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INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 2

2021

A Revolutionary Move: The Right to Information Act, 2005

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ABSTRACT

The Right to Information Act, 2005 is one of the most progressive legislations of its time. This is because, this legislation puts into action the transparency promised to citizens. It makes administration see-through. People get the right to 'know' to 'ask' and to 'question' any administrative actions of the government. This Act gives people the power that should have been rightly theirs from the very beginning.

In this paper, the researcher will go through the entire timeline of the coming into force of this legislation, the political situation at the time, how the Act came to be, what caused its enactment, its effects on society and the people in general and the government. The researcher will also be cursorily going through some case laws that brought forth the power of the legislation into reality and how the Administrative system of India comes into play and is affected by, this legislation. The researcher in this paper will focus solely on the relation between administrative law and The Right to Information Act, 2005, how the legislation has helped Administrative law grow and opened many dimensions and broadened the scope of administrative law.

I. INTRODUCTION

India is a country where people participate in the administrative process. The participation may not be completely direct, but they do so by voting their representatives into the decision making branches of the State. Also, India being the largest democracy in the globe, carries on its shoulders many expectations and many beliefs, which she is anticipated to make good on. One of the biggest and the most fundamental outcomes of being a democracy is open governance or transparency in the administrative processes.

The Right to Information Act, 2005 was a step taken in the right direction to achieve this colossal yet rudimentary goal. This Act, to be called the Act from hereinafter, would lay a foundation stone for many aims with such intentions as successors in the hopefully quite near future. Cambridge dictionary defines 'administration' as 'the arrangements and tasks needed

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to control the operation of a plan or organization'. This definition is apt to understand the broad scope of administrative law. Administrative actions include instructions or directions given by superior administrative bodies to the people working under them based on the Enabling Act better known as the Parent Act. So, the need for the public to know what these instructions are, what directions have been given, what the government is doing, is necessary for the people to trust the government, to be assured that the government they have chosen is doing what is best for them. Thus comes into play the people's right to know, right to be told.

We shall be looking into the history of the Act and then how the Act has been construed by the municipal courts, if there are any similar legislations outside India and then try to draw a conclusion from all the information gathered to check if the Act has been serving its purpose or not.

II. A GLIMPSE INTO THE HISTORICAL BACKGROUND OF RTI

The demand for information of the inner workings of the government, surprisingly, only began in the late 1990s. It all began in a humble place called Beawar in the Ajmer district of The Land of the Kings i.e., Rajasthan. The "Mazdoor Kisan Shakti Sangathan (Association for the Empowerment of Labourers and Farmers)" was at the forefront of this movement.[2] All this began because of disparity in wages provided by the government to the workers when working on the projects assigned for development. This disparity was protested and the protesters demanded to 'know' what budget was allocated for the projects, how and where the money was used, how much expenditure was incurred. [3]This was because even when the people could obviously see the discrepancies between the money allocated and that which was used, they had no proof to stand by the same. Thus they exercised their constitutionally recognised right to information while using their right to protest. This was a novel approach. The protests were not for the wages to be hiked, it was to hold the government accountable for their corrupt actions and also create an example out it. The protests were in the form of "dharna" and was scheduled for about forty days.

The year was 1996 when the protests began. 1997 was the year when India had her first dalit caste President, Hon'ble Shri K.R. Narayan. Every paper was headlined, "India's first dalit President". The fact that the word 'dalit' carries such a force and is so important does not give a sense of relief but acknowledges the fact that caste system is still very much a part inscribed

[2] *National Campaign for People;s Right to Information*, http://mkssindia.org/ (last visited 20th March, 2021)
[3] *India's Right To Information Movement Makes A Breakthrough*, http://www.delhihighcourt.nic.in/library/articles/India%20right%20to%20information%20movement%20makes%20a%20breakthrough.pdf (last visited 20th March, 2021)

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in our mindsets. The death of Mother Theresa, Queen Elizabeth II's visit to India and the resignation of Prime Minister Gujral, all these events are remembered when the year 1997 is mentioned. But this year also carries a very acute significance for one of the most necessary right which every citizen in India enjoys as naturally as breathing air, the "right to information". This year laid the foundation stone for this central legislation called "The Freedom of Information Act, 2002". By this point in time, there were already nine Sates with legislations that provided their people with the right to information of their State public authorities and also judicial decisions that had recognised this right, but accessing this right was the problem. There was no written procedure. It would be impossible for every person to come to court under Art. 32/226 to exercise this right. Thus a solution was much sought.

The protest at first could not garner much attention, with only a few hundreds of people actually participating. But with time, its popularity soared, people poured in from various parts of the countries to support and stand by the protesters. People from all ways of life came to Beawar, doctors, poets, singers, journalists. Neighbouring villages joined in on the movement by providing food grains and other forms of support. It had now turned into a protest of national interest. Then Rajasthan Chief Minister's promise of a right to information to the people, which he did not keep, acted like the matchstick that gave fire to an already piled up bunch of leaves. This movement would be known as the "RTI Movement". Impact carrying editorials and articles played a crucial role in spreading the word. The slogan of this movement was, 'the right to know, is the right to live'.

After a very hard fought battle, finally a central legislation was in the works, The Freedom of Information Act. It was enacted in the year 2002, got the Presidential assent in the year 2003, but never came into force. This was much criticised by the public. This Act was mostly exclusive in nature, it also did not confer any penalties upon the officers for non-compliance with the Act. Thus, it was obvious that this Act was only an empty shell, merely made to appease the public which was given the dubious name (similar to that of England's legislation of similar nature) The Freedom of Information. The Act itself did not stand up to its name. The government then specifically assured at the Common Minimum Programme (CMP), (an instrument that outlines the key objectives of an Indian coalition government) that it would make the FOI Act more "progressive, participatory, and meaningful".[4] Then, facing the backlash of the public for almost a fraud on the part of the government, finally The Right to Information Act was enacted in the year 2005, which is till date in use.

[4] Ibid fn. 2

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III. THE RIGHT TO INFORMATION ACT, 2005

The objective of the Act,

> "*The basic object of the Right to Information Act is to 'empower the citizens', 'promote transparency and accountability' in the working of the Government, 'contain corruption', and make our 'democracy work for the people' in real sense. It goes without saying that an 'informed citizen' is better equipped to keep necessary 'vigil' on the instruments of governance and 'make the government more accountable to the governed*"[5]

For the researcher, the most important provision of this Act is S. 26. This section speaks places a duty upon "the appropriate government" to make its citizens aware of the existence of such a right and how to access it. This is very vital when it comes to the functioning of this Act. With years having passed after the enactment of this legislation, the steps taken to further the awareness of the existence of this right seems to be diminishing. Though people have access to internet these days, India is country well-known for her villages, which she takes immense pride in. The people living in these villages are equally citizens of the country, just like everyone else. The difference is that, not everyone in the country has access to electricity, much less internet. This reflects very poorly on a country that is aiming to become a global superpower one day. One of the not so favourite provision in the Act is S. 23 that speaks of the exclusion of courts from the right to review any order passed under this Act.

One very different approach of this Act from the FOI Act, 2002 is its provision for penalties upon non-compliance. This is the core of the Act that ensures it is implemented well. S. 20 talks about the penalties to be imposed the Central Public Information Officer (CPIO) or the State Public Information Officer (SPIO) upon refusing to entertain any complaint or access to information malafidely. The penalty is of Rs. 250 for each day the RTI application not entertained and upon such successive refusal of entertainment of the application/appeal, the respective CPIO/SPIO will be recommended for disciplinary action.

A better analysis of the Act would be seen in the following chapter, wherein the researcher will focus on the judicial decisions that shaped the now RTI Act of 2005. This has helped the administrative processes become much clearer and also helped in making the administrative authorities accountable for their actions.

As the preamble of the Act asserts, the Act tries to build a harmonious relation between the

[5] *About Right to Information, 2005*, https://rti.gov.in/ (last visited 20th March, 2021)

people's - right to information and the State's security. There are a total of twenty five agencies that are exempt from the purview of this Act. The Act has opened the door to the administrative working of the government. There is a lot of potential in the Act, if used rightly. It is thus unfortunate, that people, even well educated ones are not being able to utilise the Act to its full extent. The Act was meant to empower citizens against corrupt and incompetent administration.[6] The people this Act is meant to hold responsible is the public authorities i.e., administrative bodies of the country. The main focus here are the words "democracy", "people", "administration" and "right". Thus, where the people have a right to keep a check on the administrative actions of the government and public authorities, then such governance can be called completely democratic. This seems like a pipe dream, but as it is rightly said, a good start is half the battle won.

Dicey is considered the profounder of Rule of Law, *la principle de legalite*. Though the concept of rule of law has evolved in the past years, but one principle that is common in both rule of law and in natural justice is, nobody can be a judge in his own cause. We have a very good example, Droit Administratif of France. Dicey criticised it for being against rule of law. This was because, the people judging matters raised against administrative authorities 'were' administrative authorities. How then could people expect justice to be delivered? It is rightly said by Lord Hewart, fromer Lord Chief Justice of England that, *justice should not only be done, but should also be 'seen' to be done*.[7]

Coming back to India and her RTI Act, 2005, it is seen that it is the public authorities that deliver the information sought to the public. But it is also the public authorities to whom the appeal lies upon the dissatisfaction of the people from the way their application was treated. Even when it comes to the penalties, it is seen that statutorily, it is the administrative authorities that are vested with the power to impose such penalties. Does this not reek of being against the rule of law? At the end of the day, everything hinges upon the actions of the public authorities. And barring the judiciary from playing a role only adds fuel to the fire.

IV. JUDICIAL ANALYSIS OF THE RTI ACT, 2005

Judiciary is the last straw in the hands of the public to achieve justice. Thus, judicial decisions play a pivotal role in working of a legislation. As it is the function of the judiciary to interpret laws, it is highly relied upon by the people and the government to give reasonable construction to those parts of legislations which might not be completely clear in understanding. When it

[6] *IMPLEMANTATION OF RIGHT TO INFORMATION AND IMPACT ON ADMINISTRATION*, RTI Fellowship Report: 2015, Dharanesha S.T

[7] R v. Sussex Justices, (1924) 1 KB 256

comes to the RTI Act, 2005, this right has been judicially discussed even before the RTI Movement. So let us take a look at the timeline in the judicial decisions with regard to the same and see for ourselves how much the interpretation of the right and the statute has evolved over the years and also keep a watchful eye on its corollaries on administrative law.

Now, there must be a blot of doubt in the mind of the readers as to how there are judicial decisions for the Act, when S. 23, as previously mentioned, disbars courts from involvement. This is a well fetched doubt, but the answer to that would be, the courts under S. 23 are discharged from their duties when it comes to any order passed under the Act. The Act itself or its provisions still come under the ambit of judicial scrutiny as it is law under Art. 13(2)&(3) of the Indian Constitution.[8]

- We will start with the case of *State Of U.P vs Raj Narain & Ors*, the Emergency case, the electoral malpractices case, the names given to this case are many. In this case, Raj Narain, an Indian politician cum freedom fighter, had alleged that public finances were misused to help Former Prime Minister, Ms. Indira Gandhi win the re-election. Justice K.K. Mathew called our government one with lots of responsibilities towards its citizens, the public that elected them. He then went on to say,

  > "*…where all the agents of the public 'must' be responsible for their conduct, there can but be few secrets. The people of this country have a 'right to know' everything…done…by their public functionaries…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…The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.*"[9]

This case then went on to become one of the major factors for the proclamation of Emergency in the country in the year 1975. During that time, the concept of right to information or the right to know, was a very feeble thought. India had just been through two wars and information was the key. Public disclosure would mean putting the country in jeopardy. The court also relied upon findings of various English case laws and pointed out a test as laid down in, wherein public interest that needs protection is weighed on one side with the interest of the person who wanted the production of that information. This was done so to prevent "information that cannot be disclosed without injury to the public interest" from being brought to the public

[8] INDIA CONST. art. 13, cl. 2 & cl. 3
[9] State Of U.P vs Raj Narain & Ors, (1975) 3 SCR 333 (India)

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forum. Such a progressive view, even at a time like then, was the pioneer in the building of this right to what it is today.

- The next milestone that furthered our right to information was the case of S.*P. Gupta v. Union of India*. In this case, the petitioner wanted the transcripts of communication between the Law Minister and the Chief Justice of India as to the non-appointment of two judges and also brought into spotlight the independence of judiciary. Justice Bhagwati opined that if information is to be made available to the public at large, it would help ensure a more efficient and better administration. He also said,

  "*There can be little doubt that exposure to 'public gaze and scrutiny' is one of the surest means of achieving a 'clean and healthy administration'. It has been truly said that an 'open' government is dean government and a powerful safeguard against political and administrative aberration and inefficiency.*"[10]

Here we can clearly see the judiciary exerting that an open government is the way to go to ensure that the administrative authorities are on the right track and not deviating from their set duties. Thus, knowledge of the public into the workings and happenings inside these administrative offices is a must because this would put the public authorities in the spotlight disabling them from making erratic decisions.

In England, there is The Franks Committee to study the powers and functions of tribunals and make enquiries on the same. The Committee then made a Report in the year 1972. Their reports are one of the sources of administrative law[11]. In it, the committee stated that has an obligation to gain and retain the trust of the people it governs. Instead of hiding behind the plea of secrecy, such a democratic government should come forward and explain its aims to the people. A deeply secretive government will lose the trust of the people it governs. "It will be encountered by ill-informed and destructive criticism". And as the saying goes, when someone forbids someone else strongly from doing something, the human instinct tends to want to do it even more. Thus, the Report stated that if too many secrets are kept and for too long, then people will try by hook of by crook to get the information, then the government will lose its chance to selectively publicise information as matters which needed to be kept secret keeping in mind the State's security, would also come out in the open.[12]

These two were the most vital cases with regard to this right before the enactment of this

[10] S.P. Gupta v. Union of India, (1982) 2 SCR 365 (India)
[11] *Liability*, https://www.britannica.com/topic/liability-law (last accessed 20th March, 2021)
[12] *ADMINISTRATIVE TRIBUNALS AND ENQUIRIES (REPORT)*, https://api.parliament.uk/historic-hansard/commons/1957/oct/31/administrative-tribunals-and-enquiries (last accessed 20th March, 2021)

legislation. The right to information is met by an obstacle found in another legislation, S. 123 of the Indian Evidence Act, 1872. Under this provision, the government is entitled to withhold with itself some unpublished official records with regards to the matters of the State. The two previous cases also had a lengthy decision on whether of not this provision would override the right to know. Though not clearly discussed, the documents sought after in the above two cases were held to be outside the ambit of S. 123. But it is still unclear as to which would prevail over which. The point seems that there is not conflict between the two as the information sought would be weighed against public interest before being disclosed.

- We have another very important judgment in the case of *Union of India v. Association for Democratic Reforms*. In this case, the Hon'ble Supreme Court encompassed the right of a voter to know about a candidate standing for election, under Art. 19(1)(a).[13]

Now we will move onto some of the cases that dealt with the right to information after the enactment of the legislation.

- Let us then, without further ado, proceed to look into the case of *Secretary General, Supreme Court of India v. Subhash Chandra Agarwal*. In this peculiar case, the petitioners asked the Central Information Commission (CIC) to disclose the fundings of some major political parties and also their manifestoes and if they had followed up on their promises. The Delhi High Court, in a milestone judgment brought these parties under the now broadened definition of 'public authorities' under the Act thereby directing the CIC to ask these parties to set up CPIOs to answer to RTI applications. Ajit Prakash Shah, Chief Justice of the Delhi High Court, authoring the judgment pointed out clearly the a citizen's right to information does not stem from the Act but from the catena of judgments given by the Supreme Court placing this right under the constitutional guarantee of Art. 19(1)(a). The Court also stated that the Act is a mere acknowledgment of an already existing right. It said,

  > "*In construing such a statute the Court ought to give to it the widest operation, which its language will permit. The Court will also not readily read words which are not there, and introduction of which will restrict the rights of citizens for whose benefit the statute is intended*."[14]

- Next up is the case of *The CPIO, Supreme Court of India v. Subhash Chandra Agarwal & Anr.*. In this case, activist Subhash Chandra Agarwal filed an RTI to know the process of

[13] Union of India v. Association for Democratic Reforms, (1982) 2 SCR 365 (India)
[14] Secretary General, Supreme Court of India v. Subhash Chandra Agarwal, Civil Appeal No. 10045 of 2010 (India)

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decision making by the Supreme Court Collegium. After much deliberation, this highly controversial matter had to obviously be referred to a Constitutional Bench and a decision was reached wherein it was held that the Supreme Court also fell within the ambit of 'public authorities' and that the Chief Justice was not a separate entity. The SC opined that if democratic process was to be linked with right to information, it would facilitate way better administration and provide powerful encouragement for suitable public decision making. In a highly progressive statement, the Court opined that information on the judges' conduct and administration was absolutely necessary to make sure that "broader societal goals in the administration of justice" would be achieved.[15]

In all the cases we have analysed so far, the commonality is the judiciary's stand on right to information being a fundamental necessity in achieving proper governance. The ambit of the information has been seen broadening over the years though the excuses to not give out information have also found new dimensions.

V. CONTEMPORARY FOREIGN LEGISLATIONS

The right to information has now gained global recognition. This right is now one the principles accepted under international law. India has the RTI Act but we do not know how effective this Act has proved to be yet. With this in mind, it might be a good idea to look at the global scenario with respect to this right.

In Japan there is the Law Concerning Access to Information Held by Administrative Organs, 1999. In the USA, there is Freedom of Information Act (1966). In the UK as well, there is Freedom of Information Act, 2005. In South Africa, their Constitution itself guarantees a right to information.[16]

Juxtaposing all these legislations side by side, it is obvious that every State has secrets it wishes to protect and withhold. While some are understandable, some are very puerile, thus warranting the rage of the public. It is clear that the active role of the public in using their right and effective functioning of the judiciary has allowed India to be a forerunner in transparency when it comes to administrative actions of the public authorities, at least so on the papers. The recognition of this right on a global platform thus places, States under a lot of pressure to assure that their citizens have access to their rights sincerely.

It is rightly said by Lord Acton that, power corrupts, but absolute power- corrupts absolutely.

[15] The CPIO, Supreme Court of India v. Subhash Chandra Agarwal & Anr., Civil Appeal No. 10044 of 2010, judgment pronounced on 13-11-19 (India)
[16] Gopi M, *Right to Information Act in India (An Overview)*, Vol. 4 Issue 2, JPSPA, 1, 1-3 (2016)

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Thus, international pressure is necessary to let the various forms of governments in various parts of the globe know that information is the future, knowledge is power and this power is a natural right of the citizens. Not acknowledging would only lead people to lose trust in their governments and rise up to fight for their rights.

VI. CONCLUSION

Justice Bhagwati once said, disclosure of information concerning the functioning of the government must be 'the rule' while secrecy, 'an exception'. These days, the right to information of the citizens have been turned into the right of denial[17] of the public authorities behind the garb of S. 123 of the Indian Evidence Act, 1872. The spulrge in the number of RTI applications fails to correspond to the information actually let out. The mechanical response for most of the applications is that the question does not fall under 'public authorities' and thus the application gets rejected. And even after so much struggle to get this right, people have very little knowledge as to how to use it. The people also face a lot many problems in filing an application as not everyone is technologically savy and there is no proper manual showing directions for the same. The next issue is that even if the application is entertained, the replied provided are sloppy at best. It mostly comprises of irrelevant or incomplete replies. The demand for information overweighs the supply for it and the not-so-proper maintenance of public records, or so they claim, just add to the misery.[18]

In the end, no matter how great a legislation, how progressive, how public-oriented, it all comes down to proper implementation of a legislation to make it worthy otherwise, it is merely a piece of paper. The people are yet to realise the power handed over to them in a silver platter. So it all hinges on the awareness of the public of their rights and their scopes so as to be able to utilise them to their complete extents. With information in the hands of the people, the governance will be working in open light with the awareness that they are accountable for all their actions to the citizens they govern. An open and transparent government is no longer a pipe-dream. It is within reach, with the only requirement being that the people always stay on their toes and not sit on their rights.

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[17] Shailesh Gandhi, *Will the Right to Information Act Become the Right to Denial of Information Act?*, THE LEAFLET (Dec 9, 2020), <https://www.theleaflet.in/will-the-right-to-information-act-become-the-right-to-denial-of-information-act/> (last accessed 20th March, 2021)

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