

Assessing the nature and essence of the Right to Information Act 2005

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Introduction

Transparency and accountability are two key core elements of good governance. It has been around 15 years since the Right to Information Act 2005 came into force. Three sections of this act have been amended in the year 2019 which are Section 27, Section 16 and Section 13. There are certain areas where this act is silent, if these areas could be taken into consideration, then this legislation could be made more comprehensive and impactful in terms of ensuring transparency and accountability. A crucial aspect we must understand is that there is a need for specifications in legislation in order to ensure the provisions of the legislation are not misinterpreted and misused. The same goes for the Right to Information Act 2005. The Right to Information Act 2005 is one of the few legislations which aim towards promoting accountability and transparency. There are certain provisions of the Act that need to be more specific and certain aspects that need to be classified. On 15th June 2005, the Act received the presidential assent.

Assessing the nature and essence

Section 2 (f) of the Right to Information Act 2005 which defines information does not classify information into various types. If information is further classified into various types then it would enable one towards compartmentalisation of information, which is essential. Types of information must not only be classified but also needs to be emphasized about the basis on which it is classified.

Section 2 (h) states that a public authority must be substantially funded. There is a partial ambiguity in this section, let us try and understand the ambiguity- Section 2(h) states the following - “ ‘public authority’ means any authority or body or institution of self-government established or constituted— (a) by or under the Constitution; (b) by any other law made by Parliament; (c) by any other law made by State Legislature; (d) by a notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or substantially financed; (ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.” There are certain ambiguities in this section of the Right to Information Act-

1. The first ambiguity is if an institute is partially controlled by the government, would it come under the Public Authority? This section fails to distinguish between partial control and complete control.
2. Next, we come to the question of substantially financed, the Right to Information Act fails to emphasize on what is the meaning of substantially financed by appropriate Government? When an institute is partially financed by the appropriate government, would it be considered a public authority? It is something that is left to interpretation.

3. How much percentage of funding amount must be done in order to classify it as substantially financed is not clarified in the Right to Information Act.

Section 2(i) of the Right to Information Act deals with the definition of a record. The definition only states what is included in records. This definition does not classify records into various types. The question arises why it is essential to classify the types of records. The answer is very simple. It is essential to classify the types of records for the public authority to understand what legal obligation they have to maintain records. It is not expected to have a separate classification, but a classification similar to the Public Records Act 1993 could also have been made. This would also help the Applicant filing an RTI application to understand whether or not the records as per law were to be maintained for a certain number of years.

Section 5(3) of the Act could have been more comprehensive if a brief mention of what does reasonable assistance meant in regards to Section 5(3) of the act.

Section 7(4) deals with providing access to information to the sensorily disabled however there is no detailed provision and elaboration on what form of assistance could be provided to the sensorily disabled.

Section 8 of the Right to Information Act is comprehensive however there lies an area that could be improvised that is defining trade secrets. Section 8(d) mentions trade secrets however it fails to define what a trade secret is and what can be categorized and included in trade secrets. Looking back at Section 8(d), it also mentions commercial confidence, but it does not define what commercial confidence means and what is included in commercial confidence.

Section 7(8) is also a provision that promoted transparency as it enables the legal obligation of the public information officer to state the ground and reasons for rejection. This provision also enables the public information officer to state details on the appeal and the duration available for it to be raised and details about the authority to which an appeal can be raised. Section 7(8) is a strong provision that would prevent the Public Information officer from misguiding the Applicant. There are penalties for the violation of Section 7(1) of the Right to Information Act, however, there are no specific provisions pertaining to Section 7(8) leaving it ambiguous with respect to penalties.

Section 18 is one of the most crucial sections of the RTI Act. This section deals with the powers and functions of the Information Commission. There needs to be an additional provision where the information commission has the power to discard any matter which does not deal with matters of urgent public importance.

Section 20(2) of the act deals with if the Central or state information commission is of the opinion that the public information officer has not furnished information. The officer can be subjected to disciplinary action. The problem however is that there is no comprehensive detailed provision on what these disciplinary provisions are.

One of the crucial aspects is this Act is silent on preventing frivolous applications being filed. There are no provisions which deal with frivolous RTI application. RTI act gives Absolute freedom to Applicant in terms

of number of RTI Applications one can file. Another aspect which RTI Act could focus on is laying emphasis on Public Importance. RTI Applications must be filed only on matters of Public importance if this provision is introduced to a large extent it would prevent frivolous RTI Application.

Robust Aspects of the Right to Information Act

One of the most robust provisions of the Right to Information Act is Section 19(5). Section 19(5) is an ideal provision that is essential to ensure accountability by the public information officer. Section 6(2) is a provision that enables citizens to go a bit closer towards getting information. It states that there needs to be no reason given by an applicant that is anyone who wishes to file an RTI application must not state reasons for demanding particular information.

Section 11 is one of the finest provisions in the act as it not only aims for providing information but also protects the privacy of the third party. Section 11 protects the privacy as any third party information as per the provisions of Section 11(1) would not be shared without the consent of the third party. Section 8 and 9 are very essential provisions as they emphasize the exception to the act. These sections basically deal with areas for which information cannot be provided such as information about cabinet papers. These sections lay down clear precedence on for which areas information cannot be provided hence this section is essential.

Conclusion

The Right to Information Act 2005 has been considered very crucial legislation when it comes to encouraging transparency and accountability. However, let's try to understand if the definition of records is not specific, it would not make the concerned authorities aware that they are liable to maintain records for a particular number of years. Another crucial aspect that needs to be introduced in the Act is that one must only file RTI Applications for matters of public importance-that is, RTI Applications pertaining to matters of public importance must only be entertained. If this provision is not introduced then there is a high possibility a citizen starts misusing the provision. The current RTI Act has no provision to stop citizens from filing frivolous RTI Applications which would give rise to overburdening work for public information officers and various authorities. The Act has no restriction in terms of the number of RTI applications a citizen could file at a time. This is a vital aspect that needs to be introduced. This would prevent the filing of frivolous RTI and would make him aware of the judicious use of the RTI Application. In regards with the amendment made in 2019 it is too early to analyse it. It would take time for us citizens to understand the implication of this amendment. We must at the same time not fail to recognize that this act has a very noble purpose behind it. It is our responsibility as citizens to ensure we judiciously exercise our rights and not misuse them. The nature of the Right of Information Act 2005 is semi-comprehensive in nature.

Reference

1. *Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions.* RTI ACT 2005. Right to Information, <https://rti.gov.in/rtiact.asp>.