

Introduction

In Government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.

- Justice K. K. Mathew, Supreme Court of India (*State of UP v Raj Narain*, AIR 1975 SC 865.)

Enactment of Right to Information Act, 2005¹ has ushered a new era leading us towards the development of the participatory democracy. It has led to a series of debates among the intellectuals and has also stirred common masses. Right to Information² implicitly forms part of fundamental rights guaranteed by the Constitution of India. Article 19 (1) (a) dealing with freedom of speech and expression is deemed to contain the basis of RTI. Democracy in real terms requires public to act as a sovereign force. Abraham Lincoln in his famous Gettysburg Address said that democracy is government 'of the people, for the people and by the people.' This postulation can be materialized only by an informed citizenry.

The conceptual roots of democracy lie in Articles 23 and 25 of the Universal Declaration of Human Rights, 1948 and in Part III and Part IV of the Constitution of

¹The Right to Information Bill, 2005 was passed by the Lok Sabha on 11th May, 2005 and by the Rajya Sabha on 12th May, 2005 and it received the assent of the President on 15th June, 2005. But all the provisions came into force with effect from 12th October, 2005.

²

Hereinafter referred as RTI.

India. These provisions generally guarantee some rights like right to life, liberty, dignity and decent conditions of life and development. In this regard, RTI is part of the constitutional framework enshrined as freedom of speech and expression. Explicit exercise of this right was not possible due to its derivative and implicit existence within the Constitution. This facilitated the need of a specific legislation enabling the citizens to enjoy the right available to them. The same message echoed in the juristic exposition by Justice Mathew in *Kesavananda Bharati v. State of Kerala*³ stated in these prominent words like:

“Fundamental rights themselves have no fixed content, most of them are empty vessels into which each generation must pour its content in the light of its experience.”

Access to information held by a public authority was not possible until 2005. Lack of information precluded a person to realize his socio – economic aspirations, because he had no basis to participate in the debate or question the decision making process even if it was harming him. Official Secret Act, 1923 acted as a remnant of colonial rule shrouding everything in secrecy. The common did not have any legal right to know about the public policies and expenditures. It was quite ironical that people who voted the persons responsible for policy formation to power and contributed towards the financing of huge costs of public activities were denied access to the relevant information.

This culture of secrecy resulted in prolific growth of corruption. In face of non-accountability of the public authorities and lack of openness in the functioning of government, abuse of power and unscrupulous diversion of the public money was the

³AIR 1973 SC 1461

order of the day. Under such conditions, public and various NGOs demanded greater access to the information held by public authorities. The government acceded to their demand by enacting RTI Act, 2005. This project will trace the evolution of the RTI at large in one part. In another, an attempt towards analyzing the provisions of RTI Act, 2005 will be made which will help us realize the real status and will also highlight the areas requiring improvement.

Part A – Evolution of Right to Information

A.1 International Position

RTI which is the cynosure of this discourse is not something new. In fact there is a long history at international level towards the attainment of this right and mobilization of the masses for achieving it. With development of human ideals and establishment of democratic governments in most of the civilized countries, this topic came to the fore. Many international organizations and regional groups recognized this right to be part of their systems.

Swedish Freedom of Information Law (a literal translation of the native term indicates the Freedom of Printing Act) passed in the year 1766 is considered to be the oldest and earliest legislative recognition of RTI.⁴ This law was passed by Sweden. A large number of countries have followed the same line and have enacted access laws after it. For example, Finland in 1950, Denmark in 1950, Norway in 1970, and United States of America in 1966 enacted such laws in order to facilitate information access. Before discussing the various international instruments, let us first analyse the status of RTI in the two most developed democracies of the world U.S.A and England.

A.1.1 Position in England

Democracy has been the basic tenet of England since ages but ‘secrecy’ is emphasised rather than openness. This is due to the innate tendency of legislature and executive to enshroud policies instead of making it transparent. England has enacted Freedom of Information Act, 2005⁵. But basically, the present law is contained in the Official Secrets Acts of 1911, 1920, 1939⁶. Judiciary in England has approved of openness in Government. The same is reflected in the decision of House of Lords where it established its jurisdiction to order the disclosure of any document⁷. However, it was also emphasized that balance between conflicting interests of secrecy and publicity should be maintained.

⁴Prof. (Dr.) S. V. Joga Rao, *Law Relating to Right to Information*, 1st Edition (2009)

⁵ S.P. Sathe, *Right to Information*, Lexis Nexis Butterworths.

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Avinash Sharma, “Right to Information : A Constitutional Perspective”, Vol. VIII *Nyayadeep*, see at pg. 121

⁷ *Conway v. Rimmer*, (1968) A. C. 910.

Importance of freedom of expression in English law can be ascertained by the observation of Lord Steyn in a case⁸ which goes as following:

“Freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country....”

A.1.2 Position in U. S. A.

America and democracy are generally synonymous. America apparently proclaims it to the torchbearer of the plethora of democratic rights that ought to be the part of a true democratic framework. The same applies on the dispensation of information too. Antipathy towards the inherent secrecy is therefore not a surprising attribute exhibited by the Americans. Schwartz observes, “Americans firmly believe in the healthy effects of publicity and have a strong antipathy to the inherent secretiveness of government agencies.”⁹ The Freedom of Information Act, 1966 and The Administrative Procedure Act, 1946 are two main statutes which confer RTI.

The Constitution of America does not deal specifically with RTI. However, such right is considered to be corollary of the First Amendment freedoms¹⁰. A provision of a statute was held to be a restriction on the unfettered exercise of First Amendment Rights¹¹

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R. v. Secretary of State for the Home Department Ex P. Simms, (2000) 2 LR 115 (AC).

⁹ Schwartz, *Administrative Law*, p.129, (1984).

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Thomas Emerson, *Legal Foundation of Right to know*, Washington University Law Quarterly, p.2 (1976).

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Lamont v. Post Master General, 14 Lawyer Edition 2d. 398 (1965).

and hence was declared invalid by the Supreme Court. Similarly in *Stanley v. Georgia*¹² it was observed that freedom of speech necessarily protects the right to receive information.

A.1.3 RTI and International legal instruments

Various international instruments such as treaties, charters etc have recognized RTI as right that ought to be available to the people. All the citizens have a right to decide, either personally or by their representatives, as to necessity of the public contribution, to grant this freely, to know to what use it is put; and to fix the proportion, the mode of assessment and of collection and the duration of taxes¹³.

United Nations

United Nations accepted RTI right from its beginning in 1946. The General Assembly resolved that: “freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated.”¹⁴

Universal declaration of Human Rights, 1948

Article 19 of the Universal declaration of Human Rights of 1948 states that, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

The International Covenant on Civil and Political Rights, 1968

Article 19 of the Covenant states as following:-

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22 L. Ed. 2d. 24. 542 (1969).

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Article 14 of the Declaration of the Rights of Man, cited in S. P. Sathe, *Right to Information*, pg. 11.

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United Nations General Assembly, resolution 59(1), 65th plenary meeting, 14 December 1946.

- (1) Everyone shall have the right to hold opinions without interference;
- (2) Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

The Commonwealth

The Commonwealth- association of 54 countries- affirmed the existence of RTI by emphasizing the participation of people in the government processes. The law ministers of the Commonwealth at their meeting held in Barbados in year 1980 stated that ‘public participation in the democratic and government process would be most meaningful when citizens had adequate access to official information’.

Organization of American States

American Convention on Human Rights was adopted by the Organization of American States (OAS) in 1969. This international treaty is legally binding in nature. Article 13 of the convention reads as follows;-

- (1) Everyone has the right to freedom of thought and expression. This right shall include freedom to work, receive and impart information and ideas, of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.

Clause 2 states that exercise of such right may sometimes be subject to liabilities or restrictions if it compromises the national security or contravenes the right available to others.

European Convention on Human Rights

Clause 1 of Article 10 of the Convention states that, ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions, and to receive and impart information and ideas without interference by public authority and irrespective of frontiers’.

However, clause 2 provides that such right is subjected to such formalities, conditions, restrictions or such penalties as are prescribed by law, and are necessary in a democratic society, and if it harms the national interest or territorial integrity.

However European Court of Human Rights interpreted Article 10 strictly¹⁵. That is to say it was held that freedom to information prohibited the Government from restricting a person from receiving information. But, at the same time it does not provide any positive right to a person for obtaining the information. This interpretation was based on the difference between ‘freedom’ and ‘right’.

Most of the above discussed international instruments do not deal with RTI directly. Their role however is not diminished at all by this fact. Like a first step they showed the world community a direction to be explored in order to materialize the democratic value of RTI, thereby making the systems transparent and world more amicable for the people.

A.1.4 Constitutional provisions of various countries recognizing RTI

Constitutional recognition stands paramount specially when relating to the fundamental human rights such as RTI. In this regard various countries have given place to RTI in their respective constitutions. Some of them are as following:

- Article 20 of the 1987 Constitution of Austria;
- Article 32 of the Constitution of Belgium as amended in 1993;

¹⁵ See 9 EHRR 433, para 74, cited in S. P. Sathe, *Right to Information*, pg .15.

- Article 41 of the Constitution of Bulgaria;
- Article 23 of the Constitution of Albania;
- Article 38 of the Constitution of Croatia;
- Article 44 of the Constitution of Estonia;
- Article 10 (3) of the Constitution of Greece;
- S. 32 (1) of the Constitution of Republic of South Africa pursuant to The Constitution Act 106 of 1996.

A.1.5 Statutory provisions of various countries enabling RTI

Apart from the constitutional recognition, specific statutes are sometimes necessary to be formulated in order to effectuate proper exercise of rights. This is so because mere recognition sometimes is not sufficient to provide results. Statutes here come to the rescue by providing optimal output through an elaborate mechanism. As stated earlier that Sweden enacted the first legislation in this regard. The Freedom of Information Act is now part of the Constitution of Sweden. Therefore, let us now see some of the important statutes providing RTI to the people. They are as following:

- 1888 Code of Political and Municipal Organisation of Columbia enabled the individuals to request documents held by the government;
- The Freedom of Information Act, 1966 of U.S.A.;
- The Freedom of Information Act, 1982 of Australia;
- The Access to Information Act, 1983 of Canada;
- The Official Information Act, 1982 of New Zealand;
- The Freedom of Information Act, 2005 of England; and

Legislations passed by many Asian countries such as The Philippine, Hong Kong, Thailand, South Korea, Japan, etc.

A.2 Constitutional perspective of Right to Information in India

Rights are the interests which are recognized and protected by law. The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only messiahs that can ensure freedom of all sorts. Information has a pivotal role in strengthening public by making them knowledgeable.

Accessing information, however in a developing country like India is a cumbersome task to be accomplished by majority of less educated and illiterate citizenry oblivious of its rights. Red tapism and bureaucratic supremacy is highly hesitant in empowering people. Moreover the colonial legacy which was copious with policy of secrecy still haunts the system. Here the Constitution of India comes to the rescue of the 'little man' by bestowing upon him certain fundamental rights within Part III. These rights can not be violated except the procedures laid down by the law, which are in consonance with spirit of Constitution. Similarly, RTI is a right imbibed within Article 19 (1) (a)¹⁶ of the constitution.

The right to information has not been expressly provided in the constitution. It is derived from the Article 19 (1) (a). That is to say, it is implicitly imbibed within the constitutional framework. However, judiciary in several landmark cases has expressly held RTI as natural concomitant of Article 19 (1) (a). Let us now see some important cases which raised RTI to the status of a constitutional right because of the juristic

¹⁶ Protection of certain rights regarding freedom of speech, etc.- (1) All citizens shall have the right-
(a) to freedom of speech and expression....

interpretation of the learned judges. Judicial activism has carved the sculpture out of Article 19 (1) (a) - which is the bedrock of democracy.

Upon a thorough analysis it can be safely stated that direction towards the realization of RTI within the constitutional ambit incepted right from the verdict in *Hamdard Dawakhana v. Union of India*¹⁷. Supreme Court for the first time declared RTI to be part of Article 19 (1) (a) in *Bennett Coleman v. Union of India*¹⁸, where it held Newsprint Control Order of 1972-1973 issued under the Essential Commodities Act, 1955 to be ultra vires Article 19 (1) (a) of the constitution. Ray, CJ in the majority judgment opined that, “It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of press embodies the right of the people to read.” Here what is referred as ‘right of the people to read’ refers to the right of the readers to get the information.

The strongest exposition in this regard came from Justice K. K. Mathew in *State of U. P. v. Raj Narain*¹⁹ who emphasized that in ‘government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries.’ The facts of this case were that Raj Narain who challenged the validity of Mrs. Gandhi’s election required disclosure Blue Books which contained the tour program and security measures taken for the Prime Minister. Though the disclosure was not allowed, Mathew, J. held that the people of country were entitled to know the particulars of every public transaction in all its hearing.

¹⁷ AIR 1960 SC 554.

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AIR 1973 SC 106.

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AIR 1975 SC 885.

The major breakthrough was attained in *S. P. Gupta v. Union of India*²⁰ when the apex court imparted constitutional status to RTI. The point of contention in this case was again with regards to the claim for privilege laid by the government of India in respect disclosure of certain documents including correspondence between Chief justice of India and the Chief Justice of Delhi High Court in connection with the confirmation of Justice Kumar who was an additional Judge of the Delhi High Court. Justice Bhagwati, in his ever humanistic tone advocated the concept of open government stating it to be the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19 (1) (a) of the Constitution. It was held by the learned Judge that, RTI or access to information is essential for an ideally successful democratic way of life. Hence, it is imperative that disclosure of information regarding the functioning of Government must be the rule and secrecy is justified only where the strictest requirement of public interest demands.

Liberal approach of apex court towards the disclosure of information is discernible in *Sheela Barse v. Union of India*²¹ where court issued directions for release of information to her relating to under trials kept in different parts of country. Point to be noted here is that such direction was not issued by invoking Article 19 (1) (a). Therefore, it can be inferred that a person having proper stand can seek information from the government. Similarly, the court was unequivocal of the importance of people's participation and upheld their right to know in *Pune Environmental case*²².

²⁰ AIR 1982 SC 149.

²¹ AIR 1986 SC 1773.

²² *Bombay Environmental Action Group v. Pune Cantonment Board, SLP (Civil) 11291/1986* (13th October, 1986), unreported, but reproduced in A. Rosencranz (et al ed.), *Environmental Law and Policy in India, Cases, Materials and Statutes*, p.149 (Tripathi Publication, Bombay, 1991) cited in Avinash Sharma, "Right to Information: A Constitutional Perspective", *Nyayadeep*, Vol VIII, Issue 3.

Supreme Court further in a historic decision provided the voter's right to know the antecedents of the candidates²³. Scope of Article 19 (1) (a) was widened and it was affirmed that the right to know of the candidate contesting election to a House of Parliament or a state legislature or a panchayat or a municipal corporation is a pre-condition to the exercise of a citizen's right to vote. Thus people have a constitutional right to know the antecedents of the candidates contesting election for a post which is utmost importance in democracy. Later Government brought an ordinance followed by an Act to nullify effects of the judgment. The Act was declared unconstitutional by the Supreme Court in *People's Union of Civil Liberties v. Union of India*²⁴. An important observation was made by the court that "the fundamental rights enshrined in the Constitution.... have no fixed contents." "From time to time, this court has filled in the skeleton with soul and blood and made it vibrant."

Freedom of speech and expression and its relation with RTI has been vividly described by the apex court in *Secretary, Ministry of I & B, Government of India v. Cricket Association of Bengal*²⁵ in the following words:

"The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self – fulfillment. It enables people to contribute to debates on moral and social issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy."

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Union of India v. Association for Democratic Reforms, AIR 2002 SC 2112.

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(2002) 5 SCC 399.

²⁵ (1995) 2 SCC 161.

We may end this succinct analysis of the judicial decisions which have played a major role in granting RTI constitutional status via interpretation of Article 19 (1) (a) and assimilation of the spirit with which framers of the Constitution dedicated it to the people of India. Democracy thrives on RTI which is the foundation of democracy. The same is aptly echoed in the words of apex court as; true democracy cannot exist unless the citizens have a right to participate in the affairs of the policy of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sided issues in respect of which they are called upon to express their views. One –sided information, disinformation, misinformation and non-information all equally create uninformed citizens which make democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchy organizations. This is particularly so in a country where a large bulk of the population is illiterate.²⁶

A.2.1 RTI in Constitution except Article 19 (1) (a)

RTI is not exclusively traceable in Article 19 (1) (a) only. There are some other provisions too, which in some or the other way provide right to access the information or to obtain the information to concerned persons. Article 22 (1) of the Constitution of India entitles every person who is detained to know the grounds of his/her detention. Similarly, Article 311 (2) of the Constitution provides that a government servant is entitled to know why he/she is being dismissed or removed or reduced in rank and to be given an opportunity to make representation against the proposed action. The horizon of RTI has

²⁶ *People's Union for Civil Liberties v. Union of India*, AIR 2003 SC 2363.

expanded so much so that Supreme Court in a recent judgment has considered RTI to be the offshoot of Article 21 of the Constitution of India²⁷.

A.3 Movement for Right to Information in India

Paradoxes are galore in our system. But movements by the masses for a right to which they are entitled by the virtue of bring the part of democracy is a disturbing aspect. However it is true that, while the common public has been aware of the importance of RTI, those wielding the political clout have been reluctant in transforming the right into practical legal reality. It all began in 1990 when the Mazdoor Kisan Shakti Sangathan (MKSS), a collective of farmers and labourers, was formed in Devdungri, a Rajasthan

²⁷ *Essar Oil Ltd. V. Haldar Utkarsha Samiti*, AIR 2004 SC 1834.

hamlet. Members of the collective were working for a state employment generation scheme, yet were being paid significantly less than the guaranteed minimum wage²⁸.

This enticed them to demand their legal entitlement. In response they got an answer that the official documents are not consonant with the necessary work that ought to be done by them. Such official documents were wrapped in the walls of bureaucratic ‘secrecy’ unavailable even to the persons, to which they were related. However, some clues by the sympathetic officer indicated towards enormous anomalies. Tackling these discrepancies required some unique medium to sensitize the people directly and easily for this purpose, MKSS adopted the means of placing the disclosed information (whatever could be elicited) in the public domain through live wire village based public hearing colloquially referred as *jan sunwais*. This movement raised famous slogans like *hamara paisa*, *hamara hisaab* (our money, our accounts) and *hum janenge*, *hum jiyenge* (we will know, we will live). Overall it can be safely asserted that *transparency* and *accountability* were the two pronged demands of the movement, which they wanted to be instilled in the system as whole.

Dawn of the RTI ushered with this movement, which made people realize that secrecy enabled corrupt officials to siphon off minimum wages and other entitlements of the poor. A movement demanding the RTI was thus born and its first champions were the disempowered rural workers in the remote rural area of Rajasthan²⁹.

Movements for RTI cannot be seen as isolated events. They are coextensive with a movement to make democracy real and functional. RTI was demanded as the right to work, the right to obtain famine relief, or the right to receive minimum wages. Secrecy

²⁸ Tarunabh Khaitan, “Dismantling the walls of secrecy”, *Frontline*, 44 (February 27, 2009).

²⁹ Supra footnote 28.

and national interest were some excuses which were heavily used by the power wielders to wrap information insulating it from reach of the masses. Corruption, therefore, was breeding prolifically in face of lack of accountability and an open government. Importance of open government was observed by eminent juristic mind of the nation, Bhagwati, J. in the following words: “Open government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception.”³⁰

‘Loksatta’, an NGO in Andhra Pradesh has undertaken mass awareness campaigns across the State and through a ‘post card campaign’ made representations to the Prime Minister of India demanding the enactment of a right to information law. The Rajasthan experience on demanding right to information was echoed in other States.

In response to the pressure of the grassroots movements as well as to satisfy the international money lending institutions to borrow the loans, some of the State Governments such as Goa (1997), Tamil Nadu (1997), Rajasthan (2000), Karnataka, (2000), Delhi (2001), Assam (2002), Maharashtra (2003), Madhya Pradesh (2003) and Jammu, Kashmir (2003) introduced the Right to Information Act. Among all these Acts, Maharashtra Right to Information Act was considered as the model act in promoting transparency, accountability and responsiveness in all the Institutes of the State as well as the private organizations which are getting financial support from the Government. Tamil Nadu Act was considered as the most innovative one in how to refuse the information to the seekers.

The growing demand for a right to public information from various sections of the society, led by civil society organisations in these States could no longer be ignored. The

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S. P. Gupta v. Union of India, AIR 1982 SC 149, p. 234.

need to enact a law on right to information was recognised unanimously by the Chief Ministers Conference on “Effective and Responsive Government”, held on 24th May, 1997 at New Delhi. The Government of India, Department of Personnel, decided to set-up a ‘Working Group’ (on the ‘Right to Information and Promotion of Open and Transparent Government’) in January 1997 under the chairmanship of Mr. H. D. Shouri, which submitted its comprehensive and detailed report and the draft Bill on Freedom of Information in May 1997. The Press Council of India, the Press Institute of India, the ‘National Campaign for People’s Right to Information’ and the Forum for Right to Information unanimously submitted a resolution to the Government of India to amend the proposed Bill in February, 2000.

The Government of India introduced the Freedom of Information Bill, 2000 (Bill No.98 of 2000) in the Lok Sabha on 25th July, 2000. The Bill, which cast an obligation upon public authorities to furnish such information wherever asked for, was passed by the Parliament as the Freedom of Information (FoI) Act, 2002. However, the Act could not be brought into force because the date from which the Act could come into force, was not notified in the Official Gazette.

National Advisory Council (NAC) was set up by the United Progressive Alliance (UPA) government which came at the centre in 2004. FoI Act was a very weak law and did not confer the deserving status of constitutional status to RTI. NAC recommended various changes to be incorporated in FoI Act. The central government decided to make changes which would make the Act more participatory and meaningful. But later on the government decided to repeal the FoI Act, and enacted a new legislation, the Right to Information Act, 2005, to provide an effective framework for effectuating the right of information recognised under Article 19 of the Constitution of India.

Prime Minister of India, emphasizing on the importance of RTI in the governance of country, reflected the culmination of what was a sporadically vehement movement initiated by the otherwise disempowered masses. He said, “Four years ago I said to you that an important challenge we face is the challenge of providing good governance. We have taken several steps to make Government transparent, efficient and responsive. The Right to Information Act was one major step. We have initiated reform and modernization of Government.”³¹

This is in very brief a humble effort to trace the evolutionary odyssey of RTI in India. The detailed analysis along with the salient features of the RTI Act, 2005 will be done in the next part of the project.

Part B – Critical Analysis of the working of the Right to Information Act, 2005 in India

Till now, we have traced the procedure and what went into the enactment of RTI Act, 2005 in India. Rationally, nothing is foolproof and nothing is completely wrong. Same applies on the aforesaid statute too. Undoubtedly it has ushered in the new era the democratic culture of India, but it suffers from certain loopholes too, which may be obviated in future.

B.1 Objectives of the Act

Objective of the Act is to establish “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

³¹ The Prime Minister, Dr. Manmohan Singh, addressing the Nation from the ramparts of the Red Fort on the 62nd Independence Day.

authority, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith and incidental thereto.”³²

Transparency and accountability of the public authority therefore are two main objectives which the Act seeks to achieve. Provisions are therefore society centric aiming towards the empowerment of people making them participate in the country’s democratic process. Survival of a democratic government is highly dependable on the accountability of the public functionaries. Absence of it breeds unrest and generated apathy in masses against the system. Accountability can be achieved by providing information to the people about the functioning of government. It is a prerequisite towards a real participatory democracy. People can play important role in a democracy only if it is an open government where there is full access to information in regard to functioning of government.³³

The major objectives of the act can be summed up as following:-

- i) Greater Transparency in functioning of public authorities.
- ii) Improvement in accountability and performance of the Government.
- iii) Promotion of partnership between citizens and the Government in decision making process; and
- iv) Reduction in corruption in the Government departments.

Passing of this Act has been result of strivings of the public spirited citizens like H. D. Shourie, Aruna Roy, Arvind Kejriwal and many NGOs working for the betterment of people. The objectives stated above need to be fulfilled in order to justify the sovereignty granted to the “people of India” by the Constitution, in real sense.

³² The preamble to the RTI Act, 2005.

³³ *People’s Union for Civil Liberties v. Union of India*, AIR 2003 SC 2363.

B.2 Important provisions of the Right to Information Act, 2005

RTI Act, 2005 contains provisions which impart it the nature same to that of a code. It elaborately deals with the necessary definitions, constitution of the Information Commissions both at the state and central level, imposition of penalty, rule making power conferred upon appropriate governments etc. It is not possible to deal with all the provisions in detail. Therefore, some of the important provisions are discussed as following:

B.2.1 Scope of Application

Perusal of the Act clearly signifies that it is applicable both to Central and State governments and all public authorities. A “public authority”³⁴ which is bound to furnish information means any authority or body or institution of self-government established or constituted (a) by or under the Constitution, (b) by any other law made by Parliament, (c) by any other law made by State Legislature, (d) by a notification issued or order made by the appropriate Government and includes any (i) body owned, controlled or substantially financed, (ii) non-government organizations substantially financed, - which, in clauses (a) to (d) are all, directly or indirectly funded by the appropriate Government.

B.2.2 Meaning of ‘Information’

³⁴ s. 2 (h) of RTI Act, 2005.

Section 2 (f) of the Act defines information as any material in any form, including the records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, 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 law for the time being in force.

This makes it very clear that the Act regards only that as information which is in written form. An opinion is not information until it is written. Therefore, the definition of information as postulated by the Act does not include oral expressions.

B.2.3 Definition of ‘Right to Information’

The “right to information” statutorily refers to as a right to information accessible under the Act which is held by or under the control of any public authority and includes a right to (i) inspection of work, documents, records, (ii) taking notes, extracts, certified copies of documents and records, (iii) taking separate samples of material, (iv) 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.³⁵

B.2.4 Maintenance and Publication of Records

Proactive disclosure of information by the public authorities has been provided under s.4 (1) of the Act. The provision casts a duty on public authorities to maintain records for easy access and to publish within 120 days of enactment of the statute the name of the particular officers who should give the information and in regard to the framing of the rules, regulations etc. For this purpose, s. 4 (3) states that for the

³⁵ s. 2 (j) of RTI Act, 2005.

performance of subsection (1), all information shall be disseminated widely and in such form and manner which is easily accessible to the public.

B.2.5 Request for information

s.6 permits persons to obtain information in English or Hindi or in the official language of the area from the designated officers. The person requesting for information is not required to give any reason for the request and personal details.

B.2.6 Disposal of request

Section 7 of the Act requires the request to be disposed of within 30 days provided that where information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours.

Before any decision is taken for furnishing the information, the designated officer shall take into consideration the representation, if any, made by a third party under s. 11.³⁶ A request rejected shall be communicated under s. 7 (8) giving reasons and specifying the procedure for appeal and the designation of the appellate authority. Information is exempted from disclosure where it would disproportionately divert the resources of the public authority or would be detrimental to the safety and preservation of record in question.³⁷

B.2.7 Exemptions from the disclosure of information

There are certain sorts of information which are exempted from disclosure. Such an exception has been incorporated within the mechanism of the Act, in order of not compromising with national security and integrity. Their disclosure might hamper the

³⁶ s. 7 (7) of RTI Act, 2005.

³⁷
s. 7 (9) of RTI Act, 2005.

very existence of the state as well as detriment the national interests. Section 8 exempts from disclosure certain information and contents as stated in sub clauses (a) to (j) thereof. Information expressly forbidden by any court of law or tribunal or the disclosure of which may constitute contempt of court³⁸; information which could impede the process of investigation or apprehension or prosecution of offenders³⁹ are some of those which are exempted from disclosure.

Section 8 (2) provides that a public authority may allow access to information if public interest in disclosure outweighs the harm to the protected interests. Moreover s. 8 (3) exempts information regarding matters or events which happened 20 years before the date of application seeking information.

It is significant to note that the Act is not applicable to certain intelligence and security organizations contained in the Second schedule of the Act⁴⁰ (such organizations may be omitted from the schedule or new organizations may be added by the central government⁴¹). However proviso to s. 24 (1) provides that in case the demand for information pertains to allegations of corruption and human rights violations, the Act shall apply to such institutions.

B.2.8 Other important provisions

- ss. 12 and 15 provide for the constitution of Central Information Commission and State Information Commission respectively.

³⁸ s. 8 (1) (b) of RTI Act, 2005.

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s. 8 (1) (h) of RTI Act, 2005.

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s. 24 (1) of RTI Act, 2005.

⁴¹
s. 24 () of RTI Act, 2005.

- s. 18 deals with powers and functions of the Information Commissions.
- s. 20 provides penalties for non – furnishing information as required by the Act in a sum of Rs. 250/- per day but not exceeding Rs. 25000.
- s. 21 states that no suit or prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done under the Act or rules.
- s. 22 overrides the Official Secrets Act, 1923 or any other law for the time being in force insofar as they are inconsistent with the Act.
- s. 23 bars all courts from entertaining any suit, application, or other proceeding in respect of any order made under the Act and every order under the Act should be first appealed against.
- s. 25 imposes an obligation on the Central Information Commission⁴² and the State Information Commission⁴³ to prepare an annual report on the implementation of the provisions of the Act in that year and forward it to the appropriate government.

B.3 Salient features of the Right to Information Act, 2005

Specifically, the main objectives of the law on RTI are: to operationalise the fundamental right to information; to set up systems and mechanisms that facilitate people's easy access to information; to promote transparency and accountability in

⁴² Hereinafter referred as CIC.

⁴³
Hereinafter referred as SIC.

governance; to minimize corruption and inefficiency in public offices and to ensure people's participation in governance and decision making.⁴⁴

RTI can be said to be based on two main concepts:

- (a) The right of the public to access the information and the corresponding duty of the Government to meet the request, unless specifically defined exemptions apply;
- (b) The duty of the Government to proactively provide certain key information even in absence of a request.

The RTI Act, 2005 basically has two parts- (a) substantive law, and (b) procedural law. Section 3 coupled with some other provisions like ss. 8, 9, 18, 19 and 20 of the Act deal with substantive law while s.6 along with some other provisions like s.7 of the Act deal with procedural law. Thus the Act is a code in itself.⁴⁵

These are some of the main features which make this legislation a positive step towards the realization of tenets that have been conceived by the founding fathers of the Constitution.

B.3.1 Deficiencies in the Right to Information Act, 2005

Improvements are always possible in a statute, because shortcomings are perceivable only after implementation process starts. Problems can occur both at the drafting or implementation level. RTI Act, 2005 is undoubtedly a progressive step towards the just and equitable environment. It has been marred by some shortcomings

⁴⁴ M. M. Ansari (Information Commissioner), *Impact of Right to Information on Development: A Perspective on India's Recent Experiences*, An invited lecture delivered at UNESCO Headquarters, Paris, France, on May 15, 2008.

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Dr. Niraj Kumar, *Treatise on Right to Information Act, 2005*, 530 (First edition, 2007).

which has impeded successful implementation of the Act and resulted in its under-performance.

Some of the shortcomings are as following:-

- The Act provides for appointment of Public Information Officers⁴⁶ in each of the public authority institutions at different levels, for free flow of information. There was delay in such appointments unfortunately even after the lapse of the time limit mandated by the Act. Moreover, sometimes there is not specific mention of the Public Information Officers and Assistant Public Information Officers by the departments thereby confusing the people about whom to address and serve request seeking the information.
- Obligations of public authorities⁴⁷ as conceived by the Act in form of proactive disclosure of the information have not been carried out satisfactorily. Various NGOs and public spirited citizens have raised easy disclosure of relevant information by the public authorities themselves, so that common people are saved from resorting to the statutory way for seeking the same.
- There have been grievances of the applicants that information is not provided to them in their regional language. This is against the statutory spirit contained in s. 6 (1) of the Act which makes it clear that information is to be provided in Hindi or English or in the official language of the area in which the application is being made.

⁴⁶ s. 5 of RTI Act, 2005.

⁴⁷
s. 4 of RTI Act, 2005.

- It might be feasible, but the provision of taking fees⁴⁸ for disclosing the information seems to be against the spirit of the right and the Act too. It is quite paradoxical that a person has to pay for availing information which is a fundamental human right, which has been consecrated even by the Constitution. Being a legislation which is socially oriented, it strikes wrong chord at this place, by creating a hiatus between people on the economic basis. Information can be easily accessed by the affluent classes whereas same is not so comfortable for the students and lower strata of middle class.
- Logical reasons for the rejection of the requests seeking information are not being provided as required by s. 7 (8) of the Act. Moreover, exemption clause contained in s. 8 of the Act is being misused to veil the misdeeds in the name of secrecy essential for national security, integrity etc. Although the inclusion of a public interest override is a huge step forward, the fact that the exemptions only contain a low level harm test requiring that relevant interests are only "harmed" or "prejudicially affected" could be used to block a lot of applications at the initial stages⁴⁹.
- One more difficulty is required to be solved at earliest. Rule making power is conferred on the Central Government and State Government simultaneously and independently. The RTI Act is a central legislation and it has to be enforced uniformly throughout India. When such is the case, the rule making authority granted to the State Governments should have been made subject to the rules

⁴⁸ ss. 6 (1) and 7 (1) of RTI Act, 2005.

⁴⁹ Slough, P and Rodrigues, C (2005) India's Right To Information Movement Slough, P and Rodrigues, C (2005) India's Right To Information Movement Information, Volume 1 Issue 1 Published 21 March 2005.

which may be made by the Centre and any rule when made by the State if it conflicts with the Central rule shall have a prior approval of the Central government. The dichotomy created in the field of rule making power shall be removed by making the power of the State Government to make rules subject to Central approval either prior to making the rule or thereafter seeking ratification. Glaring example of the same possibility has been the recent order of the Uttar Pradesh Government including some important public authorities in the Second Schedule by using the power granted under s. 24 (2) of the Act.

- Although the Act bestows power upon the CIC and SIC to impose penalties⁵⁰ of Rs. 250 up to Rs. 25000 on erring officials indulging in unreasonable non disclosure of information. But it does not have such a deterrent effect on the power wielding officials. However, recommendation for disciplinary action is seemingly effective but even it is not sufficient for the strict implementations of the RTI Act, 2005. Lack of such teeth which may bite the officials through the rigours of law and enable the establishment of an accountable and transparent regime.
- There is no specific safeguard for the protection of person from the harm he may suffer after seeking the information through the Act. It should not be forgotten that if a person seeks information which is potentially harmful for the authorities superior to him, he can be subjected to ill treatment later. For example, if a student asks for information from the school or college or university in which he, she is studying there are ample of chances that he could be made to suffer in future

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s. 20 of RTI Act, 2005.

because of such a step taken by hi. There should be promulgation of some safeguard in this regard, so that one can resort to using the Act fear free.

B.3.2 Achievements / success stories of the Right to Information Act, 2005

I deliberately placed the shortcomings/deficiencies prior to the achievements/success stories because it is always better to end on a good note. That is to say, it is quite natural that some loopholes remain in the process towards advancement. Situation is more cumbersome when efforts are centered on the realms of law striving to realize the rights which the system is not willing to yield to the common people. In this regard, the mere passing of the RTI Act, 2005 is a humongous achievement in itself. There have been several success stories too which corroborate the claims of the good done by the Act.

All citizens shall have the right to information.⁵¹ This statement heralds the novelty which RTI Act has succeeded in bringing to the fore. Various provisions such as disposal of request within a specific time frame i.e. 30 days⁵² reflect the importance of the right. Simultaneously it also emphasises on the responsibility that need to be shown by the authorities. Similarly, imposition of penalties⁵³, reporting and monitoring by the Information Commissions⁵⁴, are commendable efforts which will fructify if implemented sincerely.

⁵¹ s. 3 of RTI Act, 2005.

⁵²
s. 7 (1) of RTI Act, 2005.

⁵³
s. 20 of RTI Act, 2005.

⁵⁴
s. 25 of RTI Act, 2005

Let us now see some of the success stories which also display the change that RTI has brought in the lives of the people. *Krishak Mukti Sangram Samiti* in Assam used Right to Information to expose diversion of food grains from PDS allotted to the poor.⁵⁵ Women in a small village, Banakhandi, in West Bengal filed more than 100 Right to Information applications to force the administration to start work on supply of drinking water.⁵⁶ Students forced Union Public Service Commission (UPSC) to disclose cut-off marks, scaling method and model answers.⁵⁷ CIC in a recent decision gave access to, not just your answer sheets, but also your class mate's answer sheets, after evaluation.⁵⁸ These are just some of the few incidents which reveal the betterment brought upon by the enactment of RTI Act, which would have not been possible in the absence of the state.

It should however be kept in mind that, under the Act, where a citizen has exhausted the remedy of appeal or second appeal, the finality given to the orders of the commissioners and appellate authorities is only for the purposes of the Act and the citizen has a right to approach the High Court under Article 226 of the Constitution of India or where it refers to a fundamental right, he may even approach the Supreme Court under Article 32 of the Constitution of India.⁵⁹

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Samudra Gupta Kashyap, After Right to Information disclosure, raids reveal PDS rice in godown, <<http://www.indianexpress.com/story/254593.html>>

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Business Standard, Village women use Right to Information to get drinking water, 3 Oct. 2008.

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354/IC(A)/2006-13 Nov. 2006.

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CIC/MA/C/2008/00221, 9 June 2008.

⁵⁹ Justice Y. K. Sabharwal, "Right to Information and Good Governance", Vol. VII, Issue 4, *Nyayadeep*, 23.

B.4 Right to Information and Good Governance

Success of a democratic framework depends on good governance. It can be achieved by efficient and effective administration. As per a paper prepared by the Human Rights Initiative, good governance has eight major facets. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. RTI is one of the most important methods of attainment of good governance, which is necessary for ensuring sustainable human development.

Corruption is major hindrance in the growth of any system. Dangers are more in a democratic system, where development of people who have reposed their faith by electing the government to power does not takes place. Conditions become more aggravated when basic information related to the people is not disclosed in the garb of maintenance of secrecy. In fact this culture of secrecy breeds nepotism and increases

corruption to an obnoxious level. Information therefore is an antidote to corruption⁶⁰. It limits the abuse of discretion and protects civil liberties.

The whole relation of RTI and “good governance” finds its mention in the address of the Prime Minister of India, who, while piloting the Bill for its passage by the National Parliament, stated, as under, on May 11, 2005:

“I believe that the passage of this Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which will ensure that benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption, an era which will bring the common man’s concern to the heart of all processes of governance, an era which will truly fulfill the hopes of the founding fathers of our Republic.”

⁶⁰ Justice Y. K. Sabharwal, “Right to Information and Good Governance”, Vol. VII, Issue 4, *Nyayadeep*, 29.

B.5 Performance of the Right to Information Act, 2005

The passage of RTI Act has up to a certain extent infused transparency and accountability in the working of public departments. This has increased the efficiency of decision making process. This has led to reduction in corruption in the country as evident from the following:

- i) The Transparency International (TI) has reported that perceived corruption in India (a score of 3.5 out of 10) has declined at the rate of about 15-20 per cent per year, due mainly to the implementation of the RTI Act.
- ii) The Centre for Media Studies in collaboration with TI has recently accomplished an all India survey study (un-published) of the poor below the poverty line. The views of the poor have been elicited in respect of all the flagship programmes that have been implemented for alleviation of poverty. At least 40 per cent of the respondents have reported that corruption has declined.
- iii) It has also been observed that wherever NGOs are actively involved in the development activities, the perceived corruption is abysmally low.

The progress of RTI Act has been studied by PRIA (Society for Participatory Research in Asia) in August 2006. In order to track the progress of RTI Act in 12 states (Himachal Pradesh, Haryana Rajasthan, Jharkhand, Madhya Pradesh, Uttar Pradesh,

Uttaranchal, Chattisgarh, Andhra Pradesh, Kerala, Gujarat and Bihar), PRIA decided to conduct a study on a set of indicators namely the constitution of State Information Commission and its role, role of Nodal agencies, appointment of PIOs, experience of seeking information from PIOs, mandatory disclosure under section IV of RTI Act and role of government in educating people under Section 26 of the Act. The study indicated the following results, which are discussed in very brief manner as following:-

- The constitution of SIC in some states like Bihar, Jharkhand, Uttar Pradesh, Himachal Pradesh, Haryana and Rajasthan, the constitution of SIC was delayed by several months.
- Inadequate infrastructure and working staff has been provided to the SIC.
- There has been a general tendency of non imposition of penalties on the PIOs⁶¹ who have indulged in dereliction of duty.
- People belonging to rural areas feel that appeal process is very expensive.
- Public Information Officers have been appointed in most public authorities in the states. The process of accessing information by people has started slowly through Right to Information Act. However, there exists great confusion in definition of public authority.
- Most of the PIOs at state level and district level are not cooperative and they sometimes threaten applicants to withdraw applications. PIOs should be given more training so that they are sensitive to people's need and PIOs who are guilty of deliberate denial of information should be penalized.
- Most of the ministries and directorate level offices in Madhya Pradesh, Uttar Pradesh, Uttaranchal, and Andhra Pradesh have disclosed information about their

⁶¹ Public Information Officers.

activities on their website, while some are still lagging. Department of Agriculture (Rajasthan, UP, Uttaranchal, AP) has done well in self disclosure, have covered most of the items of Section 4 of RTI Act.

- It is surprising to find that self-disclosure at district, block and panchayat level have not started in the twelve states, so the departments, which are closer to the people are still lagging behind in the implementation of s.4 of the Act.
- It is quite striking that unawareness about RTI in rural areas is very highly. The applications within the Act are mostly file the educated classes and urban people. The percentage of people still oblivious about provisions of the Act and more importantly about their right is very high.

Part C- Conclusion

*“The Right to know is not meant for gratifying idle curiosity
or mere inquisitiveness but is essential for the effective functioning of democracy.*

Transparency and accountability are sine qua non in a genuine democracy.”⁶²

⁶² B. N. Kirpal, Ashok H. Desai, Gopal Subramaniam, Rajeev Dhawan and Raju Ramchandran (Eds.), *Supreme But Not Infallible- Essays in Honour of the Supreme Court of India*, p. 354 (Oxford University Press, 2004) cited in Avinash Sharma, “Right

Importance of the information is very aptly echoed in the words of James Madison who said, “Knowledge will for ever govern ignorance and people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information is or the means of obtaining it, is but a prologue to a force or tragedy or perhaps both.” India now can proudly proclaim that its citizens today have been conferred with specific RTI, which will surely lead them towards the path of development. Although there are still some shortcoming but it can not be allowed to dominate the growth of a healthy democratic atmosphere- especially in a country which happens to be the largest democracy in the world.

Harsh Mander and Abha Joshi in their study titled “THE MOVEMENT FOR RIGHT TO INFORMATION IN INDIA: People’s Power for the Control of Corruption” opined that “information is power, and that the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and pro-active dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption.” Combating corruption which has been a major concern for our country for decades has a solution potentially in the hands of RTI. It is therefore, quite safe to assert that RTI is a means as well as end to achieve democracy in its truest meaning. This can be achieved by development of a comprehensive information management system and by the promotion of information literacy among the masses. This will positively lead to ultimate realization

to Information : A Constitutional Perspective”, Vol. VIII *Nyayadeep*, see at pg. 119.

of the objectives of RTI viz. transparency and accountability. An informed citizenry is a condition precedent to democracy.

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