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Critical Study of Right to Information Act 2005

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ABSTRACT

The Right to Information Act 2005 was enacted by parliament to advance the constitutional right to know under Article 19 (1) a. The parliament gave and ensured the concrete shape to right to know. The Right to Information Act (RTI) impose duties upon all public authorities to provide information to all citizens and persons without discrimination. It has some exceptions that all information about the security and integrity of the nation, can't be asked and such information is exempted from the purview of this act. But the present act of 2005 has many challenges so its objectives of enactment could not be achieved fully.

The concept of good governance and transparency is the key point of the democratic system so every citizen of the nation must have proper access to public authorities in their decisions and orders to prevent corruption. Before the enactment of the Right to Information Act, there was no law in this regard but there was a tradition of fair information. To achieve fair policy implementation, It was considered to legislate the law, although Right to Information (RTI) is not a new concept and in ancient times during the Vedic period, Kautilya in his book Arthshastra elaborated on the traits of the king of a well-governed state in the happiness, in their welfare whatever pleases himself he does not consider as good but whatever pleases his subjects he considers as good.

The openness theme is the basis of RTI. Before the enactment of the RTI Act 2005, the information-seeking right was guaranteed by article 19(1) A of the constitution similarly judiciary widely interpreted this article in the light of "Right to Know". Apex Court of India laid down that freedom of speech and expression, means every citizen should have the right to avail information of proceeding of all government organs, and public authorities.

Keywords - Openness, Access, Transparency Corruption

I. INTRODUCTION

Right to Information Act 2005 Provided four layers forum where the applicant may seek information,

1. Public information officer

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2. Appellate officer- I
3. State Information commission
4. National Information commission

The information may be availed of such nature it is related to the public interest and the information, which is not related to public interest can't be availed.²

The Right to Information Act (RTI) imposes a duty to provide information only to the public Authority therefore the institutions and organizations of private nature are not within preview of RTI.

The right to information is not subjected to the Indian system but is a matter abroad, In 1994 Canada Government made a provision giving the right to the common man to have information about Government decisions. Similarly, the United Kingdom is also guaranteed by adopting a citizen charter in Britain.

Following the all-around voice of removing corruption Government of India passed the Right to Information Act 2005.

CHALLENGES Last 17th years' experience shows that still, the Right to Information Act could not achieve its goals absolutely which were embedded behind its enactment

II. JUDICIAL GUIDELINE

Secretary-General, Supreme Court of India vs. Subhash Chandra Agrawal³: Held- The Right to information emerges from the Constitutional guarantee under article 19(1)A

Dinesh Trivedi vs. Union of India⁴: The citizens have the Right To know about Government affairs but this right is not absolute.

III. CHALLENGES TO RTI ACT

In the last fifteen years' experience, from the date of application of the RTI till today, it has been found that there are many ambiguous provisions in RTI so many organizations claimed not to be bound to provide information under RTI. The major ambiguous provision of defining public authority, although under RTI public authorities are those which are established by Act of parliament or legislature or those institutions which are financially aided by state or union Government.⁵

² Sec. 8 of Right To Information Act 2005

³ AIR 2010 Delhi 159 FB

⁴ 1997 4 SCC 306

⁵ Section 2h of RTI act 2005

The major issue relates to the private universities in India. Most private universities claim that since they are not financially assisted by the state therefore they decline to provide information about their business. The surprising matter is that 80% of universities (private) do not have their RTI cell nor they have appointed their first information officer. The reality is that all private universities are the public authority under RTI because they are established through the enactment of the state Act or parliamentary Act. Even the university Grants Commission has issued directions to all private universities to establish and provide information but maximum private universities do not have a Public Information Officer (PIO).

The second major challenge to RTI relates to biases caused by the First Appellate officer because the first appellate officer rejects the appeal against the public information officer in 60 % of cases due to departmentally favour. Since the first appellate officer is a superior officer departmentally to the PIO therefore it is not expected that he would act free and fair.

The third major issue and challenge in the RTI Act are that information can't be provided before the expiry of 30 days. But in some cases, immediate information is required which should be provided without delay.

The fourth challenge to the RTI Act is that there are no specific penal provisions to the reluctant of this Act therefore without fear of punishment or imprisonment PIO does not afraid very much to comply with the RTI provisions, pecuniary fine provision is not a very effective provision.

The fifth provision of the RTI Act relates to debarring civil Courts from intervention. The experience proved that the working system of a civil court and quasi-judicial body is something different. The civil court is in a position to be free and fair since administrative officers are influenced by political interference.

IV. SUGGESTIONS

For effective implementation of the RTI, the penal provision and interference of civil court be allowed.
