Attempts to Erode RTI Mechanism

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The Right to Information mechanism is sought to be diluted by certain bodies by the arbitrary use of pre-existing procedures and rules which were enacted at a time when citizens' right to information had little or no consequence. These rules also lack procedural safeguards and have onerous fees devoid of any reasonableness. The aggrieved citizen had no choice but to approach the courts. This trend must be arrested in time to prevent the erosion of the hard-won right to information.

In what was a privilege earlier, the Right to Information (RTI) Act, 2005 affirmed the right of every citizen to access of government records. The Act guaranteed a powerful, timely, effective and affordable mechanism to avail the right to information in a meaningful manner. Both the central and state information commissions overseeing the operation of the Act have powers to impose a fine of up to Rs 25,000 on government officials for deficiencies in its implementation. More importantly, the RTI mechanism empowers citizens to obtain any information from the government except in limited circumstances affecting national security and privacy. In a nutshell, the Act relegates public authorities to mere guardians of public documents. In the eight years of its existence, the Act has encouraged increased public participation in government activities, particularly in enabling journalists and activists to scrutinise public records. There have been scores of instances where RTI activists have unearthed corruption at all levels of public administration.

Certainly the ubiquitous culture of secrecy among government institutions is waning. However, the attitude of public authorities towards the right has not changed. Many public institutions are searching for ways to either replace or impose onerous conditions on its implementation. A few public authorities are creating economic hurdles by imposing exorbitant fees contrary to the spirit of the legislation.

Setting a Premium

Some time ago, the Central Board of Secondary Education (CBSE) issued a public notice asking applicants to pay Rs 500 for obtaining a copy of the optical mark recognition (OMR) answer sheet and answer key to their Indian Institute of Technology-Joint Entrance Exam (IIT-JEE) (Mains) test held in April 2013. The notice was issued after the Board received several RTI requests seeking copies of OMR sheets reportedly following several discrepancies in results and answer keys. To make matters worse, all those who filed RTI applications prior to this notice were asked to make fresh applications along with Rs 500. The notice in effect comes in place of the RTI Act.

This notice is a stark violation of a decision of the Supreme Court in 2011 which categorically recognised examination of answer scripts under the RTI Act.[1] Moreover, the fee prescribed by CBSE thwarts any sense of reasonability. The Act explicitly obliges public authorities to provide copies of records to citizens for a "reasonable" fee.[2] Pursuant to the Act, the RTI (Regulation of Fee and Cost) Rules, 2005 prescribed by the central government impose a token fee of Rs 10 for processing any request for information. The rules further permit inspection of public records free of cost for the first one hour of inspection. Applicants desirous of obtaining copies of public records, including certified copies, are charged Rs 2 per page. Furthermore, this beneficial legislation exempts the fee requirement to citizens below the poverty line.[3] Most of the state governments have adopted similar fees for processing RTI requests.

On the other hand, the CBSE notice has charged Rs 500 for a copy of the OMR sheet and answer key, all of which do not exceed 20 pages! Also, the 13 lakh-odd students who took the test paid Rs 1,500 to merely appear for the test.[4] Is this an attempt to dissuade the public from seeking information or is it a ploy to exploit the desperation of eager and worried students and parents?

Incongruent Rules

The genesis of these arbitrary fee rules stems from legislations and departmental practices prior to the RTI Act. Several departments had in place ad hoc procedures and rules to facilitate access to specified information. The rules relating to extraction and inspection of the Registrar of Companies, for instance, were made way back in 1956 for the benefit of investors to scrutinise records of registered companies. A more familiar example of such procedures is the municipal rules relating to registration of birth and residence details.

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Majority of these rules were set in place primarily to facilitate transactions for personal and commercial purposes.

The RTI Act, on the other hand, is a goal in itself. It imposes an obligation on the public information officers (PIOs) to furnish all public records in their possession if requested, unless the nature of information sought is exempted on a few limited grounds. A further charming feature of the legislation is the "purpose blind" nature of the right. In other words, one need not provide any reason for seeking information. The RTI Act in a sense is a comprehensive legislation for providing public information and the nature of right guaranteed is absolute unless exempted on limited grounds. Consequently, the procedural safeguards transformed the manner in which public information is perceived.

These pre-existing procedures and rules, however, were enacted at a time when citizens' right to information had little or no consequence. This is mirrored by lack of procedural safeguards and onerous fee rules devoid of any reasonableness. The remedies against non-disclosure lie in a civil action before courts, which has never been an encouraging proposition. The government institutions administering intellectual property rights (IPR) in India is one clear instance of ad hocism in provision of public information. The table below captures arbitrary fees prescribed by the various government institutions governing IPR in India:

Table: Fees Charged by Government Institutions

Rules	Inspection	Photocopy	Certified Copies
Patent Rules, 2003	Rs 200	Rs 8 per page	Rs 700
Designs Rules, 2001	Rs 500	NA	Rs 500 per design
Trade Marks Rules, 2002	Rs 200 per hour	Rs 5 per page	Rs 500 per mark
Geographical Indications of Goods (Registration and Protection) Rules, 2002	Rs 100 per hour	Rs 10 per page	NA
Copyright Rules, 1958	NA	Rs 20 per work	Rs 20 per work

Let us examine the situation of information disclosure relating to patents in India. The Indian Patent Act, 1970 grants a 20-year monopoly to inventors over inventions which demonstrate considerable ingenuity over existing science. The inventor, in return, has to completely disclose the process of creating the invention. This serves the dual objective of promoting creativity by enriching public access to technical knowledge and enabling skilled persons to scrutinise the claimed inventiveness. The Indian Patent Office responsible for administering patent rights is statutorily obliged to maintain a register of patents which contains information, including scientific data, of such inventions. The wealth of information with the Patent Office is of tremendous importance not just for businesses but more importantly for scholars and students for educational and instructional purposes. To obtain a copy of patent application (often running into hundreds of pages), one has to pay Rs 8 per page. Though one has failed to establish a cogent link between the patent system and promoting creativity, the coffers of the Patent Office have certainly filled up. The high fees defeat any ownership conferred on public over government records.

Judicial Roadblocks

To avoid anomalies of the kind mentioned above, Parliament has deliberately inserted a provision in the Act to replace and override pre-existing laws and rules with the mechanism in the RTI Act.[5] Unfortunately, however, the Delhi High Court (HC) lent a chorus to the public authorities continuing to apply pre-existing arbitrary rules in an order passed in June last year.[6] The HC categorically upheld the legality of the Companies (Central Government's) General Rules and Forms enacted way back in 1956 for inspection and photocopying of records maintained in the registry of companies.

The dispute involved a RTI request seeking documents of a registered company submitted to the Registrar of Companies (ROC) required as per the law. The ROC refused to apply the RTI Act citing the pre-existing 1956 rules. It is a well-established rule of interpretation of statutes that newer laws override older laws. The only exception to this commonsensical rule is a situation where the older law deals with specific subject matter while the newer one is of a general kind.[7] Imagine a hypothetical legislation enacted in 2000 to provide complete medical insurance to labourers working in coal mines. Parliament in 2012 enacts a new legislation to guarantee 50% medical insurance to all labourers in the country. The enactment of the latter law (2012), however, cannot be employed to refuse complete medical insurance to coal mine labourers. This is for the simple reason that Parliament while enacting the 2012 legislation has not specifically considered the situation of coal mine labourers as it was dealt earlier in 2000.

The above exception, however, does not hold good if the latter law explicitly makes clear its intention to override the applicability of previous special law. Section 22 of the RTI Act serves exactly this purpose. It expressly overrides the operation of other legislations and rules that are "inconsistent" with the mechanism envisaged in the Act. The 1956 Rules do not (a) guarantee time-bound disposal of information; (b) impose penalties for failing to provide information; and (c) impose fees that are reasonable. The Delhi HC without taking into account the lack of procedural safeguards in 1956 Rules vis-à-vis the RTI mechanism erroneously found no "inconsistencies" between the two.

Furthermore, the HC drew an untenable distinction between information "held by public authority" and information in the public domain. The information under the RTI Act can be obtained in any form; i e, print, electronic, floppies or optical disc. In unambiguous terms, the RTI Act further allows applicants to seek printed copies of information stored in electronic form.[8] The HC, however, took the ludicrous view that information made freely available on the internet is not "held by" the public authority. By placing the information in the public domain (i e, the internet), the HC explained that information has been "let gone" by the public authority. How many people have internet access in this country? Merely by uploading the information on the internet does not absolve the public authority from keeping physical record of documents. Furthermore, the RTI Act which also guarantees certified copies of public records must be certified by the public authority holding the records.

Two independent surveys conducted in 2008 on the implementation of the

RTI Act revealed poor proactive disclosure of information by public authorities.[9] And 75% of those who requested information were dissatisfied with responses received from public authorities to RTI requests.[10] Surely, five years is a long time and these figures might not hold accurate today. The mindset of the government authorities, however, has not been positive in facilitating information disclosure. If the HC decision is not overruled, it would open the floodgates for other public authorities to devise arbitrary rules and legitimise pre-existing rules thereby replacing the RTI Act.

Way Forward

The RTI Act is a social legislation intended to empower citizens from diverse economic, social and cultural strata to equality in access to public records for diverse purposes. As demonstrated above, pre-existing rules are often not guided for serving a social purpose and therefore it would be incorrect to equate them with the RTI Act. Furthermore, every public institution is mandatorily required to appoint a public information officer and an appellate authority. Moreover, the implementation of the RTI mechanism is indispensible. Therefore, it is administratively convenient, for both the public and public authorities, to have a unified system for handling requests for information.

NOTES

1 *Institute of Chartered Accountants of India vs Shaunak H Satya* [SLP(C) No. 2040/2011], decided on 2 September 2011.

2 Right to Information Act, 2005, Section 7(5).

3 Right to Information Act, 2005, Section 7(5), proviso.

4 See JEE Main 2013 Result available on jeemain.nic.in India Today Online (8 May 2013).

5 Section 22 reads as below:

> Act to have overriding effect. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

6 *Registrar of Companies vs Dharmendra Kumar Garg* [WP(C) 11271 of 2009], decided on 1 June 2012.

7 This exception has roots from a Latin maxim, *generalia specialibus non derogant*, and the reason has been expounded in a famous decision of the US Supreme Court (*Rogers vs United States*) as follows:

> that the legislature having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do.

8 Section 2(j) reads as follows:

> "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-
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> (i) inspection of work, documents, records;
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> (ii) taking notes, extracts or certified copies of documents or records;
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> (iii) taking certified samples of material;
>
> (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

9 RTI Assessment and Analysis Group (Raag) (2008).

10 PricewaterhouseCoopers (2008).