UNIT 15 RTI : BRIDGING THE GAP BETWEEN RIGHTS AND THEIR ENFORCEABILITY*

Structure

15.0 OBJECTIVES

After studying this Unit, you should be able to:

- Discuss the status and importance of right to information;
- Identify the conflicting interests of stakeholders of right to information;
- Analyse the enforcement of the right to information;
- Examine the gaps and obstacles in realising the right to information; and
- Suggest necessary measures for effective enforceability of the RTI Act.

15.1 INTRODUCTION

In a democratic country, rights are very significant for the growth and development of an individual and society. In India, Part III of the Constitution guarantees fundamental rights. One of the very important rights is that of freedom of speech and expression, which includes right to know. The right to information flows from the right to know, which has been recognised as a facet of human rights. "Where a society has chosen to accept

*Contributed by Prof. (Dr) Preeti Misra, Head, Department of Human Rights, School of Legal Studies, Babasaheb BhimraoAmbedkar University, Lucknow, Uttar Pradesh

democracy as its creedal faith, it is elementary that the citizens ought to know what their Government is doing" (AIR 1982 SC 149).Movement for Right to Information (RTI) Act got impetus with severaljudgments of the Supreme Court, struggle of civil society organisationsat the grassrootslevel and in pursuance of international obligation to effectively guarantee the Right to Information. The Government of Indianotified the Right to Information (RTI) Act, 2005 on 21st June, 2005under the obligation of International Covenant on Civil and Political Rights (ICCPR).The RTI Actbecame operative from12thOctober, 2005.

The RTI Act, 2005 sets out the practical regime of right to information for each and every citizen to access information from the public authorities. It is a complete Code, as not only it confers right to information but also lays down procedure for accessing information. It provides for the duties of public authorities and delivery of information within a given time frame. It also makes provision for the effective grievance-redressal forums by incorporating offices of the Central Information Commission (CIC), State Information Commissions (SICs) and provisions for appeals and penalties, if information is not provided within stipulated time. The RTI Act aims for informed citizenry and transparency of information, which are vital for containing corruption and for holding government and its instrumentalities accountable to the governed. It is a major step in empowering citizens, promoting transparency and preserving paramountcy of democratic ideal.

Such a legislation, which guarantees openness and accountability, is bound to have impact on the working of all the government agencies. The disclosure of information by public authorities is bound to be in conflict with the interests of those against whom information is sought. Those not in favour of the RTI feel that it would adversely affect normal functioning of the Government's operations, optimum use of restricted financial resources and protection of confidential sensitive information.

It is not the law which matters, but its effective implementation can make a difference in the lives of people. For the effective implementation of the Act, people need to be aware of their rights and responsibilities. The RTI Act is like double edged sword, which needs to be used with care and caution, if conflicting interests of information seekers and information givers are to be harmonised for the preservation of constitutional ideals of democracy and good governance.

In the present Unit, an attempt has been made to examine the use and implementation of the Right to Information Act. It traces the problems faced by the people in realising their right to information and suggests measures for its effective enforceability.

15.2 IMPORTANCE OF RIGHT TO INFORMATION

The importance of right to information lies in the object of the RTI Act,2005. The basic object of the Right to Information Act is to empower the citizens, topromote transparency and accountability in the working of Government, to containcorruption, and to enhance people's participation in democratic process thereby, makingour democracy work for the people in a real sense. It goes without saying that aninformed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

The RTI Act is a powerful instrument for making people aware of the Government transactions, records, public policies and programmes. It makes it incumbent upon the government to be open and transparent in its working, so that good governance may be ensured. In present times, the Government need to be responsible, people-oriented and dedicated for the empowerment of deprived sections of the society. If people have satisfaction and faith in governance, it motivates them to participate in governance and play a significant role in nation building. With active participation of people, growth is possible in all spheres be it social, economic, intellectual, moral or administrative. The effective use of the RTI Act not only redresses the grievances of the masses, but also fixes the responsibilities upon way ward public authorities. It creates an atmosphere of accountability and transparency and promotes a culture of duty.

We all know that right to information is a basic requirement of good governance in any legal system. The Right to Information (RTI)Act was enacted in 2005 to ensure transparency and accountability. The Right to information is sine qua non of good governance in democratic set up. Emphasising upon importance of RTI, Thomas Emerson, observed, "*the society uses freedom of information and expression to protect certain values, which can be grouped into four broad categories. The first of these is assuring individual self-fulfillment. The second set of values focuses on means of attaining the truth.The third addresses a method of securing the participation of members of the society in social and political decision-making and the fourth category of value seeks to maintain the balance between stability and change in the society*" (Emerson, 1963).

In the case of *State of U.P. v. Raj Narain* (AIR 1975 SC 865),on the issue whether right to freedom of speech and expression guaranteed under Article 19(1)(a) includes right to know, Justice Mathew remarked,*"…in a community under a system of representative government, there can be only few facts which require to be kept secret with that solidity which defies even the*

inquiry of courts of justice. In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can but few secrets. The people of this country have a right to know every public act, everything, that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security…".

Stressing the importance of RTI, in the preface of First Report of Second Administrative Reforms Commission, Veerappa Moily, the Chairman wrote,

"*The Right to Information Act is a path-breaking legislation which signals the march from darkness of secrecy to dawn of transparency. It lights up the mindset of public authorities, which is clouded by suspicion and secrecy. Openness in the exercise of public power – Executive, Legislative or Judiciary – is a culture, which needs to be nurtured, with privacy and confidentiality being an exception. The right to information will also be a powerful means for fighting corruption. The effective implementation of the Right to Information Act will create an environment of vigilance which will help promote functioning of a more participatory democracy*" (Second Administrative Reforms Commission, 2006).

The RTI Act, 2005 "attempts to harmonise conflicting interests between the citizens' right of transparency of information in administrative functioning and efficient governments' confidentiality in sensitive matters" (Singh, 2006). The preamble to Act of 2005 itself states, "it sets out to provide a practical regime of right to information in order to promote transparency and accountability." The Act enables the citizens to get information held by the public authorities. It is an effective means to reduce corruption and bring good governance. Every government department is bound to provide information. "It is indisputable that in a democratic polity, toensure and facilitate the continued participation of people in effective functioning of the democratic process, people must be kept informed of the vital decisions taken by the government and the basis thereof. Therefore, right to seek and receive public information becomes a pillar of democratic set-up" (Satish, 2006).

15.3 STAKEHOLDERS IN RIGHT TO INFORMATION

In a country, every individual and institution are stakeholders in the regime of right to information. The RTI Act was enacted with the objective to establish a practical regime for citizens to access information held by the Public Authorities. The applicability of the Act is very wide, protecting all

the areas of governance. This Law not only applies to Union, State and Local Governments but to all authorities and instrumentalities of the government receiving substantial financial grants.

Working of the Act has revealed that it has enhanced interaction between the people and the government and its agencies. It has introduced a new awareness about the rights of citizens and highlighted openness and transparency as essential features of governance. It imparted a sense of accountability in official conduct and helped to make public servants responsible for their actions and decisions. Following are the public authorities and persons with an interest or concern in the Right to Information:

i) ***Government***

Basic institutional structure/processes have been set up by the Central Government as per the requirement of the RTI Act. The Department of Personnel & Training has been made the Nodal Department for the RTI implementation at the Central level. Various State Governments have already enacted laws for access to information in some form or the other. Some State Governments have taken innovative initiatives in line with the spirit of the Act. The key initiatives are creation of the RTI Cells in almost all governmental organisations as per mandate of the RTI Act, 2005 for receiving the applications of RTI and providing information to the information seekers. Jankari Call Centre of the Government of Bihar is noteworthy, in this context. It is doing a laudable job since its inception.

ii) ***Public Authority***

A "public authority" is any authority or body or institution of self-government established or constituted by or under the Constitution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government. The bodies owned, controlled or substantially financed by the Central Government or a State Government are also public authorities. The Non-Governmental organisations substantially financed by the Central Government or a State Government also fall within the definition of public authority.

Public authorities have designated some of its officers as Public Information Officers (PIOs). They are responsible to give information to a person who seeks information under the RTI Act. These are the officers at sub-divisional level to whom a person can give her/his RTI application or appeal. These officers send the application or appeal to the Public Information Officer of the public authority or the concerned appellate

authority. An Assistant Public Information Officer is not responsible to supply the information. The Assistant Public Information Officers, appointed by the Department of Postsin various post offices, are working as Assistant Public Information Officers for all the public authorities under the Government of India (Government of India, 28th November 2013, https://rti.gov.in/rticorner/guide_2013-issue.pdf).

iii) ***Information Commissions***

The Central Information Commission and the State Information Commissions in the stateshave an important role in upholding the ideals of the RTI Act. "Every Information Commission is tofunction as an adjudicator as well as a regulator. The objective of the empowerment of common man through the RTI can be facilitated if the process of adjudication is made more simple and convenient forinformation seekers. The rule of law has to be established bythe Information Commissioners. The Information Commissions haveto be strong and independent to reach out to the common people. Both Central and State Information Commissions are the regulator of the process of implementation of the RTI Act" (Satish, 2006).

iv) ***First Appellate Authority***

The first Appellate Authority has a very important role under the RTI Act, 2005. The independent and judicious examination of appeals by the First Appellate Authorities would lead to higher satisfaction to the appellants. This would, in turn, result in less number of second appeals to the Information Commission. The information sought by an applicant should either be supplied to her/him by the Public Information Officer or application should be rejected within the time prescribed under the Act. If additional fee needs to be charged from an applicant, timely communication in this regard should be sent to her/him.

v) ***Political Executive***

Political leaders own a higher level of responsibility. Citizens expect greater transparency from their representatives in their official work. As the decision-making processes are open to public scrutiny, therefore the elected leaders show greater cooperation. In a democracy, the RTI Act is both a challenge and an opportunity for the political leaders. They take responsibility for their decisions, and use the public forum for their interests.

vi) ***Bureaucracy***

The bureaucracy is supposed to be genuine "public servant" delivering justice. "The bureaucrat is not only a custodian of information, but a trustee too. Where government is committed to transparency, the civil servants become accountable for everything what they do. It is obligatory

for them to be more responsive to the needs of the public. The Act directs that the management of official records should be systematic and computerised, in order that information can be scientifically organised for convenient retrieval and delivery to every information seeker. It's a challenge for the bureaucracy to modernise the administrative machinery and make the official systems people-friendly" (Satish, 2006).

vii) ***Corporate Sector***

The Act gives the right to information only to the citizens of India. It does not make provision for giving information to Corporations, Associations, Companies, etc., which are legal entities/persons, but not citizens. However, if an application is made by an employee or office-bearer of any Corporation, Association, Company, NGO, etc. indicating her/his name and such employee/office bearer is a citizen of India; information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation, etc.

The Civil Society Organisations (CSOs) have enhanced the reach and awareness of RTI among the masses. It is mostly with the support of the social activists and CSOs that even a person of a grassroots level is able to use the RTI Act for asserting and ensuring her/his basic rights. However, given the geographical size and population, the reach of CSOs and social activists is limited. The CSOs have also contributed towards training of the PIOs and AAs and have made them aware of their roles and responsibilities under the RTI Act.

In a globalised world where economy is increasing fast, nations like to transact with that country, which is open and corruption free. In most of the nations of the world, the RTI legislation is in operation. The RTI Act is an important tool for eradicating corruption and ensuring good governance. In India, too, corporate sector has a stake in the success of the RTI Act. Good governance encourages foreign investments, which can be used in the interest of public welfare. The enhanced credibility of a transparent Government can be useful for the corporate sector, as an engine of economic growth.

viii) ***Media***

Media is designated as fourth pillar of the State, besides executive, legislature and judiciary. It plays a key role in governance of the country. It was the media because of which right to information got a place in Article 19(1)(a) of the Constitution of India. The Press Council of India played a crucial role in drafting the legislation of RTI. Media has played an important role in generating awareness at a mass scale. While there has been no major media campaign for promoting the usage of the RTI

Act, nonetheless the awareness on the Act has been generated through news articles based on RTI investigation. Journalists at times have played a dual role – as the users of the RTI Act and as watchdogs, monitoring and scrutinising the implementation of the Act."Through reports as well as media-sponsored RTI camps, people are learning how to seek remedies. Many people have received passports, pensions, ration cards and IT refunds using training received in RTI camps". Further, "As a responsible media, it can expose the working of the government's functionaries, especially if there is any misuse of authority. It can elicit authentic information. It can warn against arbitrariness and excesses committed by authorities. The media can influence executive decisions fighting for the causes of public interests. The media can build up public awareness regarding the RTI Act by having discussions and debates on public forums, and also through editorials in newspapers. It can give publicity to success stories of struggle for RTI to motivate others"(Kumar, 2007).

The RTI Act has the potential to bring in a socio-economic revolution, provided various stakeholders take up their responsibilities as per the spirit of the Act.

15.4 IMPLEMENTATION OF THE RIGHT TO INFORMATION ACT

After its independence on 15th August, 1947, India adopted democratic form of government and policy of public welfare. A very important role of the government is to take care of its people, protecting their rights and liberties. In fact, the evolution of the State has been a result of people's surrendering their rights, privileges and powers in favour of the State. The Social Contract theory of political philosophyimplies an actual or hypothetical contract or agreement, between the ruled and their rulers, defining the rights and duties of each. Every state is entrusted with a duty of providing RTI machinery to ensure a responsive administration guaranteeing justice, liberty and equal opportunity in seeking information.The State must safeguard the interest of its people by ensuring supply of essential public goods andservices to its citizens. In a Police State, the Government has to maintain law and order, but in a Welfare State, the structure of governance and its systems need openness, transparency, responsiveness and citizens'satisfaction. In the philosophy of good governance, greater participation of citizens is requiredto ensure quality in the working of the government and in strengthening policy-making decisions.

With the pious aim of bringing transparency and accountability in public administration and for improving implementation of key Government policies,the RTI Act, 2005 was brought into existence. The Central

Governmenthas set up the basic institutional structure/processes as per the RTI Act's requirements. The Department of Personnel & Training has been made the Nodal Department for the RTI implementation at the Central level.Various State Governments have enacted laws for access to information in some form or the other. Some State Governments have taken innovative initiatives in line with the spirit of the Act.

i) Initiatives of the Government for Effective Implementation of the RTI Act

The Right to Information Act, 2005 mandates timely response to citizens' requests for government information. The RTI portal of the Government of India is "an initiative taken by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a– *RTI* Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs, etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the Government of India as well as the State Governments" (https://rti.gov.in/aboutrti.asp).

The Central Information Commission (CIC) was constituted with effect from 12-10-2005 under the Right to Information Act, 2005. The jurisdiction of the Commission extends over all Central Public Authorities. The CIC, in order to fulfill its mandate of preparation and forwarding of the Annual Report to Appropriate Government, invites online quarterly returns from the Public Authorities (PAs) in a prescribed pro forma in accordance with Section 25(3) of the Right to Information (RTI) Act, 2005. Section 26 (2) of the RTI Act requires the State Governments "to compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act". Further, it requires the Government to update the guide at regular intervals. Accordingly, the Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training publishes a guide, which help all the stakeholders of right to information – information seekers in getting information, Public Information Officers in dealing with the RTI applications, First Appellate authorities in taking cogent decisions on appeals and the public authorities in implementing various provisions of the Act in the right earnest.

Today, almost all the States of India are having their own websiteswith RTI, SIC and PIO Links available as commitment to the good governance.JAANKARI, an RTI cell was set up by the Bihar government in January 2007 and has been running successfully

generating applications under the RTI for people all over Bihar. It was awarded as the Best E-Governance Initiative by the Government of India.

The First Report of Second Administrative Reforms Commission (ARC) 2006 headed by Veerappa Moily, in its report stated, "*the Right to Information Act, 2005 signals a radical shift in our governance culture and permanently impacts all agencies of state. The effective implementation of this law depends on three fundamental shifts: from the prevailing culture of secrecy to a new culture of openness; from personalised despotism to authority coupled with accountability; and from unilateral decision making to participative governance. Obviously, one single law cannot change everything. But this fine legislation is an important beginning. Its effective application depends largely on the institutions created, adequate participation of people and the public servants.*" The Commission, therefore,focused on two broad categories of issues for its effective implementation: first on Official Secrets and confidentiality issues and other on the steps required for effective implementation of the Act.

ii) Role of Civil Society Organisations in Effective Implementation of the RTI Act

Passing of the RTI Act has not only infused transparency and accountability in the working of public departments, but has also increased the efficiency of decision-making process. This has led to reduction in corruption in the country, which is evident from the studies conducted on implementation of the Act.The Transparency International (TI) reported in 2009 that perceived corruption in India (a score of 3.5 out of 10)has declined at the rate of about 15-20 per cent per year, mainly due to the implementation of the RTI Act (PricewaterhouseCoopers, 2009).

The firststudy was conducted by PRIA (Society for Participatory Research in Asia) in August 2006 in order to track the progress of RTI Act in 12 states of India (Himachal Pradesh, Haryana Rajasthan, Jharkhand, Madhya Pradesh, Uttar Pradesh, Uttaranchal, Chhattisgarh, Andhra Pradesh, Kerala, Gujarat and Bihar).The indicators of the study were- namely, the constitution of State Information Commission and its role, role of Nodal agencies, appointment of PIOs, experience of seeking information from PIOs, mandatory disclosure under Section 4 of the RTI Act and the role of government in educating people under Section 26 of the Act. The study indicated, "People belonging to rural areas feel that appeal process is very expensive. Public Information Officers have been appointed in most public authorities in the states. The process of accessing information by people

has started slowly through Right to Information Act. However, there exists great confusion in definition of public authority. Most of the PIOs at state level and district level are not cooperative and they sometimes threaten applicants to withdraw applications. The PIOs should be given adequate training so that they are sensitive to people's needs and the PIOs who are guilty of deliberate denial of information should be penalized" (PRIA, 2006).PRIA also collected data from 65 representatives of civil society organisations who have been working on RTI Act for at least one year in 2007, and in 2008 made a Survey of 420 individuals using RTI Act.

The (RTI Assessment and Analysis Group) RAAG study of 2009 concluded, "while the awareness of the importance of transparency has indeed increased manifold [in government], infrastructure needs to be built around it to allow it to work better." The RAAG report also notes, "the key to increasing accountability of public authorities (vis-à-vis the RTI) lies in bringing about attitudinal changes" within the government at various levels. Similarly, thePricewaterhouseCoopers (PwC) study of 2009 notes a lack of adequate planning among public authorities to "proactively identify and address constraints in providing citizens with information"(The World Bank, 2012) .

Check Your Progress 1

Note: i) Use the spacegiven below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) Highlight the importance of RTI and comment on the implementation of the Act in detail.

……

……

……

……

……

2) Write a note on the stakeholders in Right to Information.

……

……

……

……

……

15.5 BRIDGING THE GAP BETWEEN THE RIGHT TO INFORMATIONAND ITS ENFORCEABILITY

When the RTI Act, 2005 was enacted, there was a lot of excitement amongst people that they will now be able to question functioning of the government and its instrumentalities. But the perception that this Act alone might be the solution to fight corruption and apathy of Indian Bureaucracy was slowly replaced by skepticism. This view got further impetus, when the incidents of not receiving information, and incidents of harassment ofinformation seekers outnumbered the success stories of the Act. The studies highlighted the discrepancies and challenges in implementation of the RTIAct, that is, issues of pendency of cases, laxity of public authorities in furnishing timely information, lack of adequate number of Public Information Officers, low level of awareness about the RTI Act among masses, etc.

Based on the case studies conducted by the Second Administrative Reforms Commission, 2006, responses of various Ministries to a questionnaire, and interactions with the stakeholders, following difficulties /impediments were noted in the implementation of the RTI Act:

- Complicated system of accepting requests.
- Insistence on demand drafts.
- Difficulties in filing applications by post.
- Varying and often higher rates of application fee.
- Large number of PIOs.

The first Report of Second Administrative Reforms Commission (SARC), 2006 also gave various recommendations towards strengthening the Right to Information Act and its effective implementation. Some of the recommendations were accepted in principle. However, no material changes have been done in the RTI Act, nor any amendment has been made in Official Secret Act, 1923 as per Reports of the SARC (IIPA, 2009).If these recommendations were accepted by the legislative bodies, it would have been very vital in carrying out the aims andobjectives of the Preamble of the Act.

TheRTI Amendment Act, 2019 came into operation w.e.f. 1st August, 2019. The original Act of 2005 had quantified the tenures, and defined the salaries of the Chief Information Commissioners (CICs) and Information Commissioners (ICs) in terms of the then existing benchmarks. As per 2019 amendment, now the tenure of CICs and ICs is no longer fixed; their terms of appointment, salaries and tenures of CICs and ICs can be decided on a case-to-case basis by the Central Government.

The major problems and gaps have been identified in the implementation of the RTI Act,2005,which are required to be filled for effectiveenforceability of the Act in the following ares:

i) Adequate and Efficient Machinery for the Management of Records and Monitoring of RTI Cells

As per Section 4 (2) of the Act, computerisation and scientific record keeping arerequired to provide "as much information *suo moto* to the public at regular intervals", but most of the public authorities are yet to do so. As such, even where an authority wishes to provide information, it cannot do so due to non-availability of the materialsin electronic form. Both the States and Central Governments authorities suffer from the problem of poor record keeping. The records are not computerised and connected through a network all over the country on different systems so that access to such records is facilitated. There is no effective mechanism for the evaluation of information machinery to examine maintenance of records as per Section 4 of the Act. This Section needs to be taken seriously, which makes it incumbent on public authorities to "maintain all records duly catalogued and indexed". For this a culture of self-disclosure must be promoted.

In order to encourage and ensure effective implementation of the Act, an RTI Cell within the General Administration Department (GAD) has been constituted. The Cell is working with meagerstaff and without adequate resources. TheseCells are noteffective in dealing withchallenging issues of the RTI. There is no system to monitor them. All the appellate authorities and PIOs need training to run these Cells successfully.People need to be made aware of these Cells at the grassroots level. The Civil society organisations need to arrange campaigns for starting communication with villagers. A close watch should be kept at the changing events and emerging problems so that the policy change may be done accordingly. It will also help in trapping false applicants who have vested interests in seeking information.

ii) Proper Appointment and Training of Public Information Officers

In 2005, the NCPRI itself pointed out, "Many ministries and departments of the Government of India seem to have appointed multiple Public Information Officers (PIOs). This results in citizens having to run from office to office seeking out the correct PIO, sometimes in vain."

There also appears to be a lot of confusion about the appointment of Assistant Public Information Officers (APIOs), both at the central and state levels. Under the Act, "every public authority shall designate an officer at each sub divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public

Information Officer, as the case may be, to receive the applications for information orappeals under this Act (Section 5(2))". However, in many states and in some central departments, APIOs are being appointed in the same offices where the PIOs are already located. There are central public authorities all over the country. Sometimes, people living in the states also seek information from the Central Government and its agencies. For them it becomes difficult to locate all the Central Information Commissioners in Delhi.

Though Section 5 of the RTI Act gives an obligation to the public authority to designate Public Information Officers (PIOs), the Act has not prescribed any criteria or qualification for the PIOs to designate. As a result, there are so many public offices all over the country where the employeesof clerical cadre have been designated as PIOs, who are not able to justify their job due to lack of proper training. These designated PIOs do not accept applications as part of their duty nor do they take pains to supply information within the stipulated time. Rather, they discourage information seekers coming from socially, economically or politically disadvantaged sections of the society. Besides, no additional resourcesincludingmanpower are being provided to the Central and the State agencies to implement the Act.

For enhancing the efficiency of PIOs,a systematic training should be provided to all either working in government sector or in NGOs. Attempts should be made to impart adequate training sessions to the appointed officers to appraise them about the provisions of the Act and about latest judicial rulings. In 2013, detailed guidelines have been issued for all the stakeholders of RTI by the Department of Personnel & Training for making the RTI Act effective.

iii) ***Strengtheningthe State Information Commission and Providing Independence to Appellate Authority***

At the state level, there should be an efficient mechanism of decision-making and promotion of RTI culture. Most of the SIC office, function with minimal staff and a single State Information Commissioner. In many states,either Commissions are lying vacant or vacancies are not filled up to their maximum strength. It adversely affects the expeditious disposal of applications. The SICs shouldnot solely depend on state for funds for their working, though a small fund may be allocated to them. For ensuring accountabilityand transparency, the SICs should submit their annual report in time, which is a mandatory requirement under the Act. For increasing the efficiency,all government officersincluding PIOs and APIOs must be given adequate training.

"Information Commissioners", who are responsible for the implementation of the Act, are themselves obstructing the effective functioning of the Act, as most of the Chief Information Commissioners come from the IAS category. At the Central and State government levels, retired bureaucrats are appointed at the Information Commission, which are required to serve as Appellate Authority, independent of the government. But unfortunately, bureaucrats have taken complete control of it.The Second ARC of 2006 recommended amendments in the Central Civil Services Rules and in the Manual of Office Procedure, etc. but no improvement is seen in the working of the Commissions.

iv) ***No Requirement of Formalities for Filing RTI Application***

There is no prescribed format of application for seeking information. Theapplication can be made on plain paper. The applicant should mention the address atwhich the information is required to be sent.The information seeker is not required to give reasons for seeking information.It has also been reported that various ministries and departments of the government areinsisting that they will only accept the specific forms that they have designed for seeking information. The law,however, does not authorise the public authorities toprescribe any such forms.If any format is made mandatory, it will adversely affect the interests of common people.

v) ***Requirement of Cost-Effective Procedure for Eliciting Information.***

On the first reading of the statute it seems that the process of obtaining informationis very easy. But in actual practice, it is a very tedious jobto get information. Due to non-cooperative attitude of the authorities, it becomes difficult to get proper information, unless there are agencies at the local level to offer guidance. Sometimes information is provided in incomprehensible language, to interpret which technical expertise is required. Development of different set of rules for the Centre and States, create confusion for the public.At district or block level, many PIOs fix timings or days for receiving applications. For information seekers, it is not always possible to reach on designated time and place. Sometimes, it results into waste of time and money if one has to return disappointed. Complaints have also been filed against the PIOs for not giving receipts of applications. Because of all these practical difficulties, right to information becomes a costly affair in terms of time and money. It castsnegative effect and dissuades genuine people from seeking information.

Section 6 of the RTI Act does not specify or limit the quantum of information to be gained by an individual or a group of people i.e. Association/Organisation. Further, the RTI Act does not have any provision for imposition of fine or penalty on the applicant for any

misuse of the Act. There is no provision to deal with discouraging annoying and vexatious demands which deprive genuine information seekers. All these have led to an additional issue of large number of the RTI cases pending at various levels.

Technological options can be used to increase the efficiency of Information Commissions. Information can be provided by email or through any other digital means. It will not only reduce the cost but also expedite the things, and pendency of cases will be less.

vi) ***Proper Interpretation of Exemption Clauses***

Access to information under the RTI Act is limited with exemptions. There are restrictions on accessing information pertaining to security, foreign policy, defence, law enforcement and public safety which are quite standard but the RTI Act also excludes cabinet papers, including records of the Council of Ministers and other officials and thereby effectively shields the whole process of decision-making from compulsory disclosure.Section 8(d) and 8(j) are generally worded and are greatly misused due to their wide parameters.

Section 8(d) of the RTI Act, 2005 deals with “non-disclosure of information on the grounds of commercial confidence, trade secrets and intellectual property” and Section 8(j) of the Act “withholds personal and private information of an individual” on the grounds of "Invasion of Privacy". All these exemptions involve wide parameters. Further Section 8(2) provides that the information may be released “if public interest in disclosure outweighs the harm to the protected interests”. The term “public interest” is of wide connotation subject to court’s interpretation and gives an overriding effect to the Act. Such provisions should be scrutinised for minimising the purview of the exemptions.

vii) ***Stipulation of Time Frame for the Disposal of Second Appeal***

No time frame has been attached to the provision of second appeal. Section 6(1) of the Act provides that any person who desires certain information may make a request in writing to the Central Public Information Officer or the State Public Information Officer of the concerned public authority. If the Public Information Officer fails to provide the information within a period of thirty days, then s/he is deemed to have refused to provide the information. According to section 19(1) of the Act, if the person requesting the information either does not receive the PIO’s decision within the stipulated time period of 30 days or is aggrieved by the PIO’s decision, s/he can prefer an appeal (first appeal) to an officer who is senior in rank to the PIO in the concerned public authority. Section 19(6) stipulates that such a first appeal must be disposed of within a period of 30 days of receipt of the appeal or within

an extended period not more than 45 days of filing of the appeal. Section 19(3) provides that a second appeal may be preferred against the decision rendered under section 19(6) before the Central Information Commission or the State Information Commission. Unlike the first appeal, there is no stipulated time frame for decision by the CIC or the SIC of a second appeal under Section 19(3) of the Act. A disappointed appellant does not have option of moving the court against the PIOs. S/he may only approach the Information Commission, which may take its own time to dispose of the appeal. Consequently, people have no option but to wait for the decision of the CIC or the SIC before they can take judicial action in the matter (Khosla&Khosla, 2009).

The only recourse in such a situation is to send reminders to the CIC and the SIC and hope for an early resolution of the appeal. This approach is inadequate and the RTI Act needs to be amended to address this lacuna in the law. In 2016, the Government of India introduced the RTI Amendment Bill, 2016 in the LokSabha specifying time for the disposal of Second Appeal, but the proposed amendment failed.

viii) ***RTI Awareness to be Created Amongst Common Men***

Most of the people are not well acquainted with the provisions of the RTI Act. They do not know how to file an RTI application, nor do they know the authorities to whom application is to be addressed.Poor education standard is one of the basic impediments in accessing information. It is well established fact that awareness about RTI is more in educated people than amongst uneducated people. "A study of Public Affairs Centre conducted in Karnataka revealed that only 2% of people in rural areas were aware of the right to information as high number of applications were filed usually with urban departments/municipalities" (Kumar, 2007). Besides,"peoples' excessive reliance and dependence on traditional justice seeking system of the nation, somewhere prohibits effective functioning of the Act" (Kewlani, 2009).

Section 26 of the Act states that government should educate the masses about the RTI Act, but this isnot actually happening effectively. In such a situation, civil society actors and grassroots activistsshould come forward to spread the message of RTI at the local level. For this, the RTI cells may co-ordinate with NGOs and can use the resources available under various programmes for generating awarenessthrough campaigns. Mass media campaigns may be launched to make masses aware of this right. Awareness can also be created at local levels through Panchayats. Universities and Colleges should start a short course on the RTI under Choice Based Credit System, so as to create awareness of the RTI amongst non-law disciplines.The RTI education should be widespread so that it may not remain on statute book only but may become a reality.

Check Your Progress 2

Note: i) Use the spacegiven below for your answers.

ii) Check your answers with those given at the end of the Unit.

1) Examine the problems andgaps, which have been responsible for lack of effective implementation of the RTI Act, 2005.

……

……

……

……

……

2) Discuss the necessary measures for effective implementation of the RTI Act.

……

……

……

……

……

15.6 CONCLUSION

The effective implementation of the Right to Information Act, 2005 will contribute in promoting transparency and accountability in the functioning of government institutions.Furthermore, it will be an effective tool for providing information to the citizens. Thereby, the RTI will create congenial environment for capacity building of the citizens so that they can actively participate in the development process. In totality, the RTI Act ushersin good governance. The law is very comprehensive and applicable to the government at all levels i.e., Union, State and Local levels.

Since its enactment in 2005, the Right to Information Act has been lauded as a significant measure for the achievement of a more accountable and transparent government and bureaucracy. However infrastructural weaknesses and the mindset problems threaten the future of the RTI.Weaker sections of society are hesitant in filing RTI applications because sometimes it involves submission of application fee in cash and the person has to be physically present in front of the PIO. Hence, usage of the RTI is limited to middle class and social activists only.

The solution lies in empowering the ordinary people of the country by which the nation can progress to its greatness. By the enactment of the RTI Act, the

government has taken a small step but a significant one towards that goal.The government has to take keen interest for the proper implementation of the Act and strive towards creating awareness among the masses. Apart from this, the government should soften the tough procedures so that it becomes easy for the applicants to retrieve information. Most importantly, the government should think towards scrapping off the fees at the time of filing applications, which was also recommended by a parliamentary committee.

The need of the hour is to make the Act accessible at the grassroots level as it has not reached the common man yet and is still utilised by the creamy layer of the society. Also, the accountability of the bureaucrats should be duly verified. The bureaucrats should make sure that the applications received should be precise and clear and try to minimise the misuse of the Act. The gap between government and citizens should be lessened through effective implementation of the RTI Act. Once this is done, the RTI Act would be viewed as being properly and fully utilised.

Researches play a vital role in developing institutions. The RTI jurisprudence may be further developed if educational institutionsand other developmental authorities,both national and international, take up empirical research projects in the context of the RTI Act, so as to make it effective.

15.7 GLOSSARY

Official Secret: it refers to any information, the disclosure of which is likely to prejudicially affect the sovereignty and integrity of India, the security of State, friendly relations with foreign countries, economic, commercial, scientific and technological matters regardingnational security and includes any secret code, password, sketch plan, model, article, note or document regarding a prohibited place.

Official Secrets Act, 1923: The Official Secrets Act was first enacted in 1923 and was retained after Independence. The law, applicable to government servants and citizens, provides the framework for dealing with espionage, sedition, and other potential threats to the integrity of the nation. The law makes spying, sharing “secret” information, unauthorised use of uniforms, withholding information, interference with the armed forces in prohibited/restricted areas, among others, punishable offences. If guilty, a person may get up to 14 years’ imprisonment, a fine, or both. The information could be any reference to a place belonging to or occupied by the government, documents, photographs, sketches, maps, plans, models, official codes or passwords.

15.8 REFERENCES

AIR 1975 SC 865. Retrieved from https://indiankanoon.org/doc/438670/

AIR 1982 SC 149. Retrieved from https://indiankanoon.org/doc/1294854/

Dwivedi, R. (2010). *Right to Information Act 2005.* Bhopal, India: Suvidha Law House Pvt. Ltd.

Emerson, T. (1963).Towards a General Theory of First Amendment.*The Yale law Journal*. 72, 877-956.

Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, (28th November, 2013).*Guide on the Right to Information Act, 2005 - updated Version*. Retrieved from https://rti.gov.in/rticorner/guide_2013-issue.pdf

Government of India, Second Administrative Reforms Commission. (June 2006). *Right to Information, Master Key to Good Governance.* Retrieved from https://darpg.gov.in/sites/default/files/rti_masterkey1.pdf

IIPA. (2009). Administrative Reforms Commission's 1st Report Titled "Right to Information Master Key to Good Governance". *Indian Journal of Public Administration*. 55(3), 772-792.

Kataria, R. (2010). *Shorter Commentary on "Right to Information Act 2005"*. New Delhi, India: India Law House.

Kewlani, J. (2009). Right to Information: A Legal Procedure for Social Facilitation (A Sociological Interpretation and Analysis).In P.K. Saini& R.K. Gupta (Ed.).*Right to Information Act, 2005*. New Delhi, India: Deep & Deep Publication Pvt. Ltd.

Khosla, A. &Khosla, P. (2009).Right to Information: Challenges, Issues and Opportunities.In P.K. Saini& R.K. Gupta (Ed.).*Right to Information Act, 2005*. New Delhi, India: Deep & Deep Publication Pvt. Ltd.

Kumar, N. (2011). *Right to Information Act 2005.* New Delhi, India: Bharat Law House Pvt. Ltd.

Kumar, V. (2010).*Right to Information Act 2005.* New Delhi, India: Orient Publications Company.

Kumar, Y. (2007). *Right to Information Act in Madhya Pradesh: Status Report.* Bhopal, India: Government of Madhya Pradesh.

PRIA. (2006). Tracking the Progress of Right to Information in 12 States. Retrieved from https://cic.gov.in/sites/default/files/Tracking%20progress%20of%20RTI%20-%20PRIA.pdf

PRIA. (2007). Tracking Right to Information in 8 States. Retrieved from https://cic.gov.in/sites/default/files/PRIA-Tracking-RTI-in-States.pdf

PricewaterhouseCoopers.(2009). *Final Report on Understanding the "Key Issues and Constraints" in implementing the RTI Act.* Retrieved from https://rti.gov.in/rticorner/studybypwc/Executive%20Summary.pdf

Saini, P.K. & Gupta, R.K. (2009).*Right to Information Act, 2005*.New Delhi, India: Deep & Deep Publication Pvt. Ltd.

Satish, S. (2009).*Right to Information: Perspective Obstacles and Role of Information Literacy.*In P.K. Saini& R.K. Gupta (Ed.).*Right to Information Act, 2005*. New Delhi, India: Deep & Deep Publication Pvt. Ltd.

Singh, D. (2006). "Implementation of RTI Act, 2005.Some National and International experiences".*AIR 2006* Journal Section.99-103.

The World Bank.(2012). "Implementing Right to Information- A Case Study of India". Retrieved fromhttps://www.right2info.org/resources/publications/publications/wb_implementing-ti_india_2012-1

15.9 ANSWERS TO CHECK YOUR PROGRESS EXERCSES

Check Your Progress 1

1) Your answer should include the following points:

- Despite all its merits, the RTI Act has not reached to the masses due to complex procedure and closed mindset of the PIOs. Bureaucracy under the RTI Act is inaccessible and indifferent to common citizens, and is more bothered about adherence to the procedures, rules and regulations. Citizens have been treated as passive recipients only. Refer to Section 15.2 and 15.4, for more details.

2) Your answer should include the following points:

- In a country every individual and institution are stakeholders in the institution of the right to information. Stakeholders include public authorities, bureaucracy, media, corporate sector, political executive and statutory authorities, the Central Information Commission and the State Information Commissions have keen interest in upholding the ideals of the RTI Act. For details, refer Section 15.3

Check Your Progress 2

1) **Your answer should include the following points:**

- There are many factors like lack of infrastructure, lack of citizens' participation in decision-making process, bureaucratic mentality,

etc.,which have adversely affected the effective use and implementation of the Right to Information Act. Refer Section 15.5

2) Your answer should include the following points:

- Less bureaucratic approach, awareness programmes for the RTI seekers, strengthening procedure by making it less complicated, enhancing capacity of the PIOs, promoting the RTI cells, use of technology, introducing helpline numbers, efficient record management and promoting culture of suo motu disclosure will go a long way in making enforcement of the RTI Act effective. Refer Section 15.5

SUGGESTED READINGS

Bhattacharya, M. (2008).*New Horizons of Public Administration*. New Delhi, India: Jawahar Publications.

Chakrabarty, B. & Pandey, R.K. (2019).*Local Governance in India*. New Delhi, India: Sage.

Government of India. (1966). *Administrative Reforms Commission, Interim Report: Problems of Redress of Citizens Grievances*. Retrieved from https://www.darpg.gov.in/sites/default/files/01_ARC_Interim_Report07162019124141.pdf

Government of India. (1968). *Administrative Reforms Commission, Machinery for Planning. Retrieved from* https://www.darpg.gov.in/ sites/ default/files/02_Machinery%20for%20Planning07032019173216.pdf

Government of India.(1969). *Administrative Reforms Commission, State Administration.* Retrieved from https://www.darpg.gov.in/sites/default/files/14_ On%20State%20Administration07052019120548.pdf

Government of India. (2007). *Second Administrative Reforms Commission (4th Report),Ethics in Governance.* Retrieved from https://www.darpg.gov.in/ sites/ default/files/ethics4.pdf

Government of India. (2007). *Second Administrative Reforms Commission (6th Report), Local Governance.* Retrieved from https://www.darpg.gov.in/sites/default/files/local_governance6.pdf

Government of India. (2009). *Second Administrative Reforms Commission (12th Report)Citizen Centric Administration.* Retrieved from https://www.darpg.gov.in/sites/default/files/ccadmin12.pdf

Government of India. (2009). *Second Administrative Reforms Commission (15th Report),State and District Administration.* Retrieved from https://www.darpg.gov.in/sites/default/files/sdadmin15.pdf

Government of India. (2010). *Report of the Commission on Centre-State Relations (Vol- I), Evolution of Centre-State Relations in India.* Retrieved from http://www.interstatecouncil.nic.in/wp-content/uploads/2015/06/volume1.pdf

Government of India. (2010). *Report of the Commission on Centre-State Relations (Vol-IV),Local Self Governments and Decentralized Governance.* Retrieved from http://www.interstatecouncil.nic.in/wp-content/uploads/2015/06/volume4.pdf

Government of India. (2019). *Economic Survey Volume I & II, 2018-19*. New Delhi, India:Oxford University Press.

Jha, G. (2018). *Fragile Urban Governance.* New Delhi, India: Manohar.

Maheshwari S. R. (2001). *Indian Administration (6th ed.*). New Delhi: Orient Blackswan Private Limited.

Mani, N. (2016). *Smart Cities and Urban Development in India.* New Delhi, India: New Century Publications.

Mathew, G. (Ed.). (2013*). Status of Panchayati Raj in the States and Union Territories of India.* New Delhi, India: Concept Publishing Company.

Mathur, K. (2013). *Panchayati Raj.* New Delhi, India: Oxford University Press.

Mathur, K. (2019). *Recasting Public Administration in India: Reform, Rhetoric and Neoliberalism.* New Delhi, India: Oxford University Press.

Mohanty, P.K. (2014). *Cities and Public Policy: An Urban Agenda for India*. New Delhi, India: Sage Publications India Pvt. Ltd.

Pal, M. (2020). *Rural Local Governance and Development*. New Delhi, India: Sage Publications India Pvt. Ltd.

Sapru, R. (2017). *Public Policy: A Contemporary Perspective*. New Delhi: Sage Publications India Pvt. Ltd.

Sapru, R. (2018). *Indian Administration: A Foundation of Governance*. New Delhi, India: Sage Publications India Pvt. Ltd.

Upadhyay, D. (Ed.). (2019). *The Handbook of Indian Judiciary: Development of Law, Struggle & Change.* New Delhi, India: Integrity Media.