



PROACTIVE DISCLOSURE – AN AFFIRMATIVE STATE RESPONSIBILITY TOWARDS GOOD GOVERNANCE EMPOWERING DEMOCRACY

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INTRODUCTION

The Real 'Swaraj' will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused.

– Mahatma Gandhi

In 73 years of republic, trusteeship standpoint of the democracy has been swayed. Socialistic, secular and democratic India have gradually taken the edge off and right to information has been recognized a ray of hope to bring the three elements on the right track of trusteeship. The right to freedom of expression and right to know are the fundamental human rights recognized by the world community and stands incorporated in the international documents. Freedom of information or right to know provides for access to information in the possession of public authority guaranteed under Article 19(1) (a) of our Constitution.



The paper evaluates the significance of the Right to Information Act by emphasizing on the implementation of an important provision of proactive disclosure of information and obligations of public authority to have a transparent democratic government. A combination of evolutive, explicative, analytical, impact and critical research methods has been used in the paper.

The Right to Information Act, 2005

The Indian Parliament in order to promote transparency and accountability in governance, enacted the Freedom of Information Act, 2002 which was repealed later and a new Act, the Right to Information Act, came into force on 12 October 2005. The RTI Act brought important changes in the citizen-government relationship in India since its independence. The new law conferred a legal right on Indian citizens to seek information from public authority, making governmental machineries accountable and responsible.

The Right to Information (RTI) became a key instrument for democratization in India with the widespread acceptance enabling citizens to question the governmental affairs. The Act aims for positive social change in respect of matters of public concern and acts as an indicator to measure the development of a country.

The main objectives of the RTI Act are-

- ❖ To promote transparency and accountability in the working of every public authority and
- ❖ To set up a practical regime for giving citizens access to information that is under the control of public authorities.

- ❖ To develop an informed citizenry.
- ❖ To contain corruption
- ❖ To preserve the confidentiality of sensitive information and lay down exemptions to disclosure of information likely to conflict with other public interest and harmonize the conflicting interests preserving the paramountcy of democratic ideal.

Good Governance

The essence of governance has been ingrained in human civilization since its inception. As societies emerged and evolved, the concept of governance naturally evolved. From ancient civilizations to modern nation-states, the principles of governance have remained an integral part of organizing and managing human affairs. The concept of governance has been an enduring pillar of human civilization. It has evolved alongside the development of societies, reflecting cultural, political, and technological changes. While its forms and structures have varied, the fundamental purpose of governance remains to provide order, facilitate decision-making, and promote the well-being of communities and societies as a whole.

It basically involves the process of decision making and the process by which decisions are implemented. Governance has been defined "as the use of power and authority by those in government to provide good and services to the people to uphold the common good and fulfil the aspirations and needs of the common man". Modern state being a welfare-state, performs distinct functions dealing with every aspect of public life. The principle of "Welfare State" equally includes full participation of their respective citizens striving to achieve the common good, affording optimum opportunity and promoting individual growth so as to serve the societal interests. The changing nature of State has led to evolution of "Good Governance".

Good governance in a democratic framework signifies the efficient and effective administration. The organizational efficaciousness in the concept of good governance corresponds to a responsive way to attain the predetermined goals of society.

According to Oxford Dictionary good governance means "an act or manner of governing" and "the office or function of governing" while "govern" is defined as rule or control (a state, subject etc.) with authority to conduct the policy and affairs. Thus, good governance refers to the act or function of exercising legitimate authority to regulate affairs of people in a given territory i.e., a State.

The United Nation's Commission on Human Rights, has provided for the key attributes of good governance to include transparency, responsibility, accountability, participation and responsiveness to the needs of the people. A Government is expected to be fully accountable to its people and transparent in the use of public resources.

Recently, the Government of India has declared 25th December, the birth anniversary of former Prime Minister Atal Bihari Vajpayee, to be celebrated as Good Governance Day.

Right to Information for promoting Good Governance

Right to information has been realized as the key to strengthen participatory democracy and usher in people centered governance. Access to information empowers all including the poor and the weaker sections of society to demand and get information about public policies and actions, thereby leading to their welfare. Without good governance, no developmental scheme can bring improvements in the quality life of the citizens. Hence, right to information is a basic necessity of good governance. It is very important to establish the genial relation between the government and the people. In Indian democracy the people are an integral part of the system of governance, and they must also feel they are part of this system.

Governance improves with high trust between people and the Government. Trust improves with transparency. The theoretical perspective of significance of the right to information became a reality through the RTI Act. The Act empowered citizens with a practical tool to seek information and realize the right. A transparent government increases the faith and trust of the public in its functioning and reduce suspicion. Free flow of information allows citizens to participate in decision making in their

interest. Over the last two decades there has been a dramatic shift in the thinking around the right to information. Freedom of information laws were previously perceived as good governance tools. Now, having access to information is recognized as a right of all human beings and governments are bound to act as *guardians* of information that ultimately belongs to the public.

The momentum to create an open government regime, therefore, needs to come from three separate groups to ensure the most progressive results. They are political will, a competent and committed body of public bureaucrats that can implement and manage open government systems, a push from civil society, to put pressure on the government and to raise public awareness around the issues.

Making government more open and transparent is a process involving important areas of focus viz., Information Laws- establishing the legal right for a citizen to access the information that they want; Proactive transparency- this commits governments to publish as much information as possible in an accessible form.

Progressive steps towards openness require a developed legal framework of the right to information with proper mechanisms to put into practice. Governments are bound to voluntarily publish more than just the core classes of information.

Since the enactment of the Act, a large number of studies completed have examined challenges in implementing the law. The effective use of law has been constrained by uneven public awareness, poor planning by public authorities, and bureaucratic indifference or hostility. Requirements for proactive disclosure of information are often ignored, and mechanisms for enforcing the new law are stressed by a growing number of complaints and appeals.

Proactive Disclosure

"Laws and institutions must go hand in hand with the progress of the human mind."

-Sir Francis Bacon

In order to promote transparency and accountability in administration disclosure of information is very important. Disclosure is the process through which an entity communicates with the outside world. Disclosure refers to the publication of any economic information relating to a business enterprise, quantitative or otherwise, which facilitates the making of investment decisions.

One of the most important elements of the RTI Act is Section 4, which mandates pro-active disclosure of certain categories of information. Proactive disclosure has been called the future of the RTI, and digital publication is a key means of proactive disclosure. Effective implementation of the section 4 of the Act can transform the leverage citizens have over public authorities in order to ensure their accountability. Regular publishing of the most frequently sought information, physically as well as by using digital platform, cyberspace, will mitigate the huge burden that is placed on public authorities to respond separately to the large number of specific queries about public information.

Section 4 of the Right to Information (RTI) Act is a fundamental provision that mandates proactive disclosure of information by public authorities. It requires every public authority to maintain and publish a wide range of information on its official website, making it accessible to the public without the need for a formal request.

Under Section 4(1)(b), every public authority is mandated to publish the following categories of information within one hundred and twenty days from the enactment of the Act-

1. Particulars of the Public Authority
2. Powers & duties of officers & employees
3. Procedure followed in decision making
4. Norms for discharge of functions
5. Rules, regulations, instructions, manuals and records under its control/ used by employees while discharging functions
6. Categories of documents held by the Authority or which are under its control
7. Arrangement for consultation with or representation by the members of the public in relation to the formulation of policy or implementation thereof

8. Boards, Councils, Committees and Other Bodies constituted as part of the Public
9. Directory of Officers and employees
10. Monthly Remuneration received by officers & employees including system of compensation
11. Budget allocated to each agency including all plans, proposed expenditures and reports on disbursements made etc.
12. Manner of execution of subsidy programmes
13. Particulars of recipients of concessions, permits or authorization granted by the Public Authority
14. Information available in electronic form
15. Particulars of facilities available to citizens for obtaining information
16. Names, designations and other particulars of public information officers
17. Any other useful information.

Section 4 of the Right to Information (RTI) Act and Good Governance are closely co-related as the former plays a vital role in achieving the latter. Good governance is a fundamental principle that emphasizes transparency, accountability, participation, and responsiveness in the functioning of public institutions. Section 4 of the RTI Act contributes to promote good governance and ensures all the above elements of good governance.

- **Transparency:** Section 4 mandates proactive disclosure of a wide range of information by public authorities. By making this information readily available on their websites, public institutions become more transparent in their actions and decisions. Transparency fosters trust between citizens and the government, leading to better governance outcomes. The provision ensures that the citizens have easy and immediate access to a wide range of information without need to file a RTI application.
- **Accountability:** The proactive disclosure of information under Section 4 ensures that public authorities are held accountable for their actions and policies and enhances accountability in governance. When public authorities are required to publish information about their activities, budgets, and decisions, they become more accountable to the public. Citizens have access to relevant data and they can scrutinize the government's activities, demand explanations, and seek redressal in case of any discrepancies or malpractices.
- **Participatory Governance:** Good governance encourages citizen participation in decision making process. Access to information empowers citizens to actively participate in the decision-making processes. Informed citizens can contribute constructively to policy discussions, provide valuable feedback, and hold authorities accountable for their decisions. This participatory approach leads to more inclusive and effective governance.
- **Efficient Civic Amenities:** Access to information through Section 4 enables citizens to understand the procedures and entitlements related to public services. This transparency helps in streamlining service delivery processes, reducing bureaucratic delays, and improving the overall efficiency of public administration. By publishing information proactively, public authorities save time and resources that would otherwise be spent on processing individual RTI requests. This streamlines the flow of information, enhances efficiency, and enables authorities to focus on delivering better services to the public.
- **Prevents Corruption:** Good governance aims to minimize corruption in public institutions by proactively disclosing information related to budgets, expenses, and project implementation. Proactive disclosure under Section 4 acts as a deterrent to corrupt practices and promotes a culture of integrity in public institutions. When potential wrongdoings are open to public scrutiny, there is a reduced likelihood of corrupt practices going unnoticed and promotes ethical behaviour in governance.
- **Empowerment:** Section 4 of the RTI Act empowers citizens to access crucial information related to government policies, spending, and decision-making. Informed citizens can make better choices and actively engage with the government, leading to more responsive governance.

- **Trust in Government:** When public authorities demonstrate a commitment to transparency and accountability through proactive disclosure, it enhances the public's trust in the government. Trust is a critical component of good governance, and it positively impacts the overall functioning of institutions.

In conclusion, Section 4 of the RTI Act and Good Governance are interconnected elements that reinforce each other. By promoting transparency, accountability, and citizen participation, Section 4 contributes to fostering a culture of good governance in India, where public institutions work efficiently, ethically, and responsively for the benefit of the governed-people they serve. The provision plays a significant role in building more responsible and responsive governance system in India.

While this provision has significantly enhanced transparency and accountability in the Indian governance system, it also raises certain critical points for analysis. The provision under section 4 of the Act aimed to promote "proactive disclosure" of key information is often disregarded. Since the promulgation of the Act in 2005, large amount of information relating to functioning of the government is being put in public domain. However, the quality and quantity of proactive disclosure is not up to the desired level.

The Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India has issued the guidelines regarding section 4 of the RTI Act, 2005 for the implementation of *suo moto* disclosure. The purpose of *suo motu* disclosures under Section 4 is to place large amount of information in public domain on a proactive basis to make the functioning of the Public Authorities more transparent and also to reduce the need for filing individual RTI applications.

Some of the main recommendations that emerged during the Consultation¹ point

- the need for putting extensive information on the websites at all levels of government, especially which concerns citizens.
- ensuring that the information is presented in a form legible to people, and through open technical standards and in reusable forms.
- Proactive disclosure also requires proactive monitoring whereby the websites of all levels of governments should be proactively monitored vis-à-vis agreed disclosure norms. For this purpose, appropriate indicators and benchmarks should be developed.
- the monitoring and enforcement functions should take place from the Information Commissioner's office though there were some differences of opinion regarding this.
- the head of the department and not just the Public Information Officer is held responsible for the non-compliance of proactive disclosure requirements.
- Each department should frame an information policy which should be subject to public scrutiny and periodic review and be drawn up in consultation with the concerned Information Commission.
- ensure that information kiosks are set up in or close to all communities so that they can use digitally published public information.
- important issues like the information audit of government websites and monitoring of proactive disclosure by district, block and village level information committees, also came up.

However, the effectiveness of Section 4 largely depends on the willingness and sincerity of public authorities to comply with its requirements. Many government departments and agencies may not update their websites regularly or may withhold crucial information to avoid scrutiny, undermining the spirit of the Act. In accordance with the guidelines given by the Government of India the information disclosed should be presented categorically and useful to the public. The exemption to provide information provided under section 8 of the Act should be used judiciously avoiding misuse of such exemptions to evade accountability. The provision can serve in its true sense only by the upgradations in the technology infrastructure support, digital literacy especially in rural and remote areas.

Thus, there is need for regular audit of the quality of proactive disclosure made by public authorities under the provisions of the RTT Act. Lack of robust mechanism is a critical challenge and there is a need for an independent body to assess the quality and quantity of information disclosed and

sanction against non-compliant authorities. The strengthening of Section 4 can empower citizens, foster better governance and reinforce India's commitment to the right to information and true democracy.

In the words of Dr N. R. Madhav Menon, Director, National Judicial Academy, Co-ordinator National Colloquium on RTA, "the enactment of RTI Act, 2005 is indeed one of outstanding legislative accomplishment in the democratic evolution of the Indian Republic."

REFERENCES

1. The Constitution of India, 1950
 2. Universal Declaration of Human Rights, 1948
 3. International Covenant on Civil and Political Rights, 1966
 4. The Right to Information Act, 2005
 5. First Report of Second Administrative Reforms Commission Right to Information Master Key to Good Governance, June 2006
 6. Central Information Commission, Ministry of Personnel, Public Grievances & Pensions Annual Report 2005-2006
 7. Consultation on Proactive Disclosure under the Right to Information Act – Framing Guidelines for Digital Publication of Information, dated 28th June 2011, Bengaluru
 8. G.B.Reddy, Commentaries on Prevention of Corruption Act 1998, Gogia law agency hyd, 1st ed 2006, pp1
 9. Oxford Advanced Learner's Dictionary of Current English, Sixth edition, Oxford University Press, page – 557
 10. Rebecca Zausmer, Towards open and transparent government – International experiences and best practice, December 2011
 11. Guidelines by Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India No.1/6/2011-IR, Dated 15th April 2013
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