Right To Information Act And Employee Relations In India

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INTRODUCTION

Going by Abraham Lincoln's definition, democracy is a government *By The People, For The People And Of The People*. True democracy is the governance by the five words enshrined in the beginning of the noble Preamble of the Constitution of India, i.e. *We, The People Of India* and ending with the five words i.e. *Give To Ourselves This Constitution*. The jurisprudence of democracy is envisaged in Articles 23 and 25 of the Universal Declaration of Human Rights of the year 1948 and in Part III and Part IV of the Constitution of India, which guarantees some rights like Right To Life, Liberty, Dignity and decent conditions of life and development. The Right to Information (RTI) Act, 2005 provides for setting out the practical regime of the Right To Information for citizens to secure access to information under the control of public authorities, in order to promote openness, transparency and accountability in the working of every public authority. Its avowed purpose is to enable citizens to have access to information such that the resultant transparency mitigates corruption and holds governments and their instrumentalities accountable for the governed. It is understood that sometimes, the revelation of information in actual practice is likely to conflict with other public interests, including the efficient operation of governments, the optimum use of limited fiscal resources, and the preservation of confidentiality of sensitive information. In such cases, it becomes necessary to harmonize these conflicting interests while preserving the democratic ideal.

RIGHT TO INFORMATION ACT, 2005

Right to have access to information held by the government. This information could be in the form of records, files, registers, maps, data, drawings, etc.

The Right To Information Bill, 2005 was passed by the House of Parliament and received the assent of the President of India on 15.06.2005. It was published as *"Right to Information Act, 2005"* in the Gazette of India vide No.25. on 21.06.2005, and it came into force with effect from 15.06.2005.

The passing of the Right to Information Act has been welcomed from all quarters of the society, as it is a significant step towards establishing a regime *that guarantees citizens' right to know*. In addition to providing the right to information to the citizens, the Act also establishes that the state must be equipped with an adequate apparatus so that easy and inexpensive access to information is provided. Provisions of the Act that assign specific time limits for providing the information sought and serious penalties for non-compliance would go a long way in increasing transparency and accountability in the various departments.

MEANING OF PUBLIC AUTHORITY

"Public Authority" means any authority, or body, or institution of self government established or constituted :

a. By or under the Constitution ;

b. By any other law made by the Parliament;

c. By any other law made by the State Legislature;

d. 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.

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RIGHT TO INFORMATION ACT, 2005 AND PUBLIC AUTHORITIES

As per the Act, each public authority has to fulfil certain obligations before the expiry of 100/120 days from the commencement of the Act i.e by 23.09.2005/12.10.2005. Right to Information not only means the citizens' right to ask for information that they want, but it also includes, more importantly, the duty of public bodies to disclose information suo moto (on its own). This means that the government has a duty to give certain types of information without waiting to be asked for it. This includes information on issues concerning projects that directly affect the people or the environment - information on health, agriculture, weather conditions, or simply, information about the services provided or the functions performed by various public bodies.

Section 4(1) (a) of the Act castes an obligation on each public authority to maintain records. The section reads as follows:

"Maintain all its records duly catalogued and indexed in a manner and form which facilities the Right to Information under this act and ensures that all records that are appropriate to be computerized are done so, within a reasonable amount of time, and connected through a network all over the country on different systems so that access to such records is facilitated."

Section 4(1) (b) of the Act casts an obligation on each public authority (to publish within an expiry of 120 days from the commencement of the Act) to publish manuals on the 17 items contained in Chapters 2 to 17 herein, for easy access and understanding by Citizens, City Society Organizations, Public Representatives Officers and employees of public authorities including Central and State Information Commissions, Public Information Officers and Assistant Public Information Officer and Appellate Officers etc.

This Information Handbook should deal with the following chapters:

1. Introduction about the Organization.

2. Organization, Function and Duties.

3. Powers and Duties of Officers and Employees.

4. Procedure followed in the Decision Making process.

5. Norms set for the Discharge of Functions.

6. Rules, Regulations, Instructions, Manual and Records for Discharging Functions.

7. Categories of Documents held by the Public Authority under its control.

8. Arrangement for consultation with, or Representation by, the members of the public in relation to the Formulation of Policy or Implementation thereof.

9. Boards, Councils, Committees and other bodies constituted as part of the Public Authority.

10. Directory of Officers and Employees.

11. Monthly Remuneration received by Officers and Employees including the System of compensation as provided in Regulations.

12. Budget Allotment to each Agency including Plans etc.

13. Manner of Execution of Subsidy Programmes.

14. Particulars of Recipients of Concessions, Permits or Authorization Granted by the Public Authority.

15. Information Available in Electronic Forms.

16. Particulars of facilities available to Citizens for obtaining information.

17. Names, Designations and other particulars of Public Information Officers.

RIGHT TO INFORMATION ACT, 2005 APPLICABLE TO PRIVATE SECTOR ORGANIZATIONS

It is believed that the RTI Act is limited to the government and public authorities and does not apply to the private sector. In this case, its coverage would be restricted to nearly two-thirds of the 7 per cent organized sector employees; that is, a little less than 5 per cent of the total workforce or about 18 million of the over 1.1 billion population. However, this is not true, and India's private-sector companies are no more exempted by the Right to Information Act. As long as these companies report to a regulator or a government department, they are within the purview of the law. To a certain limited extent, the private sector already comes under this Act.

Section 2(f) of the Act, which defines *"information"* specifically, lays down that any such information that a private party is required to furnish to the government automatically comes under the Act and has to be ,therefore, disclosed under an existing law to that effect. Such information is ,however, not accessible directly from the company, but from the government department to whom the report has been sent. Moreover, organizations that were set up by an Act of the legislature or a government notification, and were subsequently privatized, automatically come under the purview of the Act.

The companies would not have to appoint information officers to deal with Right-to- Information demands the way government entities do. Applicants will route their requests through the relevant agency. Information on telecom companies such as Bharti Airtel, the largest mobile telephony firm, could be accessed through the Telecom Regulatory Authority of India; for banks through the Reserve Bank of India; and on brokerages and foreign investors active in stock markets, from the Securities and Exchange Board of India. Only applications that serve public interest are dealt with, not those that are sought to erode a company's competitive position. One can ask a Cola company for details on how much water it used and where the water came from, but not the formula of its fizzy drink. If there is any difference of opinion on what constitutes public interest and what doesn't, the commission shall intercede and decide.

The RTI Act gives the right to information to citizens, employees and their unions enjoy such rights to an extent under various labour laws. The difference now is that the government and public authorities cannot hide information and file notings on the grounds of the oath of official secrecy. Furthermore, even before the RTI Act, some labour laws such as the Equal Remuneration Act and other social legislations provided for the intervention by a third party, even though not directly affected to raise a dispute on behalf of the affected party.

As per the Central Information Commission of India:

❁ All organizations operating in the Country are subject to various rules and regulations of the land.

❁ The government departments enforcing the law have been granted powers to call for data and have access to the premises and records of the organization.

❁ A citizen can request for obtaining these information from the particular Government department in respect of any private organization [Section 2(f)].

❁ The data that can be accessed by a Government department from a private organization during the course of implementing its duty is within the scope of *'Information'* under the RTI Act.

RIGHT TO INFORMATION ACT, 2005 APPLICABLE TO SUBSTANTIALLY FINANCED ORGANIZATIONS

According to Section 2(h) (d) (ii):-

"If a non- government organization is financed substantially by the Government either directly or indirectly, an applicant can seek information directly from the organization as it would be a "Public Authority" at par with any organization of governance in the Country."

❁ All organizations should deeply look into their sources of funding to examine whether it has any indirect nexus with the Government, as the consequences are wide and far-reaching, bringing it into the ambit of a public authority.

❁ It is important to note that indirect funding may be even by way of providing land at concessional rate, tax concessions etc.

❁ By virtue of such indirect funding, an organization can get covered under the definition of public authority, provided that the funding is substantial.

CHIEF INFORMATION COMMISSION'S DIRECTION FOR INFORMATION

❁ Under various pronouncements, the CIC has held that the CISCOMs, Govt. aided co-operative societies and schools etc. are public authorities.

❁ The CIC has held that the Government has a 26% stake in the Delhi International Airport Ltd. (DIAL), which is quite substantial for any company and hence, it is a public authority (*CIC decision dated 17-1-07 – Lt. Col. (Retd.) Anil Heble v. Airport Authority of India*).

❁ In another case, the Commission observed that the Railway Employees Co-operative society, Madras has been

provided substantial facilities including land and buildings at subsidized rates by the Railways. Therefore, it is covered under the ambit of a Public Authority (*CIC decision dated 19.1.07 – K. Nandkumar v. southern Railway*).

❁ An applicant sought information relating to the physical assets of an unaided school. While holding that the school is outside the purview of the RTI Act being an unaided one, the Commission held that as it is affiliated to the CBSE, the appellant is authorized to go through the material in possession of the CBSE regarding the suitability of the School for getting the affiliation from CBSE (*CIC decision dated 6.5.2008, Shri Sudhir Kumar Jhalani, Jaipur v. Central Board of Secondary Education*).

ROLE OF INFORMATION IN THE CONTEXT OF EMPLOYMENT

Employers should always give fair and equitable treatment to the employees. To run an organization efficiently and effectively, management of human resources is a must as they are the real assets of an organization. Employment relationships should be transparent. The correct basis of discrimination, if any, should be clarified by the employers. They need protection from arbitrary and vindictive treatment, if any, from the employers.

The basic information that any employee seeks from the employers are:

❁ Terms and conditions of the employment contract and their compliance;

❁ Job descriptions & job specifications;

❁ Criteria for selection and recruitment, transfer, rewards, promotions, etc.;

❁ The compliance of applicable laws, collective agreements, etc.;

❁ The procedures for grievance redressal and management of discipline;

❁ Decisions related to the security of the jobs;

❁ Occupational health and safety.

Depending on the nature of the employment, one may wish to see the safety guidelines, inspection and monitoring mechanism/reports and medical records of employees affected in the past, information about hazardous substances involved, steps taken to prevent rather than just remedy the problems, etc.

EMPLOYEE ACCESS TO PERSONNEL FILES

In the information age, all information relating to the employees should be properly documented and maintained. Such personnel files should contain documents accumulated prior to the date of hire, throughout the employment, and post-employment documentation.

Most employees and some employers are not aware that employees generally have a right to access the information in their personnel files. This right of access under the 1998 Data Protection Act applies whenever personnel files are kept in a filing system under which specific data about individuals can be readily extracted. The Act also applies to any computer records kept about employees.

There are some items on the personnel file to which the employees does not have the access. This includes confidential personnel references, data held for the purpose of management planning, data about negotiations with an employee, and documents protected by legal professional privileges, including any legal advice. Although these exemptions may help employers protect sensitive information, there are still many circumstances where difficulties may arise. The personnel file may contain records or internal correspondence about an employee's performance or conduct, which may have been written on the assumption that they would not be viewed. The employee's right to access their personnel file continues after the end of their employment. An employee who is bringing a claim for unfair dismissal or discrimination may require the employer to disclose all of their personnel files (with the exception of exempt items) and there may be information in the file which is supportive to their claim. Given the legal position under the Data Protection Act, employers need to ensure that the information retained in their personnel files is information that could be disclosed to an employee without legal difficulties or other damaging consequences.

There is a general obligation under the Data Protection Act to ensure that all information in a personnel file is accurate and kept up to date. There is also a general requirement that the information should not be kept for longer than is necessary. This latter obligation causes some practical difficulties. It is sometimes helpful for an employer to retain copies of written warnings against an employee that have expired through time. In these cases, the best advice is to put a clear note on the warning letter that it has expired so that the contents of the personnel file are not misleading.

The employee who believes that the employer has failed to comply with the obligation under the Data Protection Act, or failed to provide information that has been legitimately requested, can make a complaint to the Data Protection Commissioner.

INFORMATION FOR EMPLOYEES ABOUT ALLEGED DISCRIMINATION IN PROMOTIONS

In the case of alleged discrimination in promotion, public authorities have to confirm if they have taken the decision for promoting someone else to a post to which the applicant alleges that he had valid claim, and if so, to provide a copy of the guidelines of this promotion to him and in case there are no guidelines, then to inform him the authority under which this has been done and the powers vested in that public authority (*Faruk Ahmed Sarkar v. Chittaranjan Locomotive works, No. CIC/OK.A/ 2007/01152 decided on 17.3.2008*) .

Also, information regarding basis of non-consideration for promotion is liable to be given to the appellant (*Bhushan Kumar v. Post Graduate Institute of Medical Education, Appeal no. 2873/ICPB/2008 decided on 6.10.2008*) .

SELECTION PROCESS OF EMPLOYEES

With a view to ensuring transparency and objectivity in the selection and recruitment, a public authority is required to put in public domain the details of the entire selection process. Therefore, the selection process should be in public domain by public authority (*Narayana C.K v. Department of Posts, F.No. CIC/MA/A/2008/00634, decided on 1.7.2008*).

LIMITS TO RTI USAGE

The use of the RTI is required only in situations in which information cannot be otherwise accessed. For example, company data on annual operations as given in the Annual Report are available with the respective Registrar of Companies (ROC). In many instances, the Annual Reports are not submitted to the ROC. In such situations, it might be necessary to use the RTI, to even access information that is supposed to be made available to the public. The use of the RTI for different circumstances of information needs has not been tested. For instance, the valuation of assets and business activity is of central importance to any meaningful stakeholder intervention in cases of industrial closure. However, the practice of companies is to provide bare minimum details of valuation, with no substantiation of the actual valuation process. This is an extremely non-transparent exercise. Similarly, information on transfer pricing and marketing arrangements is extremely hard to get. It would require several challenges before the court of law to determine the extent under the RTI to which stakeholders, and the public will be allowed to access such information that business would hold as covered under business secrecy clauses.

CONCLUSION

The RTI Act has a wider use for citizen rights vis-à-vis public authorities. It can also be used in the context of employment in government and public enterprises, and also in the private sector. In the private sector, the unions can seek information on matters provided in various labour legislations in the country such as on occupational safety and health-related matters, using the provisions of the Factories Act. They can ask information on various aspects listed in the relevant schedule, under the notice of change and its effect on workers. Where trade unions themselves are weak and are unable to assert and obtain information from employers, in furtherance of legitimate trade union activities, they can tap additional sources such as the media, academics through collaborative research, members of legislature/parliament through correspondence, questions, etc., civil society institutions, international networks of trade unions and global unions as well as representation to the ILO Committee of Experts on Freedom of Association, etc.

The unions can definitely take and understand the key elements of the RTI Act and based on the experiences, can bargain on what kind of information should be provided, where, when, how and by whom. Moreover, it will be in the interest of the employers to provide free access to any and all information that promotes equity, fairness, openness, transparency and accountability of people who have control on the work and lives of other people.

Even if the organization does not come under the purview of the RTI Act, still employees and trade unions can have

access to information through the various rights that they have under various labour laws and collective agreements. This can definitely help to fight against unfair labour practices. Therefore, it is difficult for employers to deny information. They can, at best, defer or delay, at tremendous cost to all stakeholders. Employers are obliged to accommodate the reasonable request of employees and their unions for information. Sometimes, it may be possible for employers to block and disguise certain kinds of information on some technical grounds or under the guise of confidentiality and competitive considerations. In the past, courts have ruled, in several countries, that a privacy rule does not apply to employers and employment records when they are acting in their role as employers. When a union requests employment-related information from the employer about the employees, they represent the bargaining unit, and the employer is required to provide the information consistent with the principles of natural justice and fair play. If employers use gimmicks without rhyme or reason, it vitiates the atmosphere of trust. Where the free flow of information can build bridges of understanding, the blocking of information can erect walls of misunderstanding, making it difficult for both parties to either cooperate or collaborate.

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