

Provisions Of Proactive Disclosure Under The Right To Information Act: An Assessment Of Its Implementation In The State Of West Bengal

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1. INTRODUCTION

This research paper attempts to examine Section 4(1) of the Right to Information Act, 2005 especially, the provisions regarding to the information to be provided to the general public by the public authorities. The second part of this article investigates application of this Act to the fifty³ Government Departments in the State of West Bengal. This study was undertaken by Centre for Regulatory Studies Governance and Public Policy (CRSGPP) to know the objectives of the Act and its application in a holistic perspective. The study also has highlighted a few of the prevailing lacunas of the Act and suggests remedial measures to overcome them.

The right to information is often said to be the most essential part of the administration of government. It gives people the feeling that they are part of the Government and it is for them (that these) policies are made and implemented in true spirit. But then the methods provided to obtain the

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³ Egiye Bangla available at <https://wb.gov.in/portal/web/guest/departments.jsessionid=RaJMpzFnM9EpRqRM36zMdGia> (last visited 16th January, 2018).

information sought must be simple, easy, time bound and inexpensive thereby empowering them to judge whether the governmental actions holds public interest or not. The information withheld must be proactively disclosed by the public authority. Information as a right was first recognized under the Right to Information Act, 2005 which required the relevant public authorities to disseminate the information available free of cost which (could) reach maximum people or at such minimal costs to supply the information via electronic transmission. This approach provided under the Act contemplates a rights based approach between the information seeker and the Government department. Earlier such rights were not enjoyed under the Official Secrets Act which acted as an umbrella for the acts of the Government slowly began to lose its importance. The Second Administrative Reforms Commission⁴ (ARC) suggested that the Official Secrets Act (OSA), 1923 should be repealed, and accordingly, was substituted by a Chapter in the National Security Act, containing provisions relating to official secrets. This development naturally led to public demand for information in regard to public policies.

The RTI Act envisages a Public Information Officer (PIO) to whom an RTI application is addressed to, to provide the information sought for failing which the custodian of record and Appellate Authority (AA) who is actually responsible to disclose the information will have to disclose it when the PIO has failed in discharging his obligations.

Section 4 of the RTI Act envisages the publication of information by a public authority on as many as seventeen clauses indicated under this section. Under its provisions the information pertaining to an organization must be proactively disclosed by the public authority.

The researchers while pursuing a doctrinal study as regards the implementation of Section 4(1) (b) of the Right to Information Act have followed the comparative model research in respect of the departments of the government

⁴ Scrapping of Official Secrets Act, 1923 available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=121247> (last visited 19th January, 2018).

2. RIGHT TO INFORMATION AND ROLE OF PUBLIC AUTHORITIES

Section 4 of the RTI Act imposes⁵ a duty upon the Public Authority to publish within 180 days from the enactment of the Act the information based upon the following broad headings:

- i. Particulars of its organization, function and duties;
- ii. The powers and duties of its officers and employees;
- iii. The procedure followed in the decision making process, including channels of supervision and accountability;
- iv. The norms set by it for the discharge of its functions;
- v. The rules⁶, regulations, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- vi. A statement of the categories of documents that are held by it or under its control;
- vii. The particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- viii. A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- ix. A directory of its officers and employees;
- x. The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

⁵ Right to Information Act 2005 available at <http://lawmin.nic.in/ld/P-ACT/2005/The%20Right%20of%20Information%20Act,%202005.pdf> (last visited 16th January, 2018).

⁶ The Central Information Commission directed the Delhi Development Authority (DDA) to publish on its website the Acts/Rules which is relevant to its functioning.

- xi. The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- xii. The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- xiii. Particulars of recipients of concessions, permits or authorizations granted by it;
- xiv. Details in respect of the information, available to or held by it, reduced in an electronic form;
- xv. The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- xvi. The names, designations and other particulars of the PIO;

Or any other information as may be prescribed and such information when disclosed must be updated every year.

The word 'information'⁷ includes all records held by a public body, regardless of the form in which the information is stored which can be a tape, electronic recording, emails, logbooks, orders, circulars, releases, samples, models and many more including information relating to any public body for which information regarding it can be assessed by the public authority for the law due to any law in –force.

The Act imposes an obligation⁸ on the public authority to provide and publish the aforementioned information within hundred days. A careful reading of the provision gives an impression that there is no liability upon non- disclosure of such information as laws made by the parliament must be followed and implemented in letter and spirit. It is therefore necessary for each public authority to publish such information in the public domain so that the public can have access to such information with a few clicks of the mouse in computer. The information to be disclosed should essentially be for the benefit of the public at large, which is only possible through the

⁷ Supra note 2; Section 2 of the RTI Act.

⁸ Dr. J.N. Barowalia on Commentary on The Right To Information Act Universal Law Publishing Co. (ULPC) (2010).

use of information and communication technology. This proactive disclosure of information not only ensures a transparent working of the government but also helps to reduce the number of RTI applications, on the available information.

The Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training issued an office Memorandum⁹ in regard to proper implementation of Section 4 of the RTI Act. The Government felt that there is lethargic attitude in the implementation of Section 4 of the RTI Act by the Government Departments in respect of suo-moto disclosure of information. The memorandum stressed that the Government departments on a prerogative basis should make available the information affordably to the public at large and the information provided must be in the local language as far as possible so as to reach larger number of people. Furthermore, under the Memorandum it is the duty of an organization to provide suo-moto disclosure of information which relate to:

- a) Information related to procurement: Information relating to notice/ tender enquiries, corrigenda, details of bid.
- b) Public Private Partnerships
- c) Transfer Policy & Transfer Orders
- d) RTI Applications
- e) CAG & PAC
- f) Citizens Charter
- g) Discretionary and Non-discretionary grants
- h) Foreign Tours of PM/Ministers

The above additional points mentioned in the memorandum are for maximum dissemination of information to the public and effective compliance of Section 4 of the RTI Act through the use of internet.

The authors probed contextually the application of Section 4 of RTI Act. It speaks about suo-moto disclosure of information, which literally means

⁹ Implementation of suo motu disclosure under Section 4 of RTI Act, 2005 – Issue of guidelines regarding available at http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/Suo_moto_disclosure-15042013.pdf (last visited 17th January, 2018).

that the public authorities which are run by the Government or aided by the Government or institutions which come under the definition of Article 12 of the Indian Constitution falls under its purview. Sec 4 thus not only takes into account¹⁰ the officers, organizations under the heads of Executive, Legislature and the Judiciary but also any authority or body or institution or self-government established under the Constitution and Parliament. Section 2(h) defines public authority as “any authority or institution of self-government established under the constitution or law made by parliament. It can be the creature made:

1. By or under the Constitution;
2. By any other law made by Parliament;
3. By any other law made by the State Legislature;
4. By notification issued or order made by the State Legislature;
5. By notification issued or order made by the appropriate Government, and includes any
 - a. Body owned, controlled or substantially financed;
 - b. Non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

It should be noted that when the institutions are established they have to function in a transparent way. Transparency¹¹ of public authorities is a key feature of good governance and an indicator of whether or not a society is genuinely democratic and pluralist, opposed to all forms of corruption and this can be tested better by way of participation of the citizens. Informing the public by the government is important in order to objectively realise the goals of freedom of information as laid down under the legislation. .

The test of determining whether an institution is public authority or not depends on the control exercised by the Government over the particular authority. In case where the Government provides funds and thereafter specifies the way and manner it will be spent then in that case it can be said that there is substantial control of the Government. It is also important

¹⁰ Sairam Bhat on Right to Information, Eastern Book House, (2012) PG 114.

¹¹ Ibid PG 3.

to mention here that it is irrelevant¹² that the funds are for certain projects or programs.

Section 3 of the RTI Act states that information available as a right is subject to the provisions of the Act. Section 4 highlights the true spirit of the information as a 'right' by imposing a positive and specific duty on the public authorities about furnishing information about the working structure of the department. It is also understood that such information which is once remitted¹³ must also be constantly updated. Furthermore, the term 'publish' means not only to publish it in the official government gazette or annual reports by the public authorities but also to take into view the spirit of Section 4 which provides access to the information by large numbers. Mode of disclosing of information can be resorted through notice boards, newspapers, public announcements, media broadcasts and any other means which can be by way of wall paintings in the Gram Panchayats and Gram Sabhas wherein the public can be informed about their rights and also the procedure of availing them. Disclosure of information also takes into account the local language and the methods of disclosure of information. For instance, it will be better if at the village level copies of the RTI Act printed in local vernaculars is distributed or its provisions and the access permitted are explained to the people.

2.2 The public authorities shall discharge the following duties under Section 4, 6, 7, 11 of The Right to Information Act:

1. To maintain¹⁴ records or information in a catalogued and indexed form and thereafter digitize the same to provide information to public at large.
2. Proactive provisions for information disclosure must be implemented.

¹² Appeal no. ICPB/A-8/CIC/2006 dated 22 March 2006 decided by Padma Balasubramanian, Information Commissioner.

¹³ Dr. Madabhushi Sridhar on Right to Information Law & Practice 1st ed. Reprint (2007).

¹⁴ Venkatesh Nayak and Charmaine Rodrigues on The Right To Information Act, 2005 – A Summary available at http://www.humanrightsinitiative.org/programs/ai/rti/india/national/rti_act_2005_summary.pdf (last visited 17th January, 2018).

3. Provide reasons for its administrative or quasi-judicial decisions to affected persons.
4. Proactive disclosure of information including publishing of facts when new policies are framed and decisions which affect public.
5. To help an applicant who has visually challenged to access information or inspect records.
6. Providing information free of cost when not provided within the time limit when the Appellate Authority orders release of information.
7. Take into consideration representation made by third party before disclosure of such information.
8. To provide with information despite the exemptions for upholding public interest at high.

According to J.P.B. Sawant. "The barrier to information is the single most cause responsible for corruption in society. It facilitates clandestine deals, arbitrary decisions, manipulations and embezzlements. Transparency in dealings, with their every detail exposed to the public view, should go a long way in curtailing corruption in public life."

The disclosure of information must as far as possible be made in accordance with the Right to Information Act and in any case must not be inconsistent with the provisions related to disclosing of such information. It should also be kept in mind that the secrecy laws must not make it illegal for the public authorities to prevent in providing the information which is already disclosed once.

Public authorities should do their job at the right time. The government also should enact legislation to ensure work from them. It is mainly aimed to reduce the grievance to a minimum. One major issue that lies with the public authorities is the grievance redressal mechanism and providing status report for application preferred. However, in instances of this kind public authorities take their own time to reply. To overcome this, the Urban Development Department has issued an official gazette which speaks about the time period to be taken by an official in replying to an

application. The time period prescribed is¹⁵ 60 days¹⁶ from the receipt of the application. Generally a question is asked what recourse the public has when no reply is received within the stipulated time period. A few institutions follow the automated response i.e. by way of SMS updates and software which will help the public to get the information about where the file is actually lying and the comments received, if any.

3. POSITION OF SUO-MOTO DISCLOSURE UNDER RIGHT TO INFORMATION ACT IN THE DEPARTMENTS OF GOVERNMENT OF WEST BENGAL

The West Bengal Government has 50 (fifty) Departments for its administration. The departments are headed by minister in charge along with minister of state or individually by ministers in charge. A few departments are monitored directly by the Hon'ble Chief Minister herself.

The Government has created a webpage called 'egiye bangla' which gives us a clear picture of the number of Government departments at present and their details. The webpage is quiet holistic and provides consolidated information about all the departments which includes the nature of work each particular department carries out along with the engagement of the department in the various activities thrust on it.

The Centre for Regulatory Studies Governance and Public Policy established by the Judicial Department of the Government of West Bengal

¹⁵ The Urban Land (Ceiling and Regulation) Act, 1976 available at http://164.100.161.188/upload/uploadfiles/files/ulcra_1976.pdf (last visited 16th January, 2018).

¹⁶ Ibid. Section 27. Prohibition on transfer of urban property. —

(1) Notwithstanding anything contained in any other law for the time being in force, but subject to the provision of sub-section (3) of section 5 and sub-section (4) of section 10, no person shall transfer by way of sale, mortgage, gift, lease for a period exceeding ten years, or otherwise, any urban or urbanisable land with a building (whether constructed before or after the commencement of this Act) or a portion only of such building for a period of ten years of such commencement or from the date on which the building is constructed, whichever is later, except with the previous permission in writing of the competent authority.

(2) Any person desiring to make a transfer referred to in sub-section (1), may make an application in writing to the competent authority in such form and in such manner as may be prescribed.

(3) On receipt of an application under sub-section (2), the competent authority may, after making such inquiry as it deems fit, by order in writing grant or refuse to grant the permission applied for: Provided that the competent authority shall not refuse to grant the permission applied for unless it has recorded in writing the reasons for doing so and a copy of the same has been communicated to the applicant.

(4) Where within a period of sixty days of the date of receipt of an application under this section the competent authority does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the competent authority shall be deemed to have granted the permission applied for.

at the West Bengal National University of Juridical Sciences, Kolkata has taken up a study to assess the implementation of Section 4(1) (b) of the Right to Information Act 2005 in the departments of the West Bengal Government. The objective of the study is to assess the implementation of the 17 sub clauses (mentioned above) under section 4(1) (b) of the Right to Information Act, 2005.

This study after having adopted seven parameters mentioned herein attempts to know whether these parameters pertaining to governance and public policy are part of the objectives/goal of the RTI Act. Furthermore, the study also seeks to find out how far these parameters have been realised by the Government Departments.

3.1 The parameters of evaluation are:

- i. Transparency, accountability and good governance in administration.
- ii. Disclosure of information at large for the public.
- iii. Updating of information at regular intervals.
- iv. Reduction of filing of RTI applications.
- v. Promoting e-governance.
- vi. Uniform system of disclosure of information.
- vii. Implementation of Section 4 (1) (b) of the RTI Act.

3.2 Methodology:

The researchers of the Centre have analysed whether the information under the heads as per Section 4(1) (b) of RTI Act as stated above is indicated in the respective departmental website of the West Bengal Government. Whether the nature of information required to be provided from time to time is updated or not.

3.3 Observation:

The researchers of the Centre observed that the West Bengal government has fifty (50) departments. Out of which there are no websites in seven¹⁷ (7) departments, three¹⁸ (3) departments have websites which are not functioning, eight (8) departments have¹⁹ no disclosures or very scarcely disclosed or information not updated regularly and three (3) departments have²⁰ not disclosed complete information.

The study reveals that the Government departments have tried to disclose information as far as possible. However, the information disclosed in the websites are scarce and not updated regularly. Furthermore, the information from many heads remains undisclosed or ignored while disclosure is made. Information head relating to 'other information for public use' does not provide for disclosure of updated annual reports, budget, employees' salaries which are essential for any public authority.

It should be mentioned to the surprise of everyone, that information under the following heads remained undisclosed in almost all the departments of the Government:

- i. Procedure followed in the decision making process, including channels of supervision and accountability;
- ii. Particulars of any arrangement that is prevalent for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- iii. Meetings, the minutes and statement of the boards, councils, committees and other bodies;

¹⁷ Agriculture Marketing, Home and Hill Affairs, Information and Cultural Affairs, Judicial, Law, Water Investigation and Development.

¹⁸ Women and Child Development and Social Welfare, Sports, Sundarban Affairs, Backward Classes Welfare.

¹⁹ Co-operation, Food and Supplies, Food Processing Industries and Horticulture, Health and Family Welfare, Housing, Labour, Minorities Affairs and Madrasah Education, Planning, Statistics & Programme Monitoring, School Education, Self Help Group and Self Employment.

²⁰ Agriculture, Fire and Emergency Services, Micro Small and Medium Enterprise and Textiles.

- iv. The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- v. Particulars of recipients of concessions, permits or authorisations granted by it;
- vi. Details in respect of the information, available to or held by it, reduced in an electronic form.

The study opines that if the departments sincerely disclose the information as per Section 4 (1) (b) of the RTI Act, the number of RTI applications which will be filed for seeking information under the seventeen sub-clauses will drastically come down. This will help the PIO along with the concerned public authority of the particular department for smooth functioning. More the information disclosed by a Government department more the public will feel satisfied about their inclusion in the administration of the State. The study also made a few recommendations by way of suggestions:

1. The departments also should implement the process of providing docket numbers on the received applications along with creating a portal to track such applications which will definitely go a long way in enabling the citizens to track the process of such applications.
2. There must also be a fixed duration of time for replying of all received letters by a particular department. Even applications rejected on grounds of irrelevancy must be covered by the time limit.
3. The public information officers (PIO) must be trained to handle RTI applications so that they discharge their obligations in a balanced manner.

4. CONCLUSION

Suo moto or proactive disclosure of information by the public authority has been the intention of drafters of the RTI Act. This has to be realised in letter and spirit. Disclosure of full information when made within the stipulated time will reduce the number of RTI applications filed. The Central Information Commission from time to time has emphasized and directed in its official communication for the publication of information under all the

seventeen clauses of Section 4 (1) (b). The guidelines when issued by the Central Government at times becomes difficult for implementation by the State Government as the State is bound by the State Information Commission which would frame rules for the public authorities relating to the nature and manner for disclosure of information. Failure of disclosing information does not put the public authority in any default or fine. However, this is another grey area which needs attention by the bureaucrats for giving effect to the objectives enshrined in the RTI law. The study reveals that all departments of the Government of West Bengal has somewhere have tried to disseminate information sincerely but the information provided at times are scattered or not updated. However, it is suggested that some information needs to be showcased by each department in a holistic perspective. Lack of uniform pattern in disclosure of information by the public authority is another area where the study recommends for a uniform format for use by the public authority (to disclose information). Presently ninety²¹ nations out of one hundred and ninety three have information laws in force which speaks about the lethargic attitude of governments in providing information to its citizens. It is time to overcome this trend by enacting legislation.

²¹ Anshu Jain on Good Governance and Right to Information: A perspective available at [http://14.139.60.114:8080/jspui/bitstream/123456789/12376/1/015_Good%20Governance%20and%20Right%20to%20Information_A%20Perspective%20\(506-519\).pdf](http://14.139.60.114:8080/jspui/bitstream/123456789/12376/1/015_Good%20Governance%20and%20Right%20to%20Information_A%20Perspective%20(506-519).pdf) (last visited 17th January, 2018).