losses apart from moral degradation.
- f. India is low on International Corruption Perception Index.
- g. RTI Act can effectively identify corruption but not prevent it.
- h. It is very difficult to get hard evidence of corruption. Only circumstantial evidence is possible in a large majority of cases.
- i. It is in the rarest of rare cases that RTI can provide hard evidence of corruption for the anti-corruption agencies to take up the cases.

- j. Effective use of the RTI Act can at best create a fear in the minds of the public representatives and the officials that the short cuts in procedure, delayed decision-making or lack of transparency is liable for scrutiny through sustained use of the RTI Act.
- k. While some steps are taken towards implementation of Section 4, it has yet to be fully streamlined.
- l. Unless the government carries out administrative, police and judicial reforms to ensure that the laws are obeyed and the guilty are punished speedily, all talk of new laws is hogwash.

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