

# The issue of frivolous applications and the question of Locus Standi under RTI-identifying RTI Abuses and antidotes

Neeraj Sharma  
Assistant Professor  
Sandip University

## Abstract

Right to Information Act, 2005 is a path breaking Statute enabling the Common men to approach the public authorities to seek information. Even the Preamble of the Act expects that the citizens of this nation should be well informed. There is no motive of demeaning public authorities. The Act does not sieve out whether the information sought is in public interest or not. The Right to Information Act has even ruled out the basis of locus standi which used to be there prior to the enactment of this Statute. The seeker of the information need not assign any reasons for seeking the information. The positive use of the Statute definitely outweighs the negative use of the Act which is being resorted nowadays by filing fictitious and frivolous applications. The use of the Act to intimidate the public authorities should be discouraged by penalizing such applicants. It is indeed a matter of concern that precious time of the public offices is being wasted in disposing off the malicious applications under the Statute. The entrepreneurship resorted to through this Act is derogatory to the democratic principles of this great country. The only antidote to prevent this misuse lies in imposition of heavy penalties to these non-serious applicants.

## Introduction

The Right to information Act, 2005 being a revolutionary legislation promises to bring in an era of transparency in the system of the government which used to be opaque at times. After the enactment of the Act, the common citizenry is finding itself powerful enough to seek information from the government offices in order to unravel the truth. The Act has to its credit many achievements including unraveling many scams and scandals. The bureaucrats can no longer deny the information to the public taking the pretext of the official secrets Act. No doubt as far as this contribution of the Act is concerned it is indeed game changer. However it is also a fact that this Act is proving to be a nuisance as it is somewhere obstructing the normal functioning of the public offices. The sacrosanct right is being misused by some miscreants, who are using the provisions of this Act to subserve their dubious motives. These moves by such unscrupulous elements do raise unnecessarily suspicion on even the best intentions of the government which is indeed not good for the democracy. Even the judiciary has

spoken out against such misuse of the Act. In case the appellant persists with vexatious RTI applications which disproportionately diverts the resources of the government offices, then the Public Information Officer will be free to deny information under section 7 (9) of the Act.<sup>1</sup> However the misuse is creeping in even at faster rate. The applicants with ill motive will first dig out the information and then try to misinterpret it maliciously to malign the public image of some public authority. The Solution to keep the frivolous applicant at bay, lies in imposing heavy penalties without compromising the interest of the serious applicants. This can be a short term solution. The duty lies with the legislature to bring in timely amendments so as to find a lasting solution to this problem. The nation cannot afford to lose this powerful tool just because of the misuse and abuse by some.

### **Issue of frivolous applications**

The journey of the Act is being littered with the complaints of the frivolous applications, which no doubt is somewhere weakening the strong foundation of this legislation. It is really surprising when the details of the casual applications come out. A lady enquiring about the reasons why the parcel containing the sweets which she has sent to the U.S President never reached him is one of those useless applications. Shockingly she is also asking the public information officer to take appropriate action against the delinquent officers. In another application of such kind, an applicant was seen asking about the chewing habits of the municipal corporation of delhi. The misuse from Hyderabad was seen when an applicant was asking about the number of times the governor of Andhra Pradesh visits the temple. The limits go berserk when an applicant from Kutch was seen asking State Information Commission of Tamil Nadu to suggest him a proper life partner from the government offices of the Tamil Nadu. The miscreants are not even stopping themselves to approach Prime Minister Office. There is a report that one applicant wrote to PMO on when the good days as promised to the people during the election campaigning will arrive. Though PMO in this case replied promptly that these information which are opinion based cannot be provided under the Act as these are not the part of any public record. People are also seen enquiring about mythological facts misusing the right vested in this Statute. The questions like which religion Lord Shiva and Goddess Parvati gave birth to, fall within the limits of same kind of frivolity. Public should understand that Act is not meant to seek information regarding the sentiment or feeling under this Act. A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law.<sup>2</sup>

Glorification by the media of such so called activist further encourages filing of such frivolous applications under Right to Information Act. Both print and visual Media should restrain from giving space to such frivolous

---

<sup>1</sup> Sh. R.K. Chauhan & Sh. N. Singh Vs Ndmc

<sup>2</sup> Delhi High Court In Shail Sahni Vs. Sanjeev Kumar And Ors. [W.P.(C) 845/2014]

applications. Democratic values of the nation lies strained when a statute is being used more as a publicity stunt rather than for sub serving the public cause.

However, not only public, but also Public Information officers are also not far behind in giving the frivolous replies. One such instance of similar nature came when the information regarding the road roller has been sought under this Act from the Public works department and an astonishing reply from the PIO came that the same has been eaten by the ants. Another instance of stupefied answer from the PIO came to light when he added in the reply to the information sought that the information provided cannot be used as a proof anywhere.

The right to information is an esteemed right for the common men. It has proved its worth in being a formidable tool in extracting out information from the offices of the government which used to be dreary task once upon a time. This cherished right needs proper use at the hands of the citizenry. However the common men should realize that impractical demands in the name of the exercise of this right should be avoided. The sensitivity of the information wherever it is, has to be respected. The confidentiality of the information should be respected. Too many doubts often led to sour relationship which is again unhealthy for the democratic set up. Request for the disclosure of the information indiscriminately can at times lead to the situation where the bureaucracy's time and efficiency is being bogged down under the non-productive work involved in furnishing of information. If the Act becomes a tool to harass the honest officials then it will be demoralizing the bureaucrats who have to shoulder many other important responsibilities. If corrective measures are not taken immediately, the Act could become a hindrance to the development of this nation, which surely neither the legislator nor the beneficiary of this Act desires. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties<sup>3</sup>. The government Authorities should not be forced to prioritize the work of providing the information at the cost of their regular work. In this regard many warnings from the office of chief information commissioner has been used but to no avail.

The menace of misuse of such progressive statutes is not limited to India. Frivolous applications under Freedom of Information are seen even in the countries like U.K and U.S.A. If we measure by proportion then it comes out that frivolous application is not a mess of such a scale as has been made out. As per a recent study , vexatious or frivolous applications account for only for 0.6% of the total applications under RTI. The study was based on 4,000 second appeals filed with various information commissioners<sup>4</sup>.

## **Lacunae in the Right to Information Act, 2005**

<sup>3</sup> CBSE vs. Aditya Bandopadhyay, (2011) 8 SCC 497

<sup>4</sup> Study conducted by Right To Information Assessment and Advocacy Group's (RAAG)

The Right to information is a well drafted statute, comprehensive in many spheres. However the statute only confers Rights to the citizenry without assigning duty on the part of the public. The Citizens should be made aware that the provisions of this Act is not meant for running down the public authorities. The duty to respect the public office seems very genuine expectation. The Statute was never meant to create an environment of skepticism. The general public should be made aware that this sunshine Act is not meant to settle personal scores.

The manpower is another issue to cope up with, in the present times. The Act is being implemented with the existing bureaucracy with no fresh recruitment to fill the post of the Public information Officers. May be our legislators were not aware of the mammoth task which this novel Act will bring into. Overloading the existing workforce with the additional responsibility will surely subdue the noble objectives with which this Act came into being. The Central and State government should be vested with adequate funds in order to steer the machinery to be involved for the proper implementation of this Act.

The Act should also provide the Public Information Officers with adequate powers to impose fines and penalties on those who want to fish out information just for publicity purpose or to fulfill their revenge against some other party. Another challenge is to tackle the huge tide of vast number of RTI applications. The applications lie stuck at the appellate level. There is a need to evolve a cost effective strategy to dispose of the applications lying in huge numbers. The ambit within which the information can be accessed is very huge. The available exemptions are very narrow. Many a time it has been seen that the information is being released if the public interest outweighs the protected interest of somebody.

The Act does not provide for any specific qualification for the public information officers. There is no bar on the quantum of the information that can be sought in one go which again brings hardship to the public authorities. The language used in Section 8(d) and 8(j) is generally worded and is often misused. Thus a critical scrutiny of the Act is required. Also there are some clauses where the actual implementation is not taking place at a pace it should have taken. Section 4 of the Act envisages that government offices will go for digitization of the record, but it is still in process. Section 26 expects the government to work towards creating mass awareness of the Act, but again at the ground level implementation is not that proper.

### **Misuse of the Act**

The varied ways in which the Act is being misused can be appreciated when a look is being taken on the nature of the information sought under this Act. The applications are being seen where abusive language was used. Applicant at time tries to seek antique information which at times become a complex task for the PIO's to deal

with. As there is no restraint on the number of items on which information can be sought, applicant resort to application seeking voluminous information. Even applicants were seen asking information relating to the same issue number of times.

It is alleged that the RTI was misused in the Vyapam Scam. Candidates who have allegedly bribed the officials were asked to leave blank sheets during the time of exam. Later on the officials resorted to RTI to view those answer sheets. At that time they filled them with proper answers in order to make everything proper.

However the utility of the Act can also not be undermined. There have been interesting instances when the Act has helped the common man to get justice from the doors of the public office. One such success story emerged from Agra, wherein a research scholar's Viva-Voce was not being held for one year despite submitting his Ph.D Thesis. He resorted to RTI and asked one simple question from the authorities of the university regarding the time limit after which the Viva should be conducted after the submission of the Thesis. Within one month of sending this application his Viva was scheduled. Probably that was the power of the RTI only which forced the authority to hasten up the process which was unduly getting delayed.

### **Locus Standi**

The Right to information Act provides the citizen with a right to seek information on any issue without assigning any reason to the Public authority. No Government office can question the Locus Standi of the Citizen. An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him<sup>5</sup>. Prior to the enactment of the RTI Act, 2005 the information could be provided only if the requestor proves his locus standi. However the present Act abolishes this concept of Locus Standi. This restriction on disclosure of reasons cannot be misconstrued to mean that any information pertaining to a public authority or its employees is public information.<sup>6</sup>

The unique part of this Act is that it allows any citizen to seek any information. However, to ensure proper implementation effective workforce is required. Also to reduce the work, the public offices have to be smart enough and make endeavour to bring in and publish more and more information on their websites. It shall be a constant endeavour of every public authority to take steps to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information<sup>7</sup>.

<sup>5</sup> Section 6(2) of The Right to Information Act, 2005

<sup>6</sup> Union Public Service Commission vs Dr. Mahesh Mangal on 17 March, 2015 delhi high court

<sup>7</sup> Section 4(2) of the Right to Information Act,2005

## Antidote

It is a matter of concern that such a progressive act is being hijacked by few self acclaimed RTI activist, who are resorting to frivolous and repetitive applications. The commission should consider banning repetitive application based on the principle of Res Judicata. No doubt such a provision is not there in the statute book, but it is principle of the public policy. A matter which has been disposed of once should not be called for again. It will unnecessarily divert the precious man hours of the public officials. Though the Act does not bar the repetitive information, however it is implied from the objective of the Act that citizen has the right to information only once and not repetitively. The Commission should take steps to make a record of the abuse and identify the abuser. Commission should even notify the applicant who is resorting to abuse of the Act by clogging the Public Office with repetitive applications. If any applicant resorts to three such repeated RTI applications, the Commission may even recommend blocking.<sup>8</sup>

The repetitive misuse of the Act should come under the crime of Public nuisance as defined under section 268 of the Indian Penal Code and punishable under section 290 of the Indian Penal Code. The cases of cantankerous application can also be taken to be akin to assault , punishable under section 353 of the Indian Penal Code.

## Conclusion & Suggestion

RTI Act, 2005 has been a helping hand for the genuine information seekers. It is not hidden from anybody that public offices used to be very unresponsive towards providing any kind of information. They generally refuse the information on one pretext or the other. However things have changed vis-a-vis the public authorities. The penal provisions have deterred the public official from not to refuse the information sought. The citizenry have been empowered to ask for the information from the opaque system of the government without assigning any reasons.

It is also a matter of fact that this Act has been used out of vengeance by the so called RTI activists. With ulterior motives, absurd and uncalled for questions have been asked from the public offices, resulting in the wastage of lot of time of the public authorities.

There is a need to evolve a system of checks and balances if the government wants to effectively implement the provisions of the Act. Amendments are required in the Act so that RTI Act may not end up simply being a tool of harassment in the hands of the overenthusiastic RTI Activists. The process of screening is required wherein the frivolous applications may be identified and uprooted at the initial stage itself. It leads to wastage of lot of time for the public officials to attend the hearing of the Commission, especially in case of frivolous applications. The basic infrastructure of the State Commissions should be upgraded so that the effective

<sup>8</sup> R.C.Jain Vs. DTC, File No.CIC/AD/A/2013/001326SA



functioning of the appellate authorities should not be stalled. The vacancies of the Information commissioners at the state and central level should be filled timely so that the disposal of the appeal can be done in a time bound manner. These steps can help in reposing the trust of the public in this revolutionary Statute. The commission should take the help of the technology in order to plug in the loop holes in the Act. It should be made mandatory for all to quote the Aadhar number on the application. A database of all applicants should be made meticulously. In case of any kind of misuse on the part of the applicant, a warning needs to be issued. Any kind of repetitive delinquency should result in the blacklisting of the applicant from seeking any further information under the Act.

#### References:

1. Taxman's Right to Information Law & Practice by Dr. R.K Verma
2. A Treatise on the Right to Information by Dr. Anshu Jain
3. Right to Information Act by U.N Gupta
4. <http://cic.gov.in>
5. <http://www.righttoinformation.gov.in>

