

## **A Descriptive Study on the 15 years Journey of Right to Information Act, 2005 in India**

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### **Abstract**

This paper attempts to study **15 years** journey **RTI law** that gives an ordinary citizen the right to ask questions & seek information/disclosure from the Government, Administration & the Public Offices. Right to information is a weapon in the hands of citizens of the country to know the functions performed by public authorities, the purpose of the public transaction said to be done in the name of the public act and the source of finance to discharge such functions. Right to information exists before the enactment of Right to Information Act, 2005 because it is considered as one of the fundamental rights within the purview of [Article 19\(1\)\(a\)](#). This right promotes transparency, accountability in function discharge by public authorities. Although Right to information is considered as advancement in India it suffers from several drawbacks which need to be revised and improved. Right to Information Act, 2005 promotes harmonious construction between people and the government of people. Earlier, where situation arose public officer became superior-oriented rather than service-oriented because there were no checks upon them regarding their services. But the RTI Act, provides a straitjacket solution to make public officer again service oriented. Now under RTI Act, people have right to get details of public authorities so, it creates a fear of exposing upon the mind of the public servant, which is changing the attitude of public officers towards their duties and responsibilities.

Role of Right to Information Act, 2005 for Good Governance because RTI Act helps to improvement in accountability, the performance of government. The act facilitates a mechanism to access upon information by the public from public office. Any kind of administrative action or quasi-judicial judgment taken by any public authorities so, minute details are required to maintain. The general public or affected parties can collect that information from public office and time. Act also appreciates the participation of citizens in the decision making process. NGO, co-operation, institution or general people have right to get information regarding various yojana, plans, schemes, allocation of resources and funds by the government in a rural and urban area. With the help of those data NGO and social welfare, the institution gets an idea about the problem in the

society and their solutions too. Act provides aids to reduce corruption in public offices, now the public officer is not utilizing the fund for their private use, and not abuse their public power.

*Key words: RTI act, good governance, issues , NGO, transparency*

## **Introduction**

India is considered as the largest democracy in the world. The basic feature of every democratic setup is transparency, openness and accountability. In India, public authorities or administrative authorities have a wide discretionary power, so feeling has been arisen in the mind of legislators as well public that this may lead to misuse of power which will ultimately result in maladministration and corruption.

For this purpose there should be a right vested in the common people of the country to access the information regarding the conduct or act discharged by public officials, so the system of check and balance can be maintained. Therefore, Right to Information has emerged. Right to Information implies that the public can participate in governance by accessing the information held by administrative or public authorities regarding the function discharged by them for the public welfare.

It is not only a statutory right but also a fundamental right of a citizen to know the information related to the public act performed by public authorities. It is fundamental for good governance and makes governmental authorities more transparent and accountable towards the common people of a country. There is a proximate relation between Right to information and Administrative law as Administrative law can be defined as “*branch of public law deals with the operation performed by administrative authorities*”, and Right to Information empowers the public to access information held by public authorities. There are many provisions in RTI Act, which impose obligations, duties responsibilities as well as a penalty upon public officer but no provision for the appreciation for their hard works, which create a situation of de-motivation in the mind of public employees. Act also not provides any kind of protection to the whistleblower. Basically, Whistleblowers get information with the help of right conferred under the RTI Act, from

public information office and give the report to Civil Vigilance Commission (CVC) about corruption, illegal works, malpractices etc. Whistleblower Protection Act is introduced by the government in 2014 but that Act has many loopholes and no proper protection provided to a whistleblower in RTI Act which makes the worst condition for a man who raises their voice against injustice. Poipynhun Majaw murder case (2018), Nanjibhai Sondarva murder case (2018), Bhupendra Vira murder case (2016), Nandi Singh murder case (2012) etc. are the example of whistleblower murder cases. 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.

### **Objective:**

This paper intends to explore and analyze **the Right to Information Act** has been in place for **15 years**. A landmark legislation, that has opened the doors for transparency in government.

### **Historical Background**

- The right to information gained power when **Universal Declaration of Human Rights** was adopted in 1948 providing everyone the right to seek, receive, information and ideas through any media and regardless of frontiers.
- The **International Covenant on Civil and Political rights 1966** states that everyone shall have the right to freedom of expression, the freedom to seek and impart information and ideas of all kinds.
- According to **Thomas Jefferson** “*Information is the currency of democracy,*” and critical to the emergence and development of a vibrant civil society. However, with a view to set out a practical regime for the citizens to secure information as a matter of right, the Indian Parliament enacted the Right to Information Act, 2005.
- Genesis of RTI law started in 1986, through judgement of Supreme Court in **Mr. Kulwal v/s Jaipur Municipal Corporation** case, in which it directed that freedom of speech and expression provided under **Article 19** of the Constitution clearly implies Right to Information, as without information the freedom of speech and expression cannot be fully used by the citizens.

### Need and Objectives of the Act

Right to information is the need of the current scenario because it assists to maintain transparency and accountability in government work. It helps to create a situation where the general public can get details of government action, plans, Yojana, schemes, etc., which aids to enhance the responsiveness of government towards society.

Right to Information Act in India took around 80 years to transform a grimy system of authority, valid by the “*colonial officials secrets act*”, where people can demand the “*right to information*”. India having a feeling of self-esteem in being the largest democracy, but with the passing of the recent enactment of the “Right to Information Act, 2005”. India has also become a strong democracy. The remarkable shift for Indian democracy, for the more access to the information by the citizen. Its “*main focus on transparency and accountability in relation to the public authorities has been basically financed by the government*”. Right to information has constitutional status, also it is enforced from [Article 19 \(1\)\(a\)](#) which talks about “*fundamental rights of freedom of speech and expression*”.

This Act is very necessary for each and everyone due to this our government officials and public institutions gathered information and work upon them. It embedded the right of every citizen of India to have access or control of the information related to finance to any authority by the state, thereby responsibility arises on the authority to use the information effectively without including into any corrupt activities. *“In one of the cases, the Supreme Court of India ruled that every person has a right to know about expenses and assets against candidates for election, because these candidates offer the public services with their own desire so that they cannot demand exemption from any of the details related to assets or any charges against them.”* According to the above case, not only candidates but a political parties, worship places, education centres, but even private schools and public companies fall under this Act.

The Mazdoor Kisan Shakti Sangathan (MKSS) was founded by social activists Aruna Roy and Nikhil Day in the year 1990 in the state of Rajasthan. This organization plays a very important role in the struggle of right to information. With the efforts of activists and international agencies, a large number of states enforced RTI Acts. They were Tamil Nadu (1996), Goa (1997), Madhya Pradesh (1998), Maharashtra (2000), Rajasthan (2000), Karnataka (2000 ), Delhi(2001), Assam (2002), and Jammu Kashmir(2003).

### **What is Public Authority?**

**"Public authority"** means any authority or body or institution of self government established or constituted—

- by or under the Constitution;
- by any other law made by Parliament/State Legislature.
- by notification issued or order made by the appropriate Government, and includes any—
  - body owned, controlled or substantially financed;

- non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.
- **Section 4** of the RTI Act requires **suo motu disclosure of information** by each public authority. However, such disclosures have remained less than satisfactory.
- **Section 8 (1)** mentions exemptions against furnishing information under RTI Act.
- **Section 8 (2)** provides for disclosure of information exempted under Official Secrets Act, 1923 if larger public interest is served.
- The Act also provides for appointment of **Information Commissioners** at Central and State level. Public authorities have designated some of its officers as Public Information Officer. They are responsible to give information to a person who seeks information under the RTI Act.
- Time period: In normal course, information to an applicant is to be **supplied within 30 days** from the receipt of application by the public authority.
  - If information sought **concerns the life or liberty of a person**, it shall be supplied **within 48 hours**.
  - In case the application is sent through the Assistant Public Information Officer or it is sent to a wrong public authority, five days shall be added to the period of thirty days or 48 hours, as the case may be.

### **Features of Right to Information Act, 2005**

Public authorities have a duty to provide any information which is claimed by a citizen.

Public authorities are under the obligation that they need to circulate the information to the person who demands the information. However, this Act comes with certain obligations relating to the security of the nation, personal information & other person's information.

There is a time limit on the authority to give information within 30 days.

If the authority denies providing any kind of information then the person has the power to go to the appellate authority. Later they can also go for the second appeal which falls under the “central information commission/state information commission”.

Local court commands cannot be entertained in these scenarios.

There are 25 organizations which are exempted from the right to information under the “second schedule” of this Act. These include Central Economic Intelligence Bureau, Intelligence Agencies, etc., certain bodies which basically perform the research work with regard to the country’s security, special service bureau, narcotics control board, but RTI Act is not applicable to “Dadra and Nagar Haveli & Lakshadweep”. This Act has done marvellous work because it gives the path to access information which earlier remained secret. This Act impacted the system and the people both tangible and intangible. People use this activity as a tool to get their documents and avail services like “passport, death certificate, pension, birth, ration card and income tax return”.

Many people who are incapable, poor or physically disabled get benefits from this Act. RTI Act works with “administration in which there is more transparency with regard to the functioning of public bodies” due to which they maintain all records which are categories as the indexed. If transparency is removed or abolished from this Act then the chances of corruption practices increase and the delaying of work would become slower due to which lower investment means misuse of power, authority and the funds used for private purposes.



RTI helps the administration to take proper action and adopt a policy which helps the government to reduce corruption and work effectively. It also involves the selection of appropriate programmers to achieve government objectives. The largest indicator of “RTI Act” has slowly lowered the level of corruption in India.

Chapter 1 of this Act deals with the definition that is covered under this Act e.g. definition of “information”, “competent authority”, “state public information officer”, “Right to Information”, “public authority”, etc. Chapter 2 deals with the obligation of public bodies against the maintenance of books and records in their interest areas of work and the different procedures related to the application of information. Section 8 is defined as “exemption from disclosure of information”. Sub-Section (1) states that Notwithstanding anything contained in this Act, there shall be no obligation to any citizen. Disclosure of the information would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign States or lead to incitement of an offence.

The 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. The 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 a 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. The 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: Provided that the decisions of the Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made



public after the 14 decision has been taken, and the matter is complete, or over: Provided further that those matters which come under the exemptions specified in this Section shall not be disclosed.

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 unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied.

The above Section talks about the exemption in which public organization cannot disclose their information because that likely to threaten for the society and the parliament or not mandate to disclose. Only with permission, it can be disclosed.

### **Critical Appraisal of Right To Information Act**

The RTI Act makes the right to information as a tool to check upon the misuse of the discretionary power of administrative authorities but it suffers from several drawbacks which weaken the position of the right to information. The drawbacks are as follows:

[Section 2\(h\)](#) defines the term ‘public authority’ but it does not give a comprehensive and exclusive definition of public authorities which might create confusion. The term ‘Public Authorities’ includes Non-government organization which are funded by the government either directly or indirectly but there are some NGOs which are funded by the public then the question has been arising that whether these NGOs falls within the category of public authorities or not. Temples appeared not as public authorities because they are funded by trusts but in many cases, the Supreme Court considered temple as public authorities. So, here also there is no clear picture in the Act whether the temples considered as public authorities or not.

Another loophole in this Act is absence of contempt provisions, this stated that the information commission shall be binding but the provision of ‘contempt of court’ is absent due to which it cannot force or compliance to the public to follow the rules. the absence of ‘contempt of court’ make the non-compliance of the order passed by the information commission .there must be provision insert in this Act.

## Conclusion

The Right to Information Act was made to achieve social justice, transparency and to make accountable government but this act has not achieved its full objectives due to some impediments created due to systematic failures. As observed by Delhi High Court that misuse of the RTI Act has to be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act". It is well recognized that right to information is necessary, but not sufficient, to improve governance. A lot more needs to be done to usher in accountability in governance, including protection of whistleblowers, decentralization of power and fusion of authority with accountability at all levels. This law provides us a priceless opportunity to redesign the processes of governance, particularly at the grass roots level where the citizens' interface is maximum.

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