

RIGHT TO INFORMATION VIS A VIS NATIONAL SECURITY

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ABSTRACT

“The year 2023 marks 18 years of RTI Act; A long journey worth researching”.

RTI Act 2005 is the welfare legislation and one of the most progressive reforms in recent years, which enhance the ambit of Fundamental Rights available to citizens under Part III of the Indian Constitution. RTI Act is considered an advancement of the Right to freedom of speech and expression under Article 19(1)(a). Various judicial pronouncements held that Right under Article 19(1)(a) includes the Right to know where citizens can acquire information from public authorities. Democracy and RTI are interrelated, ensuring good governance, transparency, and government accountability towards its citizens. Previously Government was immune from answering its action. People electing democratic Government had no idea about policy matters, their progress, and implementation. That led to various instances of corruption, nepotism, and favouritism. Thus, the Right to know through RTI Act, 2005 is a tool in the hands of the citizens, which ensures “*participatory democracy*” and reasoned exercise of the Right to vote during elections.

However, RTI Act is not absolute, and there are certain exceptions where the public cannot obtain information. A few instances are Sec 8 information disclosure, which relates to India's sovereignty and integrity, etc. Sec 9, where information pertains to infringement of copyright subsisting in a person other than State, and Sec 24, which says the provisions of RTI Act will not apply to the intelligence and the security organizations.

Nevertheless, RTI has played a vital role in empowering citizens and increasing their active role in meaningful democracy.

INTRODUCTION

The Constitution of India is the "*Law of the Land*" and "*Principal legal document*" of the Country. The Constitution derives its authority from its people as envisaged in the Preamble, so all laws are tested on serving its people. The govt needs to be accountable to its citizens. The Right to Information Act enacted in 2005 (hereafter referred to as RTI Act) is one such legislation in that direction. It is not explicitly provided under the Constitution. It became one of the Fundamental Rights through judicial interpretations and pronouncements. It then found its place under one of the most widely interpreted Art, i.e., Art 19(1)(a), which provides "*right to freedom of speech and expression.*" The Supreme Court has held that Art 19(1)(a) includes communications and information receipt. Both are two aspects of the same thing, and Art 19 protects the fundamental rights of citizens in the form of the Right to know.

The S P Gupta case, popularly known as the Judges' transfer case, led to the recognition and elevation of the *Right to information* and the *Right to know* to the status of Fundamental Right. The Court held that disclosing any document is explicitly contrary to the public interest can only be denied. However, in this case, Court held that appointment and transfer of judges are of the nature of public interest and cannot be denied.ⁱ

This paper aims to understand the background of the evolution of the concept of Right to know and the formulation of RTI. The author would try to cover pan India instances through case laws etc., where RTI proved its worth.ⁱⁱ It helped in exposing corruption, making public authority accountable and answerable. This paper will further try to highlight the exceptions given under RTI and analyze its importance for national security. This paper will also try to investigate the instances where the accountability of the Government can be enhanced without compromising national security. Further, analysis will be done on whether RTI helps in accountability and transparency of the Government, and if yes, then to what extent and also if the exceptions under RTI are antithetical to democracy.

EVOLUTION OF RTI ACT, 2005

In 1977, the then Janata govt formed a working group to ascertain if Official Secrets Act, 1923 could be modified to have a greater flow of information to the public. Supreme Court in the *S P Gupta Case*ⁱⁱⁱ elevated the position of Right to know to Fundamental Right in the year 1981.

Then the year 1986 saw the Supreme Court Interpreting Art 19 in *Mr.Kulwal v. Jaipur Municipal Corporation case*^{iv} to include the Right to information. Only after doing so the very purpose of Article 19 could be fulfilled.

The year 1994 witnessed the organization MKSS (Mazdoor Kisan Shakti Sangathan) demanding transparency of all official records etc.

In 1996 NCPRI, i.e., National Commission on People's Right to Information, was founded.

1997 witnessed various states like Tamil Nadu and Madhya Pradesh n then Goa moving forward to bring legislation on RTI. States started playing their role in increasing the ambit of information available to the people. In the same year, the Working Group under H D Shourie Chairmanship was appointed, which drafted the Freedom of Information Bill in 1997.

In 2002 Freedom of Information Bill 2000 was passed by the Parliament of India, while in 2003, the Freedom of Information Act 2002 was enacted after getting the assent of the President.

In 2004, RTI was tabled on Dec 23, which initially was applicable to Central govt only but backfired by many organizations, was passed as RTI Act 2005 from Lok Sabha on May 11, 2005, and Rajya Sabha on May 12, 2005, and received the assent of President on Jun 15, 2005, which became applicable to both Centre and States after necessary amendments.

And thus, we got RTI in its present form.

Certain amendments were proposed in the Right to Information (Amendment) Bill, 2019 now Act. This seeks to remove the fixed tenure of the CICs(Chief Information Commissioners) and ICs(Information Commissioner). Other changes include the determination of the salary, allowances, and other terms and conditions of the service of the CICs and ICs by the Central Governments.^v Similarly, provisions have been added for the deduction of the salary.^{vi} However, these proposed changes have faced a lot of criticism from all the opposition parties and the RTI Activists' parlance. It is assumed to affect the efficacy, impartiality, and

efficiency of the working and implementation. It was argued that it was brought to make it another “toothless tiger,” and it will affect the independence of the RTI authorities.^{vii}

PROVISIONS UNDER RTI THAT EMPOWER CITIZENS

Specific provisions are there under RTI that empower the citizens to ensure the accountability of the Government as stated under:

Sec 4 of the RTI act ensures that it shall be the duty of every public authority to maintain its record. In addition to it the authority should also facilitate the accessibility of the information to the public under this Act within a reasonable time considering the cost, language, and method of communication can be most effective.

Sec 6 empowers the applicant to obtain necessary information from public information officers at the Central or State level without giving any reason for the information he sought to achieve.

Sec 7 empowers the applicant to receive the information as fast as possible and maximum within 30 days of making such request.

Sec 19(9) imposes a duty on the Information Commissioners at the Centre and State level to give notice of their decision to the public authority and complainant. It shall include the Right of appeal if any.

Sec 19(8)(b) RTI act empowers the CIC to make liable the public authority to compensate the complainant or appellant for any loss suffered.

Sec 20 imposes a penalty on the PIO who did not furnish information within 30 days of the requested information with a 250/- penalty per day or has given incorrect, misleading, or incomplete information knowingly or obstructed in any manner the availability of data.

Sec 22 says if there is any inconsistency in Official Secrets Act regarding any information, it will be superseded by the RTI.

Sec 25 requires the information Commission at the Central and State level to prepare a report on the implementation of this Act and forward the copy thereof to the respective Government.

FEW INSTANCES WHERE RTI PROVED ITS PURPOSE^{viii}

“Adarsh Housing Society Scam”^{ix}: there was constructed 31 storey housing apartment in Colaba in Maharashtra, for the widows of Kargil war (1999) martyr. Instead, it was diverted for politicians, bureaucrats, and other top officials in the military. It was then exposed by RTI activists S.Singh and Y. Anand; RTI Activists. Flats were given at meager rates than the market. The then CM Ashok Chavan relatives, too, were allottees of the apartments. It was also revealed that there was no environmental clearance even when it was in Coastal Regulation Zone. It also posed a security threat to the Country. The land belonged to the Ministry of Defence, which the govt of Maharashtra misappropriated. All these revelations finally led to the resignation of the Chavan Govt. The Supreme Court directed the Centre to take possession of the Adarsh Society.^x

“Telecom sector scam or popularly known as 2G Scam”: RTI Activist Subhash C. Agarwal exposed the erroneous exercise of the power of the then UPA Govt, which allegedly undercharged mobile companies during frequency allocation for a colossal bribe. Initially, CAG estimated the loss at 2,645Cr, came finally with the calculation of 1.76 lakh crore. However, CBI estimated the loss of 30,984.55 crores to the exchequer.^{xi}

“Scam in Commonwealth Games” Housing and Land Rights Networks, a non-profit organization, exposed the diversion of approx. Rs.744 Cr and further instances of corruption and money laundering as many facilities showed were on paper only.

“Demonetization” was announced without RBI nod by PM Narendra Modi as revealed after filing RTI by Activist Venkatesh Nayak.

While replying to an RTI, RBI informed that about 23000 cases of fraud amounting to 1 lakh crore had been reported by various banks in the last five years.

“University in Odisha” in 2006, Odisha Govt allotted 7000 acres of land to Vedanta Group without granting the mandatory Right to be heard under Land Acquisition Rules, 1963. The landowners approached the Court, and after RTI, it was found that the basic requirements of the land acquisition Act were not followed. The Court then quashed the State Government’s order, and the land reverted to the actual owners of the land.^{xii}

“Office of HC and SC judges” 5-member Constitutional Bench headed by the then CJI Ranjan Gogoi held that for the judiciary to be independent, it needs to be under the ambit of RTI. Ensuring accountability and information available to the public goes hand in hand.^{xiii}

As seen in the preceding paragraphs, through various provisions under the RTI Act 2005 and instances cited above, the RTI helped to unearth corruption and the availability of information with the public. RTI has thus helped increase the Government's accountability and has thus served its purpose. Still, when we come across the exceptions provided under RTI Act, it curtails the extent of the information available in the public domain.

EXCEPTIONS UNDER RTI

Like Art 19 under Indian Constitution, RTI also is not an absolute right and is subject to certain exceptions as enumerated below:

Sec 8(1) of the Act clarifies there won't be any information available for disclosure that can affect India's sovereignty, security, and integrity. Information that would cause a breach of privileges of the Parliament or the State Legislature or related to trade secrets or intellectual property; information received in confidence from foreign Government or any info which does not hold any public interest and the like. However, access to the information may be allowed by the public authority if the public interest outweighs the harm to the protected interest as per Section 8(2).

Sec 9 of the Act elaborates the ground for the rejection to have access to the information. Public information officers at the Central and State level may have the Right to reject the request for information if such a request would lead to copyright infringement subsisting in a person not being State.

Sec 24 of the Act exempts specific organizations dealing with intelligence and Security specified in the 2nd Schedule established by the Central Government. This Section also exempts any information which those organizations furnish to the Government from disclosure. However, if the violation of human rights or corruption is alleged, these organizations shall provide info after the approval of the CIC.

Along with these specific provisions, even Sec 7(9) is there in RTI, where information can be denied if there is a disproportionate diversion of resources. Although while exercising this

exception, public authorities cannot deny the info in toto instead, in some other form, information can be provided to the petitioner/activist. This is a word of caution while exercising this exception.

FEW INSTANCES WHERE INFORMATION WAS DENIED

The most recent case of denial of information and can be said to be the most controversial one is information regarding PM-CARES Fund.^{xiv} The PMO had denied the info related to PM-CARES Fund, first saying it doesn't come under the ambit of "public authority" and then citing Sec 7(9) that is doing so would "*divert the resources of the office disproportionately.*" However, in 2010, Kerala High Court held that this clause could not withhold the information.^{xv} The only thing that the public authority can do is provide the information in some other form and the form it was sought. The first Chief Information Commissioner remarked the denial of the data based on Sec 7(9) is just the misuse of the Act. Punjab and Haryana High Court have issued a notice of motion to the CIC and PMO after it failed to decide on the second appeal regarding the PM Cares Fund, and matter will be heard on Jan 6, 2022.^{xvi}

Another controversial one remains the India- France Rafale deal where the info was denied by Air Force citing many reasons.^{xvii} The information was confidential, and Air Force was not the actual authority instead was holding the data in 'fiduciary capacity'.^{xviii} The Air Force also cited that the information disclosure had no relevance for the larger public interest, although it could make it available to the "adversaries." The copies of the agreement and the financial transaction details were sought from Defence Ministry, then forwarded to the Air Force.

Other instances of uncomfortable RTI pleas were when PMO rejected the RTI plea, which wished to get information regarding in the details of the bad loans submitted by the then RBI Governor Raghuram Rajan. It was said that the details of the bad loans don't come under the "information" of RTI Act, 2005. Similarly, the details of the PM Modi graduation degree from DU were denied based on the candidates' personal information, and its disclosure wouldn't have served any public interest.

OTHER CONTROVERSIAL ASPECTS OF RTI ACT, 2005

The govt that brought RTI tried to get amendments under RTI to include “cabinet papers” among the things exempted. A massive protest with the slogan “Save the RTI” campaign was carried out across the Country.^{xix}

A survey was conducted by SNS (Satark Nagrik Sangathan) and the Centre for Equity Studies, where the waiting period for getting the desired information was enormous. It would take almost 43 years if any information was sought in West Bengal on Nov 1, 2017. Similar is the situation of other states as well. In Kerala, the average waiting period is six years and six months, and in Odisha, more than five years.^{xx}

RTI is marred by lesser appointments done for the post of the Information Commissioners; West Bengal had just two ICs and didn't entertain any appeals lying before it.^{xxi} Approximately 62% of the ICs do not publish their annual data.^{xxii} States like Telangana, Nagaland, and Manipur have no appointments of ICs.

There is even security concern for RTI Activists across the Country. Bihar alone reportedly suffered the loss of life of 20 RTI activists in the past 11 years.^{xxiii} More than 95 activists have been killed and more than 175 assaulted since the Act's implementation in 2005. According to data collected by Commonwealth Human Rights Initiative (CHRI), hundreds of cases of threat and other forms of harassment were reported^{xxiv}.

The recent amendments proposed in RTI are again under attack from many fronts, including the opposition parties. The bill passed in Lok Sabha was without due discussions and deliberations. No fixed tenure of CICs and ICs, the salary, allowances, etc., would be determined by the Central Governments at the Centre and State level. These changes are feared to affect the impartiality of the respective authorities.^{xxv}

Along with the above stated controversial aspects of the RTI Act, Indian Evidence Act (IEA) 1872, contains exceptions in its provisions Sec 123 & 124 stating that the unpublished official records concerning with State Affairs and non-disclosure of official communication respectively.

CONCLUSION & SUGGESTIONS

Thus, we see Right to know has followed a long journey and finally culminated into one of the people's most utilized pieces of legislation. RTI has served its purpose, but for the entire legislation to work, it must come from within the society. The draconian and colonial Official Secrets Act gave way to the accountability of the public authorities and even imposed the penalty for non-compliance with the rules. Empowered citizens make the empowered Country. We cannot deny that RTI has helped unearthing corruption, highlighting major and minor scams, curbing corruption, and favoritism. But at the same time, we cannot ignore the security and sovereignty of the country, which limits access to certain information. We know about enemy spies, sleeper cells having asymptomatic characters among us, so all information in the public domain is unwarranted.

Sadly, the murder of RTI activists across the Country is diminishing the importance of this tool. Also, the families of the Activists become reluctant in continuing the process. The govt needs to investigate this as a matter of primary concern.

Pendency of the appeals, vacancies existing of the ICs and CICs also must be addressed.

Despite all the above lacunae still existing into the fair implementation of the Act, we proudly find that it has and is serving its purpose continuously. It is one of the most progressive legislations in Independent India. The Government that brought this Act was itself exposed to so many scams done by it; this is the power of RTI.

We can further strengthen it by not using the “dead-end” approach of the answer for the query sought (sec 123, 124 of Indian Evidence Act, 1872). It must be made a little more accountable by mentioning specific grounds for refusal.

Other than that, we must know the difference between our Right to know and the things which we need to know. Exercising any right just because it's available without seeing the aspect of its utility for immense public interest will only increase the amount of pendency of the queries/info without yielding any fruitful result.

For any legislation to be meaningful, it should emanate from the people for its proper utilization and purpose to be served. *“Along with Right always comes the duty.”*

ENDNOTES

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- ^{iv} L.K.Koolwal vs State of Rajasthan And Ors. AIR 1988 Raj 2, 1987 (1) WLN 134.
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