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Need For Awareness on RTI and its Enormous Potential

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ABSTRACT

The study of this article is based upon the conceptual and theoretical understanding on the subject matter of Right to Information and how the same helps in ensuring good governance of the organizations be it the government, semi-government or non-governmental organizations in holding the right person in authority accountable for their act of deceit and callousness. Right to Information being a basic human right available with every human being also discusses on how the right facilitates into public participation and how glaring is the subject of its awareness amongst the citizens of the nation for them being more responsible and participative in the transparent governance of various sectors. Furthermore, the article discusses the purpose and intent of legislating the Right to Information Act, 2005 and how prior to it the area was given a wide understanding under the Right to Freedom of Speech and Expression i.e. Article 19 of the Indian Constitution. In the part of conclusion, the paper provides certain recommendations and suggestion on ensuring active public participation in exercising this right which is both the duty of the government and the citizens in ensuring the same. Thus, the study of this article is hence forth based upon certain given set of rules, laws, widely accepted theories, radical judgements and the logical rational behind doing so.

Keywords: *Right to Information, Good Governance, Public Participation, Need of Awareness and Judicial Observation*

I. INTRODUCTION TO NUANCES OF RTI REGIME IN INDIA

“Information is basic human right and the fundamental foundation for the formation of democratic institution.”

- Nelson Mandela

Political maneuvering of power, corrupt practices, use of muscleman, violence and criminalization of politics threw the ideas of democracy to the wind and people’s participation

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remained utopian to the society in the absence of fair and transparent government process.³ Right to Information is a weapon in the hands of common people to fight against unethical practices and growing corruption in the country.

The power to change and have knowledge is with the citizens and they must recognize their own power and demand them. However, until and unless the public knows the granted power, it cannot be enforced. If the citizens are not aware with the rights, they cannot know if whether they are respected, protected, and made real.

It should be remembered that Right to Information or the Freedom of Information has the ability to generate more controversy and heated debate than virtually any other aspect of contemporary government and administration.⁴ India is a democratic country and it makes a nation liable to every individual. RTI satisfies the fundamental point of participatory democracy as any subject of nation can get data about government activity in this manner empowering opportunity and transparency. The privilege of secrecy existed long back in Colonial British rule, no longer survives in the present-day democratic set-up of governance and the state can no longer be allowed to function in an arbitrary and vindictive manner keeping the public in dark about their governmental and also their administrative function.⁵ If we study the constitutional history of Britain then we will find that parliament's desire to know about who counselled and advised the monarch in the formulation of policy was a major factor in the struggle between Crown and Parliament.⁶

Right to Information Act 2005 commands convenient reaction to subject solicitations for government data. Ideal to Information engages each subject to look for any data from the Government, review any Government archives and look for guaranteed photocopies thereof. Ideal to Information likewise, enables subjects to official examine any Government work or to take the example of material utilized in any work. However, Information that can preferentially affect inside security, relations with outside nations, scholarly property rights, break of parliamentary benefit and obstructs examinations cannot be imparted to general society. Bureau papers are absolved until the point when a choice has been actualized. In any case, talks inside the Cabinet can never be uncovered.

The right to information is implicit in the Constitution of India; even so the dominant culture of the executive has been one of secrecy and resolute denial of access of information to the

³ I N. V. PARANJAPPE, *RIGHT TO INFORMATION LAW IN INDIA* (1st ed., Lexis Nexis, 2014)

⁴ Sharmendra Chaudhry, *Right to Information in India*, SSRN (Feb. 9, 2011), <https://ssrn.com/abstract=1758022>

⁵ *supra* note 1

⁶ *supra* note 2

citizen.⁷ Information is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the greater would be the responsiveness of government to community needs.⁸ However, law under constitution is not absolute; Supreme Court in *District Registrar v. Canara Bank*⁹ reiterated that there may be circumstances when information sought by the applicant may be refused in the larger interest of society.

Some of the significant provisions of the act are summarised below:

- i. **Section 2(h):** Public authorities means all authorities and bodies under the Constitution or any other law, and inter alia includes all authorities under the Central, state governments and local bodies. The civil societies substantially funded, directly or indirectly, by the public funds also fall within the ambit.¹⁰
- ii. **Section 4(1)(b):** Maintain and proactively disclose information.¹¹
- iii. **Section 6:** Prescribes simple procedure for securing information.¹²
- iv. **Section 7:** Fixes time limit for providing information(s) by PIOs.¹³
- v. **Section 8:** Only minimum information exempted from disclosure.¹⁴
- vi. **Section 19:** Two tier mechanism for appeal.¹⁵
- vii. **Section 20:** Provides penalties in case of failure to provide information on time, incorrect, incomplete or misleading or distorted information.¹⁶
- viii. **Section 23:** Lower courts are barred from entertaining suits or applications. However, the writ jurisdiction of the Supreme Court and High Courts under Articles 32¹⁷ and 226¹⁸ of the Constitution remains unaffected.¹⁹

⁷ Harsh Mander & Abha Joshi, *The Movement for Right to Information in India- People's Power for the Control of Corruption*, COMMONWEALTH HUMAN RIGHTS INITIATIVE, <https://www.humanrightsinitiative.org/programs/ai/rti/india/articles/The%20Movement%20for%20RTI%20in%20India.pdf>

⁸ Sahina Mumtaz Laskar, *Importance of Right to Information for Good Governance in India*, MANUPATRA (Oct.-Dec. 2016) <http://docs.manupatra.in/newsline/articles/Upload/AC9CD2C7-B8AD-4C5A-B910-3751BF5CB28.pdf>

⁹ *District Registrar & Collector v Canara Bank* (2005) 1 S.C.C. 496 (India)

¹⁰ The Right to Information Act, 2005, No. 22, Acts of Parliament s. 2 (h)

¹¹ The Right to Information Act, 2005, No. 22, Acts of Parliament s. 4 (1)(b)

¹² The Right to Information Act, 2005, No. 22, Acts of Parliament s. 6

¹³ The Right to Information Act, 2005, No. 22, Acts of Parliament s. 7

¹⁴ The Right to Information Act, 2005, No. 22, Acts of Parliament s. 8

¹⁵ The Right to Information Act, 2005, No. 22, Acts of Parliament s. 19

¹⁶ The Right to Information Act, 2005, No. 22, Acts of Parliament s. 20

¹⁷ INDIA CONST. art. 32

¹⁸ INDIA CONST. art. 226

¹⁹ The Right to Information Act, 2005, No. 22, Acts of Parliament s. 23

(A) Objective of Legislating the Act

The right to information is expected to improve the quality of decision making by public authorities, in both policy and administrative matters, by removing unnecessary secrecy surrounding the decision-making process. The more noteworthy the entrance of the subject to data, the more prominent would be the responsiveness of government to community needs. On the other hand, the more prominent the limitations that are set on 'get to', the more noteworthy the sentiments of 'feebleness' and estrangement.

Information from the government can be termed as national resource, which is created neither for the benefit of government nor for the benefit of the public officials. These are generated for the benefit of the public, which is proof of legitimate discharge of duties of the office and discharge is in the benefit of the public. Right to information is indispensable human rights throughout the world, which have wide range of application. The principle that underlies the right is MAXIMUM DISCLOSURE AND MINIMUM SECRECY.

The colonial legacy of secrecy, distance and mystification of the bureaucracy coupled with a long history of one party dominance proved to be a formidable challenge to transparency and effective government let alone an effective right to information secretive government is nearly always inefficient in that the free flow of information is essential if problems are to be identified and resolved.²⁰ Information can enable poor communities to fight the conditions in which they get themselves and help balance the unequal power elements that exist between individuals minimized through neediness and their legislatures.

Right to Information Act 2005 orders auspicious reaction to subject solicitations for government data. Right to Information enables each resident to look for any data from the Government, investigate any Government reports and look for confirmed photocopies thereof. Ideal to Information additionally engages residents to official examine any Government work or to take the example of material utilized in any work.

An informed citizenry will be better prepared to keep important vigil on the instruments of government and make the administration more responsible to the administered. The potential of RTI is indeed very high, but unless and until its potential is placed in progress with full utilization and awareness regarding the same is not present, it cannot be utilized.

RTI thus being inherent in democratic functioning and a precondition to good governance and realization of all other human rights. The main objectives of which are-

²⁰ Dr. Sheila Rai, *Transparency and Accountability in Governance and Right to Information in India*, RTI KNOWLEDGE PORTAL, http://rti.img.kerala.gov.in/RTI/elearn/GovernanceandRTIinIndiaSHEILA_RAI.pdf

- a) To operationalise the fundamental right to information;
- b) To set up systems and mechanisms that facilitate people's easy access to information; to promote transparency, and
- c) Accountability in governance; to minimize corruption and inefficiency in public offices and to ensure people's participation in governance and decision making.²¹

The Act thus envisages the harmonization of public interests with the right to information.²² However, leaving aside certain areas where the public interest demands some element of secrecy, that, where it has been felt that certain area of governance has to be kept outside the purview of the RTI Act, the same have been exempted under the specific provisions envisaged under the Act.²³ Thus, a harmonious balance has been tried between the two.²⁴

II. ASSURANCE OF GOOD GOVERNANCE

*"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing."*²⁵

-Justice P N Bhagwati

There is no doubt that nurturing good governance is essential to ensuring respect for human rights and that without the rule of law, independent courts and other institutions of the modern society such essential components of good governance are the promise of human rights remaining an unfulfilled promise.²⁶

The Act of Right to Information being legislated in the year 2005 was so done with the intent of facilitating and streaming of information to the citizens regarding regulation and governance of governmental and non-governmental organizations except for certain matters of secrecy and defence being under wraps.

With the same potent objective, the legislation maintains transparency, accountability, predictability and participation both on the ends of the organizations and the citizens.

Moreover, the preamble of the legislation signifies the achievement of the same by having two pillar points which the drafters of the legislation had which are the- Right to Freedom of Speech

²¹ M. M. Ansari, *Impact of Right to Information on Development: A Perspective on India's Recent Experiences*, CENTRAL INFORMATION COMMISSION, (May 15, 2008) <http://cccindia.org.in/A+perspective.pdf>

²² *supra* note 6

²³ Central Public Information Officer SCI v Subhash Chandra Agarwal, (2009) SLP (c) No. 32855

²⁴ *Id.*

²⁵ DR. ABHE SINGH YADAV, RIGHT TO INFORMATION ACT, 2005, AN ANALYSIS (Central Law Publications) (2016)

²⁶ Universal Declaration of Human Rights 1948, Preamble

and Expression²⁷; and the Right to Life²⁸.

Under both of these Articles the Supreme Court of India has over a span of two decades in various case laws have recognised the importance to Right to Information for the citizens to be exercised. Be it the case of *N Nagraj v Union of India*²⁹ wherein the judiciary by way of liberal interpretation deduced the right to know and right to access information under the realms of Article 19(1)(a) with the reasoning of ensuring open government oppressions thus ruling that it is the right to information which is implicit to freedom of speech and expression. As also in case of, *Ram Jethmalani v Union of India*³⁰ wherein the court observed that, withholding of information from the citizens by the State constrains the freedom of speech and expression. An informed citizenry will be better prepared to keep important vigil on the instruments of government and make the administration more responsible to the administered. The potential of RTI is indeed very high, but unless and until its potential is placed in progress with full utilization and awareness regarding the same is not present, it cannot be utilized.

An informed citizenry will thus be better prepared to keep important vigil on the instruments of government and make the administration more responsible to the administered. Thus, also ascertaining the potential of RTI is indeed very high, but unless and until its potential is placed in progress with full utilization and awareness regarding the same is not present, it cannot be utilized.

(A) Judicial Intervention: A Progressive Step

RTI in India also received judicial recognition though some landmark judgements of the Supreme Court. Brick by brick the judiciary has built an impregnable edifice of the Fundamental rights providing thereby a semantic expansion and wholesome judicial connotation to RTI.³¹

Justice Mathew in *State of Uttar Pradesh v. Raj Narain*³² stated that “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

²⁷ Constitution of India 1950, Article 19(1)(a)

²⁸ Constitution of India 1950, Article 21

²⁹ [2006] 8 SCC 212

³⁰ [2011] 8 SCC 1

³¹ *Supra* note 8.

³² [1975] 4 SCC 428.

wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security”.

In *Union of India v Association of Democratic Reforms*³³ the Court stated that, “...the little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.” Even in *D.K. Basu v State of West Bengal*³⁴ the court laid down guidelines to protect the fundamental rights of arrested persons. Among other things, it also included his right to be informed of who is arresting and interrogating him and why and also his right to have a friend or relative informed of the arrest, as soon as is practicable. This case shows that how healthier democracy and improved participation is result of access to information.

Right to Information Act will empower individuals to move past their obligation of choosing the legislature to a more extensive obligation of taking an interest in the basic leadership and administration forms.

However, the act does not emphasize active intervention in educating people about their right to access information- without widespread education and awareness about the possibilities under the act; it could just remain on paper.³⁵

(B) Public Participation in RTI

Essence of RTI lies in public participation in the democratic process. Information Commissioner at the Central Information Commission Madabhushi Sridhar Acharyulu mentioned that sensitising people on Right to Information (RTI) and creating awareness on the subject will go a long way in promoting public participation in promoting integrity and eradicating corruption. “Secrecy in the system breeds corruption. Those who cast their vote have every right to know about the candidate whom they prefer to represent them in the election. Political corruption has a serious impact on democratic governance. Therefore, care should be taken to strengthen public participation by questioning the system,” he emphasised.³⁶

Also, the public participation in RTI can be gained in the following way, as it did in case of *Bennett Coleman v Union of India* wherein the Hon’ble Chief Justice quoted that, “It is indisputable that the freedom of press embodies the right of the people to read.” Drawing upon an analysis on this statement it can be so inferred that, the right of people to read is referred as

³³[2002] 5 SCC 294

³⁴ [1997] 1 SCC 416

³⁵Anushree Adhau, ‘*Right to Information Act, 2005- An Overview*’

<<https://www.scribd.com/doc/20595082/Research-Paper-on-Right-to-Information-Act-2005>> accessed 8th September, 2020

³⁶ Editorial, “Public Participation key to check Graft”, *The Hindu*, (Dec 2, 2016) accessed 8th September, 2020

to 'right of the readers to gain information'.³⁷ This makes it as a way of participation of the public to get the information which is anticipated to be known to them without even asking for it.

A study conducted by CHRI (Commonwealth Human Rights Initiative) shows that 9.17 lakh RTI application has been filed in the year 2015-16 and 27.2% (47.66 lakh) of the total RTIs filed between 2005 and 2015 were to the different ministries and departments under the Centre. The overall proportion of rejection for Central Government (including UTs) has come down marginally from 6.62% in 2015-16 to 6.59% in 2016-17. These Public authorities rejected 2.86% of the RTI applications (26,267) for reasons other than Sections 8, 9 and 24 permitted under the RTI Act. This figure has also come down from 3.78% in 2015-16. The data shows that there 6% dip in the total number of RTI applications received by central government.

"Analysis of data suggests that RTI has achieved a lot but clearly, the transparency Act itself is losing teeth. The nation surely needs a fresh struggle against corruption to bring forth the untapped potential for which the RTI Act was enacted," said Rama Nath Jha, Executive Director of Transparency International India.³⁸

(C) Problems of Low Public Participation

First, Low awareness level- It was uncovered that just 15% of the respondents knew about the RTI Act. The awareness level is low among the hindered networks. Second, Constraints looked in documenting applications-PIOs (Public Information Officers) are required to give sensible help to the candidate in drafting and accommodation of the application. Third, Poor nature of data gave and Constraints looked in review of records.

Non-accessibility of User Guides for RTI usage for data searchers, non- accessibility of Standard structures for RTI application, awkward instalment channels for accommodation of utilization expenses and badly arranged accommodation channels for RTI application are alternate reasons looked at interest side.

Another issue was that the instalment instruments recommended in a portion of the State rules are badly arranged to the subjects applying from areas outside the concerned State, for instance, the application charge in Orissa must be paid through treasury challans and investors checks. Likewise, postal request, which is considered to be the most effortless instalment challan, isn't an accessible choice in Maharashtra, Orissa and Andhra Pradesh.

³⁷ [1973] AIR 106

³⁸ Editorial "About 2.44 cr RTI applications filed during 2005-2016", *Business Standard*, Oct 12, 2017.

III. NEED FOR AWARENESS OF RTI AMONGST CITIZENS

Right to Information being a right vested amongst the citizens of India, should be known to them so as to be exercised effectively. Democracy thus in real terms requires public to act as a sovereign force. As per the section 26 of the Act³⁹, it states that the ruling Government may develop and organize educational programmes to advance the understanding of the public, regarding how to exercise the rights conferred to them under this Act. This could thus be achieved to numerous people by way of use of television channels and various multimedia platforms like newspapers, radio's etc. which have a reach to a large number of people in the society.⁴⁰

The apex court in *Secretary, Ministry of I & B, Government of India v Cricket Association of Bengal* stated that, "The freedom of speech and expression enables people to contribute in debates on moral and social issues. It is the best way to find a truest mode of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political disclosure so essential to democracy."⁴¹

Over a period of time, it has also as a matter of fact being observed that the average awareness about the RTI is found to be low in the women as compared to the men, both in urban and rural areas.⁴² Further the awareness amongst the OBC/SC/ST scales down rather rapidly than in the general category.

Here it becomes a point of importance to understand that the public needs to be made aware of how to use the right effectively for its own personal benefit or benefit of the public at large and not for overburdening the government with workload and getting nowhere at the end. Things such as what kind of information can be asked by an applicant in his/her application are necessary to be conveyed. While the Act remains clear in defining the responsibilities of the appropriate government in creating awareness on the Act, there has been lack of initiative from the Government's side, which are restricted to publishing rules and FAQs on its website.

Here the lack of awareness about the RTI amongst the citizens is also as one of its reason because of the lack of promotion done on the part of the Government as compared to its other socio-economic development schemes where the citizens are more aware about it and the updates upon it. While this inadequacy on part of the Government in its promotion can be due

³⁹ Right to Information Act 2005, s. 26

⁴⁰ Information and Public awareness programme available at <<https://mnre.gov.in/information-and-public-awareness-programme>> accessed 10th September, 2020

⁴¹ [1995] 2 SCC 161

⁴² Available at <<https://ijsdr.org/papers/IJSDR1605161.pdf>> accessed 8th September, 2020

to lack of accountability, it can also be so because there is not enough information available to them about the failure or success of a given department at a Public Authority Level. Hence the Government is not in a position to enact the same in the applications.⁴³

Not only this but also it so happens that many a times because of dissatisfactory answers the applicants refrain from making further more relevant RTI applications, also this discourages others towards not making an effort of seeking information by themselves. Also, it is not only important to provide quality of information regarding the process of RTI but also to make sure that their privacy will be secured and won't be misused; to assure that their answers will be provided affirmatively in a given time frame or a follow up is assured etc. So, the quality of the responses to be provided by the Government can be improved by making time to time records of all the public activities, keeping its process transparent and smooth, by training the concerned PIO about the drafting of the applications answers etc.

Unless these problems are addressed comprehensively by the appropriate Government and Public Authority in tandem, it would continue to be an issue.⁴⁴ As per the provision of Section 27⁴⁵ and 28⁴⁶ of the RTI Act, that empowers the State Government and its competent authorities to make their own rules is concerned, they are severely being misused and subject to corrupt bureaucracy practises which ultimately are working against the very purpose of the act.

(A) RTI facilitating in identification of Scams

Since, the RTI applications are effectively addressed to, they have been helpful in identifying many scams in India such as the, 'Adarsh Housing Scam', where a 31 storey building, which came up in the area of Colaba, Mumbai, was original supposed to be a six-storey structure to house war widows and heroes of the 1999 Kargil War, here, shortly after the RTI came into force it was understood that the construction did not belong to the Government of Maharashtra, but to the Ministry of Defence under the Central Government and necessary actions upon it were taken thereafter.⁴⁷

Not only this but also many other scams such as the 2G scam, Indian Red Cross Society scam, Commonwealth Games scandal etc. have been caught and worked upon. Thus, with effect to it, the modus operandi of corruption and abuse of power can be stopped successfully for which

⁴³*Supra* note 14.

⁴⁴ *Ibid.*

⁴⁵ Right to Information Act 2005, s. 27

⁴⁶ Right to Information Act 2005, s. 28

⁴⁷ Shyamal Yadav '10 ways in which RTI has changed the functioning of govt, officials', available at: <<https://indianexpress.com/article/explained/10-ways-in-which-rti-has-changed-the-functioning-of-govt-officials/>> accessed at 8th September, 2020

there needs to be encouragement of RTI applications amongst the citizens which ultimately leads to spreading awareness about the RTI amongst the citizens. Also, in the opinion of the courts, the large number of RTI applications should not merely become a tool of operation and obstructing the progress of the Government by increasing its workload.

IV. CONCLUSION

“In Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be 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 functionaries.”⁴⁸

-Justice K. K. Mathew, Supreme Court of India

Thus, in this way RTI will empower the individuals to move past their obligation of choosing the legislature to a more extensive obligation of taking an interest in the basic leadership and administrative form. Also, in the similar way, because of the RTI Act, the accountability of the government will rise, which will keep them abreast in their timely working along with increasing their efficiency.

Hence, the RTI Act should be delivered as per the spirit of the Act which they have to be ultimately responsible for. Ironically the citizens earlier didn't have any legal right to know about the public policies or the expenses which has changed over a period of time but if this change is not exercised properly the purpose of this Act won't be served. Also, by way of proactive disclosures under section 4(1)(b)⁴⁹ obtaining information even without asking for it can be made possible which will eventually fulfil both the purposes of the citizens of having updated information in public sector and also would decrease the work load of the Government in terms of receiving RTI applications. It thus becomes the job of the Government to ensure that RTI is not killed by the corrupt and the inefficient and the very spirit of it sustains.

The Right to Information ought not to simply be seen as an instrument of showdown due to lost eagerness of a few people and make a wedge between the subject and the administration. Furthermore, it needs to go about as a mirror in order to arouse authoritative procedures, direct them to the intentional way of rectification and change in this very manufactures a connection between the residents and his legislature in a progressively tasteful way. Thus, making people aware of the right they possess and working towards its successful attainment becomes necessary.

⁴⁸ *Supra* Note 29

⁴⁹ *Supra* Note 9

Thus, the right to information, though not absolute in nature, 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.⁵⁰

⁵⁰ *Supra* note 15