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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RIGHT TO INFORMATION-A REALISTIC APPRAISAL

AUTHORED BY - R. SAGUNTHALA

INTRODUCTION:

“The real Swaraj will come not by the acquisition of authority by a few, but by the acquisition of capacity by all to resist authority when abused”. When Mahatma Gandhi said this, he may not have imagined that one day India will have to make a law to empower people for something as basic as seeking information about the development of the country.

The date of 12th October 2005 shall be remembered as a new era of empowerment for the common man in India. It is applicable everywhere except the state of Jammu and Kashmir. This law was passed by Parliament on 15th June 2005 and came fully into force on 12th October 2005. Information disclosure in India was restricted by the **Official Secrets Act 1923** and various other special laws, which the new RTI Act now relaxes.

The effective date is often incorrectly referred to as 13th October 2005. But, since the Act came into force on the midnight between the 12th and 13th, therefore, the official date is 12th October 2005.¹

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.

CONSTITUTION OF INDIA AND RIGHT TO INFORMATION

RTI act 2005 is a law enacted by the parliament of India, giving citizens of India access to records of the central government and state governments. The Act applies to all States and Union Territories of India, except the state of Jammu and Kashmir – which is covered under a State-level law. Under the provisions of the Act, any citizen (including the citizens within J&K) may request information from a “public authority” (a body of government) which is required

¹ The right to information Act, P.K.Das, 4th edition, universal law publishing co., pg.no 19.

to reply within thirty days.²

The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. Thus, the Right to Information Act is a codification of the important fundamental right (**Article 19**) of citizens. The Act and its rules define a format for requisitioning information, a time period within which information must be provided, the method of giving the information, some charges for applying, and list of organizations exempted from giving information.

The **Right to Information Act 2005 (RTI)** is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is an Act of the Parliament of India “*to provide for setting out the practical regime of right to information for citizens.*” Jammu and Kashmir has its own act called **Jammu & Kashmir Right to Information Act, 2009**.³

The formal recognition of a legal Right to Information in India occurred more than two decades before legislation was finally enacted, when the Supreme Court of India ruled in *State of U.P. v Raj Narain* that the Right to Information is implicit in the right to freedom of speech and expression explicitly guaranteed in **Article 19** of the **Indian Constitution**. Subsequently, the Court has affirmed this decision in numerous cases and has even linked the Right to Information with the right to life enshrined in **Article 21** of the **Constitution**.

On 16th December 2002, the **Bill for Freedom of Information** was passed after several changes were made for its improvement. The Bill is in accord with both **Article 19** of the **Constitution** as well as **Article 19** of the **Universal Declaration of Human Rights**. Regarding the penalty for those officials who refuse information, as per the Bill’s provisions, that the CCS Conduct Rules would be amended for disciplinary action against such officials. Out of 200 countries, only 20 have laws for Freedom to Information. Bill will enable the citizens to have an access to information on a statutory basis. The Bill specifies that every

² Right to information Act 2005, implementations and challenges, P.K. Saini, R.K.Gupta, Deep & Deep publications pvt.ltd, pg 29.

³ Right to information Act 2005, implementations and challenges, P.K. Saini, R.K.Gupta, Deep & Deep publications pvt.ltd, pg 55

citizen shall have the right to freedom of information. An obligation is cast upon every public authority to provide information and to maintain all records consistent with its operational requirements duly. The Bill provides for the appointment of one or more officers as Public Information Officers to deal with requests for information.

The primary stakeholders in RTI are –⁴

1. Citizens;
2. Public Authorities comprising of Public Information Officers and the Appellate; and
3. Central and State Information Commissions.

One important task of the State both at center as well as at the state level is to appoint the Chief Information Commissioners and other Commissioners and it is clearly stated in the act that those people who will be appointed for these positions should have the background of social Service, journalism, academics, jurist etc.

Definition of RTI in Legal Terms-

Section 2(f) of the RTI Act defines Information as:

“Information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for a time being in force.

Right to Information (RTI) is defined under Section 2(j) as:⁵

“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

- 1) Right to inspection of work, documents, records;
- 2) Taking notes, extracts, or certified copies of documents or records;
- 3) Taking certified of materials

⁴ Right to information, concept law practice with position in other countries and case studies, N.K. Jain, Regal publications, new delhi, pg.no 36, 37

⁵ Right to information law, Dr.S.R. Myneni, Asia law house Hyderabad, 1st edition 2013 pg no 8

- 4) 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.

The Importance of RTI –

At the price of ₹10, it provides the facility for citizens to get information and the government's actions and decisions.

If a thousand citizens spend about ₹70 per month (if you send your application by registered post or courier, the extra cost will be about 10 to 25₹. The cost getting the information of about five pages would be ₹10. Even if you add the postage cost of getting the information the total will be about ₹70) and about an hour in their own house they can file a new RTI application and get information about matters, which concern them.

The law mandates that the information has to be given within 30 days.

The power of getting accountability, reducing corruption, impacting policy decisions and ensuring better governance is now with us. We missed our opportunity in 1950, but have another chance now. You individually can make a big contribution to getting the Nation we want. A small effort from our own house can bring Swaraj.

The RTI stipulates the following –

A time period within which information must be provided, namely 30 days.
Method of giving information.

Exemptions of information

Section 8(1) – *“Which will not be given.”*⁶

However, **Section 8(2)** specifies that “if there is great public interest in disclosure, all information must be given, even if it exempt.”

Citizens can ask information by getting Xerox copies of documents, permissions, policies, and decisions. Inspections of files can also be done and samples can be asked.

⁶ Right to information law, Dr.S.R. Myneni, Asia law house Hyderabad, 1st edition 2013 pg no 12

All administrations offices of public authorities have to appoint 'Public Information Officers' (PIO) or 'Assistant Public Information Officers' (APIO). Citizens apply for information to the Public Information Officer of the concerned office.

If the information is not provided or wrongly refused, the citizen can go in appeal to an Appellate Authority who would be an official in the same department, senior to the PIO. The Appellate Authority has to give a decision in 30 days. If this too does not give a satisfactory result, one can appeal, to the State or Central Information Commissioner, which is an Independent Constitutional Authority, established under the Act.

The Act provides for a penalty for a delay on the POI at a rate of ₹250 per day of delay, or for mala fide denial of information, or giving false information. In case of information being delayed, no charges for information are to be paid.

State of U.P. vs Raj Narain case (1975) 4 SCC 428 (landmark case)⁷

It was held that "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be 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 all entitled to know the particulars of every public transaction in all its bearing."

People's Union for Civil Liberties vs Union of India (AIR 2004 SC 1442)
Justice S.B. Sinha and Justice B.M. Khare

It was held that "Right to Information is a facet of the freedom of 'speech and expression' as contained in article 19(1) (a) of the constitution of India. Right to Information, thus, indisputably is Fundamental Right."

Govt. of India vs The Cricket Association of Bengal (1995) 2 SCC 161.

The Supreme Court says that "the freedom of speech and expression includes right to acquire information and disseminate it. It enables people to contribute to the debate on social and moral issues. Right to freedom of speech and expression means right to education, to inform, to entertain and right to be educated, informed and entertained. Right to telecast is, therefore,

⁷ <http://nammakpsc.com>

within the ambit of Article 19 (1) (a).”

Apart from these leading cases, there are many cases where a person’s right to know and right to information have been upheld. The purpose of discussing all these is to show that we already have the right to information as guaranteed by Article 19(1) (a) of the Constitution of India. Moreover, as an extended part of the freedom of speech and expression, the right to know and to be known is our Fundamental right.

Interrelation of RTI with other reforms –⁸

1. Constitution and Right to Information:

As a result of the Indian national movement against the British imperialist colonial rule, the liberal democratic political system with a written Constitution includes rule of law, social justice, development, adult franchise, periodic elections, a multiparty system has come into existence. For the transparent functioning of the democratic political system, the founding fathers of the Constitution included the provisions of the right to expression in part three of the Constitution in the fundamental rights. While there is no specific right to information or even right to freedom of the press in the Constitution of India, the right to information has been read into the Constitutional guarantees which are a part of the Chapter on Fundamental Rights.

The Indian Constitution has an impressive array of basic and inalienable rights contained in Chapter Three of the Constitution. These include the Right to Equal Protection of the Laws and the Right to Equality Before the Law (**Article 14**), the Right to Freedom of Speech and Expression (**Article 19 (1)(a)**) and the Right to Life and Personal Liberty (**Article 21**). The Right to Constitutional Remedies in **Article 32**, backs these that is, the Right to approach the Supreme Court in case of infringement of any of these rights. These rights have received dynamic interpretation by the Supreme Court over the years and can truly said to be the basis for the development of the Rule of Law in India.

As pointed out by H.M. Seervai, *“Corruption, nepotism and favoritism have led to the gross abuse of power by the Executive, which abuse has increasingly come to light partly as a result of investigative journalism and partly as a result of litigation in the Courts”*. The legal position with regard to the right to information has developed through several Supreme Court decisions

⁸ Right to information Act 2005, implementations and challenges, P.K. Saini, R.K.Gupta, Deep & Deep publications pvt.ltd, pg

given in the context of all above rights, but more specifically in the context of the Right to Freedom of Speech and Expression, which has been said to be the adverse side of the Right to Know, and one cannot be exercised without the other.

The interesting aspect of these judicial pronouncements is that the scope of the right has gradually widened, taking into account the cultural shifts in the polity and in society. The development of the right to information as a part of the Constitutional Law of the country started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging governmental orders for control of newsprint bans on distribution of papers, etc. It was through these cases that the concepts of the public's right know developed.

2. Supreme Court and Right to Information:⁹

For more than two decades, the Supreme Court of India has recognized the right to information as a constitutionally protected fundamental right, established under the **Article 19** (right to freedom of speech and expression) and **Article 21** (right to life) of the Constitution. The court has recognized the right to access information from government departments is fundamental to democracy.

Therefore, Justice K. K. Mathew of Supreme Court of India said that “In a government, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people have a right to know every public act, everything that is done in a public way, by their public functionaries. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.”

3. The Indian Penal Code 1860 and Right to Information:

Though **The Indian Penal Code 1860** does not deal explicitly with a citizen's Right to Information, it however contains various provisions which have close bearing on the responsibility of a public servant to provide correct information to the public, failing which the public servant concerned is liable to punishment for his acts of omission and commission in this regard. The **Section 21** of IPC defines a public servant to include such categories of

⁹ Right to information Act 2005, implementations and challenges, P.K. Saini, R.K.Gupta, Deep & Deep publications pvt.ltd, pg 32

persons as every commissioned officer in the military, naval or air force of India, every judge, every officer of a Court of Justice, every jurymen, assessor or a member of Panchayat assisting a Court of Justice or public servant, every arbitrator or other person to whom a cause or matter has been referred for decision or report by a Court of Justice or by any other competent public authority, every person who holds any office by virtue of which he is empowered to place or keep any person in confinement, every officer of the Government whose duty it is, as such officer, to prevent offenses and to give information of offenses.

Role of the government in RTI –

Section 26 of the Act enjoins the central government, as also the state governments of the Union of India (excluding J&K), to initiate necessary steps to:

- Develop educational programs for the public especially disadvantaged communities on RTI.
- Encourage Public Authorities to participate in the development and organization of such programs.
- Promote timely dissemination of accurate information to the public.
- Train officers and develop training materials.
- Compile and disseminate a User Guide for the public in the respective official language.
- Publish names, designation postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if the request is rejected etc.

Use of Technology in RTI –

For any program to scale up to a national level and across different demographic segments, a technology-based approach is most effective. For RTI in particular, RTI being an information-based system, the use of technology is not just preferable, but imperative. In national scale programs, initiated by the central government, the typical approach is to allow every state to create and deploy its own technology solution. This results in a plethora of issues, such as:

- Inadequacy of the state machinery with respect to technology know-how.
- Attempt to procure hardware and software rather than long-term solutions.
- Lack of intent for process improvement prior to deployment.
- Opaque systems for citizens and the central government.
- Lack of transparency in fund allocation and utilization.

- Lack of ownership for achieving the desired success.
- Dilution of the overall vision.

The use of technology, therefore, is not about deploying computers and connecting government offices. It is more about how citizen requests can be captured and tracked, and how PA responsiveness can be monitored, and all of this in the true spirit of the Act.

Besides citizens, technology also needs to become an enabler for PAs to be able to respond to RTI requests on time as stipulated by the Act. When we all know that it is impossible for PAs to become fully automated overnight, nor is there sufficient budget with them to automate several decade old processes and records, is there a way in which they could still cope with the RTI onslaught? Rollout of RTI cannot be successful unless PAs have the required means to fulfil citizen expectations.

The key metrics for accelerating “Right to Information” in India –

There must be a consistent growth in RTI requests over the years with exponential growth in the initial years.

This is because:

- 1) RTI has been implemented primarily due to realization by the Government that transparency and accountability generally lack in governance. By this rationale, a significant portion of the population must necessarily be dissatisfied, hence should have the need to submit RTI queries if given a chance.
- 2) With increased transparency in governance, the information visible to the people will initially result in more RTI queries, not less. This is because filing an RTI request is only a means and not an end. Information will enable people to pursue their actual “ends” with government organizations, which is extremely difficult today.
- 3) A maturing democracy tends to be more aware and makes the government more answerable and transparent.

The interpretation of the RTI Act must, to the extent possible under the Indian federal structure, be consistent across central and state governments. This should be reflected in the nature of responses made to RTI queries and appeals/complaints made to the Commission. This in turn

should be monitored in which requests complaints and appeals data is accurate and available real-time.¹⁰

The level of automation must see a steady increase across government organizations. This will indicate the adoption of the RTI Act in letter and spirit by PAs. There should eventually be a steady decline of appeals and complaints (in percentage terms). Government departments should be able to resolve the majority of the RTI queries while ensuring satisfaction of the applicants. The nature of RTI queries should see maturity over the years. This would be reflected in information-based queries changing to analysis-based queries as a result of the basic information being already available to the masses.

In the case of RTI, the citizen is central. RTI is “for, to and by” the citizen. As a result, the entire RTI system needs to gravitate around the citizen, and not the other way round. This essentially means the following:

- The citizen should be able to send a request in the same manner to all PAs;
- The citizen should not be required to decipher the government maze in order to reach the specific PA in charge of the area of the RTI request;
- The citizen should be able to track the status of the request at any time.
- The PA/PIO not responding within the stipulated time should get exposed automatically.
- The identity of the citizen should be held anonymous to the PA. The SIC in the state for state government PAs and the CIC for central government PAs should be able to see the requests currently floating in the system.

Restrictions Imposed by the Act –

The Act itself is self-restrictive in nature. The Act does not make the Right to Information an absolute right but imposes a restriction on this right. **Section 8(1)** of the Act deals with exemption from disclosure of information. The section says that notwithstanding anything contained in this Act, there shall be no obligation to give any citizen, –

“(a) Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

¹⁰ The right to information Act, P.K.Das, 4th edition, universal law publishing co., pg.no 19.

- (b) Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) Information disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (d) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- (f) Information received in confidence from foreign Government;
- (g) Information, disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (h) Information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers; Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over.”

Under Section 2(h) of the RTI Act ‘public authority’ means anybody or institution or Authority constituted or established:¹¹

- By or under the Constitution of India;
- By any law made by the Parliament;
- By any law made by the State Legislature;
- By any notification issued by the appropriate government and includes;
- Body owned, controlled or substantially financed;
- NGOs established, financed (directly or indirectly) by the Government.

Restrictions Under Indian Law On Right To Know –

There are laws which are contrary to the right to know in India and need to be amended in order to preserve the right to know. **Sections 123, 124, and 162** of The **Indian Evidence Act** provide

¹¹ Right to information law, Dr.S.R. Myneni, Asia law house Hyderabad, 1st edition 2013 pg no 9

to hold the disclosure of documents. **Section 123** provides that any head of a department may refuse to provide information on affairs of state and only swearing that it is a state secret will entitle not to disclose the information. In a similar manner **section, 124** states that no public officer shall be compelled to disclose communications made to him in official confidence. **Section 162** provides court not to inspect a document relating to matters of state.

The Official Secrets Act as evident from its name, under **section 5**, provides that any government official can mark a document as confidential so as to prevent its publication.

The challenges faced by the RTI Act –

The general awareness amongst people about the RTI Act and how it can be used for their benefit is still low. Moreover, there is a lack of sincerity on the part of government officials in disclosing information, who often threaten the applicant or refuse to provide information. Additionally, the Information Commissioners have time and again cited the lack of manpower required to comply with all the provisions of the Act.

Recently, the Union Cabinet was contemplating amendments to the RTI Act, which were subsequently withdrawn after pressure from activists. The amendments, if cleared, would have restricted the disclosure of file nothings in government departments under the RTI Act only to the ones related to social and developmental issues.

Also, the selection process for appointments made to public offices would have been concealed from the public. However, the very fact the such an amendment was even considered by the government and moreover, the Supreme Court's judgment in Namita Sharma's case has set the alarm bells ringing as far as the future of the RTI Act is concerned.

Information which is exempted from disclosure –

- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, "strategic, scientific or economic" interests of the State, relation with foreign State or lead to incitement of an offense;
- Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign Government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. (NB: This provision is qualified by the proviso to **sub-section 11(1)** of the Act which exempts disclosure of “trade or commercial secrets protected by law” under this clause when read along with **Section 8(1)(d)**)

Loopholes of RTI Act –

As much as the Act has empowered the citizen and given them a “weapon” to keep the public officers in check, not everything about it is foolproof. The Act has flaws – Some of them in its implementation, and some in its interpretations. There are also some specific problems with the implementation of Acts in certain states. For instance, Chhattisgarh has increased the fee

for an RTI application to ₹ 500, placing it beyond the reach for a lot of people. This is despite the fact that the Act stipulates a nominal fee.

There is hope though. The Whistleblowers Protection Bill is closely connected with the success of the RTI Act, considering the increasing attacks on RTI Activists who have dared to register complaints against corrupt politicians, and wilful misuse of power by them. The legislations to protect whistleblowers, when enacted, shall provide safeguards to an RTI applicant.

Fallacy in the Act –¹²

This act empowers the people to gather information. But the problem is that when 35% of the population is illiterate, then how anyone could expect that people will demand information. The act lacks necessary teeth for defaulters. In cases where information has been denied without sufficient cause, the penalty is not so harsh enough so as to have a deterrent effect on those who do not want to share information.

The official mindset is a very big obstacle in the progress of this act. No official in normal condition wants to share information. They generally prefer not to share information, and therefore people find it very difficult to secure information from them. The act itself provides for several grounds on which the public information officer turn down the application. Although one is allowed to appeal to next higher authority but this is just making the matter worse. The act being based on computerized records of data, it may take a long time in computerization of such vast data and therefore the doubt hangs over whether the act would be implemented in a time bound manner.

Conclusion –

Until the introduction of the Right to Information Act, information was the property of those people who are in the ruling side and secrecy was maintained. With the commencement of the Act, now the people have got right to take, see, check and inspect any information, which is not coming under the exemption list. But at the same time it requires a lot of awareness campaign among the people in order to utilize the act to combat the corruption and get the services of the State, otherwise the present **Right to Information Act 2005** will also become just like any

¹² The right to information Act, P.K.Das, 4th edition, universal law publishing co., pg.no 19.

other act.

RTI can be termed truly successful only if it becomes “effective” in the true spirit of the Act

- When there is easy and widespread access for filing RTI queries;
- When the masses are aware of the course and recourse they are entitled to;
- When the process becomes so easy that the poor and illiterate can also participate;
- When a PA can be challenged, but not the citizen who is seeking information;
- When all RTI queries can be tracked to completion with full accountability;
- When analysis of RTI queries can be done for improvement of governance;
- When PAs become proactive in sharing information without an RTI query;
- When transparency becomes visible in government, not just in the RTI process;
- When transparency in governance in India is recognized internationally.

The RTI Act has been lauded by democracy advocates all over the world, since it is at par (or even better) than similar laws enacted in countries in the West. For instance, in the US and UK, the respective information disclosure acts require the applicant to disclose his personal details, whereas in India, no such details are required. The RTI Act is one of the legislation that is indeed the pride of Indian democracy.

The RTI Act, as it stands today, is a strong tool to uphold the spirit of democracy. The need of the hour is that the RTI Act should be implemented to ensure that the objects of the RTI Act are fulfilled. Any attempt to dilute the provisions of the RTI Act will only quell its success. Since the first step in cleansing any system is to expose its malaise, the same method needs to be followed in RTI as well.