

An Indian Perspective of Right to Information And its Application

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Abstract:

Right to Information or in popular sense RTI is an essential step in ensuring transparency and accountability in governmental systems and processes. When a country's government is transparent, there are very few chances exist for corruption and mismanagement of country's resources and that government is presumed to be more accountable towards its citizens. This is the main reason of the growing importance of RTI and are therefore now-a-days becoming the standard of international arena. The Right to Information generally understood simply as the .right to have access to information held by public authorities. It is not just a necessity of the citizens but it is a condition precedent to a good and transparent government. To be more specific, Right to Information or RTI makes democracy more vibrant, participatory and meaningful and allows citizens to participate in the process of governance of the county. In other words, it can be stated that the Right to Information in true sense of the term empowers the ordinary/poor citizens or the so called mango people of the country especially them who lives mainly in the rural parts of our country.

Keywords: Right to Information, Transparency, Accountability, Corruption, Mismanagement, Resources, Public Authorities, Government, Democracy Etc.

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INTRODUCTION

‘Information’ as a term has been derived from the Latin words ‘Formation’ and ‘Forma’ which means giving shape to something and forming a pattern respectively. Information adds something new to our awareness and removes the vagueness of our ideas.¹ Information is Power, and as the former Prime Minister Atal Behari Vajpayee stated, the Government wants to share power with the humblest; it wants to empower the weakest. It is precisely because of this reason that the Right to Information has to be ensured for all.²

India is a democratic republic state. Here the Government is of the people, by the people and for the people. Therefore the people of our country have the right to know about state affairs.

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1. Right to Information- National Documentation Centre On Mass Communication, Research, Reference And Training Division (Ministry Of Information And Broadcasting), available on [Http://Www.Rtrd.Nic.In/Right%20to%20information.html](http://www.rtrd.nic.in/Right%20to%20information.html) browsed on dated 04.05.2014 At about 8.23 A.M
 2. Ibid.

Gone are the days when public dealings were kept in strict secret, a practice which often led to corruption, misuse and abuse of statutory and administrative power. Freedom of information brings openness in the administration which helps to promote transparency in state affairs, keep government more accountable and ultimately reduce corruption. Freedom of information owes its origin in the freedom of speech and expression which is one of the solemn Fundamental Rights under the Constitution of India. It includes the right to know and to be known and the right to impart and receive information regarding the functioning of the government and the state machineries. But so far as private affairs are concerned, the Right to Information Act has no effect. Freedom of information is not absolute. There are reasonable restrictions as imposed by the Constitution, the Act itself, other statutes and of course judicial interpretations on the access to information. But still, it is the most valuable piece of legislation in the hands of the people of India to know about the particulars of the government. During the last decade the

public became vocal to get information from the state.³

The right to impart and receive information is a species of the right to freedom of speech and expression guaranteed by Article 19(1) (a) of the constitution of India. A citizen has a Fundamental Right to use the best means of imparting and receiving information. The State is not only under an obligation to respect the Fundamental Rights of the citizens, but also equally under an obligation to ensure conditions under which the Right can be meaningfully and effectively be enjoyed by one and all. Freedom of speech and expression is basic to and indivisible from a democratic polity. A true democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in

20journal/WINTER%202010%20ARTICLE
S/Article%204.pdf browsed on dated
04.05.2014 at about 8.16 A.M

respect of which they are called upon to express their views. One sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals. Hence to have a representative central agency to ensure the viewer's right to be informed adequately and truthfully is a part of the right of the viewers under Article 19(1) (a).⁴

INTERNATIONAL TREND OF RIGHT TO INFORMATION

The UN's Universal Declaration of Human Rights of 1948 had a catalytic effect on movements for 'open' government, worldwide. Many democratic countries have taken legislative action to give its citizens a right of access to information in the possession of the government and its agencies.⁵

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3. Global Media Journal – Indian Edition, Winter Issue / December 2010, LIMITATIONS OF THE RIGHT TO INFORMATION ACT, 2005 by Priyanka Jana, Advocate, Calcutta High Court, Email: priyanka_mandal_kol@yahoo.co.in, available on [https://www.caluniv.ac.in/Global%20mdia%](https://www.caluniv.ac.in/Global%20mdia%20journal/WINTER%202010%20ARTICLE%20S/Article%204.pdf)

The first RTI law was enacted by Sweden in 1766, largely motivated by the parliament's interest in access to information held by the King. The Swedish example was later followed by the US, which enacted its first law in 1966 and then by Norway in 1970. The interest in Freedom of Information (FOI) laws took a leap forward when the US, reeling from the 1974 Watergate scandal, passed a strong FOI law in 1976, followed by several western democracies enacting their own laws (France and Netherlands 1978, Australia, New Zealand and Canada 1982, Denmark 1985, Greece 1986, Austria 1987, Italy 1990). By 1990, the number of countries with FOI laws climbed to 13. A big step forward was the EU Charter of Fundamental Rights in

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2000, which included both freedom of expression and the right of access to documents.⁶

By 2010, more than 85 countries have national-level RTI laws or regulations in force including the major developing countries like China and India. Of all these, Mexico has taken the lead with one of the best examples of a well-functioning FOIA in the world. The law passed in 2002 represents a vital element of Mexico's democratic transition, and became a model worldwide. A well competent governmental body (Instituto Federal de Acceso a la Información) is entrusted with the responsibility of implementation and overseeing the law. Handling over 200,000 requests in its first five years have resulted in Mexico setting a new international standard for transparency legislation.⁷

In Asia so far almost 20 nations have adopted FOI laws including Kazakhstan (FOI Act, 1993), South Korea (Act on Disclosure of Information by Public

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4. THE EXPANDING HORIZONS OF RIGHT TO INFORMATION BY PRAVEEN DALAL available on <http://cic.gov.in/CIC-Articles/Praveen%20Dala-02-13052006.pdf> browsed on dated 04.05.2014 at about 8.28 A.M
 5. Right to Information in India: A Hallmark of Democracy by Varun Malik, Assistant Professor, Rayat College of Laws, Railmajra, Punjab, India- International Journal of Management and Social Sciences Research (IJMSSR) ISSN: 2319-4421 Volume 2, No. 2, February 2013, available on <http://www.irjcjournals.org/ijmssr/Feb2013/>

Agencies, 1996 adopted in 1998 and amended in 2004), Japan (Law concerning Access to information, 1999 came into power in 2001 and amended in 2003), China (Open Government Information Regulation, 2008 which came into effect in 2009) and Indonesia (FOI Law, 2008 which came into force in 2010). In South Asia, countries such as Afghanistan, Bhutan, Maldives and Sri Lanka, have not adopted any related legislations. Only Nepal (2007), Bangladesh (2009), Pakistan (2002) and India (2005) have such laws.⁸

In Pakistan, the FOI Ordinance passed in 2002 has provision for fine upto R10,000 when complaints are deemed to be frivolous, vexatious or malicious by the Ombudsmen. In Nepal, the law requires public agencies to update and publish 12 different kinds of information(s) by themselves on a periodic basis. Likewise, in Bangladesh, request for information cannot be rejected on the ground of national security. Jordan is the only Arab country to have enacted a RTI law.⁹

6. Analysing the Right to Information Act in India, available on http://www.cuts-international.org/cart/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf

browsed on dated 04.05.2014 at about 8.13 A.M

7. Ibid.
8. Ibid.
9. Ibid.

In Africa, the progress on the enactment of RTI laws has been more modest. The South Africa's Promotion of Access to Information Act, 2000 came into force in 2001 remains unique in Africa being the only such law that permits access to records held by private as well as public authorities. Followed by South Africa, Zimbabwe adopted the Access to Information and Privacy Protection Act, 2002, though it is very weak. In three other African nations: Angola (Access to Administrative Documents Act, 2002 which was further amended in 2006); Uganda (Access to Information Act, 2005 which came into power in 2006); and in Ethiopia (Law on Mass Media and FOI, 2008 amended in 2010) FOI Acts were adopted which have been constrained by poor implementation.¹⁰

Kenya's efforts to enact an FOI law dates back several years but in recent times has been most apparent through the publishing of draft FOI Policy and FOI Bill 2007 by the Government of Kenya in April

2007. The published bill has very progressive provisions, but its enactment is still awaited. In Zambia, a FOI Bill 2002 was placed in the Parliament but withdrawn in 2002 itself, with the government justifying the withdrawal on the basis that it wanted to consult widely on the Bill. The new Bill has yet to be reintroduced in the Parliament. The Constitution of Ghana guarantees the people, freedom of information. In Ghana, the FOI Bill has been drafted but not yet passed by the Parliament.¹¹

RIGHT TO INFORMATION IN INDIA

India is a signatory to the Universal Declaration of Human Rights i.e. UDHR (1948) and the International Covenant on Civil and Political Rights i.e. ICCPR (1966). As a party to these instruments it is under an international obligation to effectively guarantee the right to information. Further, under Article 51 (c) of the Indian Constitution the state is duty bound to

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10. Supra Note 9
11. Ibid

foster respect for international laws and treaty obligations. This binds the Indian Government to create suitable conditions to implement international laws and obligations with respect to right to information. Further the Indian Constitution also has some provisions which indirectly promote the right to information.¹²

India's RTI Act is generally claimed as one of the world's best law with an excellent implementation track record. It is one of the most empowering and most progressive legislations passed in the post Independent India. From the day the Act came into force, enlightened citizenry had started using the law by making information requests in order get the police to act or get their entitlements of food grain under public distribution system or expose the corrupt officials.¹³

Most radical provision of the Act is that the information seeker need not to give any reason for it or prove his locus standi. Yet the task of implementing the law is not without major challenges. Lack of adequate

public awareness, especially in rural areas, lack of proper system to store and disseminate information, lack of capacity of the public information officers (PIOs) to deal with the requests, bureaucratic mindset and attitude etc. are still considered as major obstacles in implementation of the law.¹⁴

Background of RTI in India¹⁵

Disclosure of information held by public authorities in India was governed by the Official Secrets Act (1923) enacted during the British rule. The Supreme Court of India had in several judgments prior to enactment of the RTI Act, interpreted Constitution to read RTI as the fundamental right as embodied in .right to freedom of speech and expression. and .right to life..

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- 12. Supra Note 5
 - 13. Supra Note 11
 - 14. Ibid
 - 15. Ibid

The *raison d'être* for a gradual and strong evolution of RTI in India is primarily because of a group of villagers in central Rajasthan, mostly poor wage workers, asserted their RTI by responding against ghost entries in muster rolls, which was the sign of rampant corruption in the system, and demanding official information recorded in government rolls related to drought relief work. The movement spread to various parts of Rajasthan, leading to a nationwide movement for the RTI and related state legislations. Thus, it was states that took the first step by enacting RTI laws. Tamil Nadu (1997) Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004).

The demand for national law started under the leadership of National Campaign on People's Right to Information (NCPRI). The FOI Bill 2000 was passed in the Parliament in 2002 but not notified, hence, never came into effect.

The national campaign for RTI received a major boost when the UPA Government's Common Minimum Programme promised that the RTI Act will be made more progressive, participatory and

meaningful. All this and many other factors, including pressure from the civil society groups led to the enactment of the RTI Act in India, which came into effect on October 12, 2005.

RIGHT TO INFORMATION UNDER THE CONSTITUTION OF INDIA

- **Freedom of information under Article 19(1) (a)¹⁶:** Article 19(1)(a) of the constitution guarantees to all citizens freedom of speech and expression. At the same time, Article 19(2) permits the State to make any law in so far as such law imposes reasonable restrictions on the exercise of the rights conferred by Article 19(1)(a) of the constitution in the interest of sovereignty and integrity of India, the security of the State, friendly

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16. Supra Note 4

relations with foreign States, public order, decency, morality, contempt of court, defamation and incitement of offence. Thus, a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a). It must, however, be noted that freedoms under Article 19, including Article 19(1) (a), are available only to citizens of India. An alien or foreigner has no rights under this Article because he is not a citizen of India. Thus to confer protection upon non-citizens one has to depend upon and apply Article 21 which is available to all persons, whether citizen or non-citizen.

- **Right to know under Article 21:** Article 21 enshrines right to life and personal liberty. The expressions “right to life and personal liberty” are compendious terms, which include within themselves variety of rights and attributes. Some of them are also found in Article 19 and thus have two sources at the same time.¹⁷

Regarding Right to Information under the Indian Constitution, the following judicial pronouncements can give a better idea of understanding:¹⁸

In *People's Union for Civil Liberties v/s Union of India*¹⁹, a Division Bench of the Supreme Court of India constituted by Justice S.B. Sinha and Justice B.M. Khare held that "45. Right to Information is a facet of the freedom of 'speech and expression' as contained in Article 19 (1) (a) of the Constitution of India. Right to Information, thus, indisputably is a Fundamental Right." Here it is also recognized that a reasonable restriction on the exercise of the right is always permissible for the security of the state.

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17. Supra Note 16

18. Supra Note 3

19. AIR 2004 SC 1442 : (2004) 2 SCC 476

In *State of U.P. v/s Raj Narain*²⁰, it has been held that "in a Government of responsibility like ours, where all the agents of the public must be responsible for their

conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing."

In *S. P. Gupta v/s Union of India*²¹, it is observed that to ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government. Democracy expects openness and openness is a concomitant of a free society. But in earlier two cases the Apex Court was silent on the relationship between the restriction which should be imposed on the right to know and the reasonable restrictions which are already existing on the freedom of speech and expression under Article 19 (1) (a).

In *Secretary, Ministry of Information and Broadcasting, Govt. of India v/s The Cricket Association of Bengal*²², the Supreme Court says that freedom of speech and expression includes right to acquire information and disseminate it. It enables people to contribute to debate on social and moral issues. Right to freedom of speech and expression means right to education, to inform, to entertain and right to be educated,

informed and entertained. Right to telecast is, therefore, within the ambit of Article 19 (1) (a).

In *Union of India v/s Association for Democratic Reforms*²³, the Supreme Court observed that the voters' right to know the antecedents of the candidates is based on the broader interpretation of Article 19 (1) (a). The foundation of healthy democracy is to have well informed citizens. Free and fair election is the basic structure of the Constitution and for that, information about the candidates, e.g., whether the candidate is literate, what is his asset and liability, whether he is charged with any criminal offence, these must be known to every voter.

In *Bennet Coleman and Co. v/s Union of India*²⁴, the Supreme Court looked at the

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20. (1975) 4 SCC 428
 21. (1981) Supp SCC 87
 22. (1995) 2 SCC 161
 23. (2002) 5 SCC 294
 24. AIR 1973 SC 60

freedom of press which is within the ambit of Article 19 (1) (a) from another angle. The Constitutional Guarantees for the freedom of speech is not so much for the benefit of

press as it is for the benefit of the public. The freedom of speech includes within its compass the right of all citizens to read and be informed.

Apart from these leading cases there are many cases where people's right to know and right to information have been upheld. The purpose of discussing all these is to show that we already have right to information as guaranteed by Article 19(1)(a) of the Constitution of India. Moreover, as an extended part of the freedom of speech and expression, the right to know and to be known is our Fundamental right as ensured by Chapter III of the Constitution. As per the Constitution if there is violation of Fundamental Right by the state, the aggrieved person may go to the Supreme Court under Article 32 or to the High Court under Article 226 directly. But after passing of the Right to Information Act, 2005, this Fundamental Right becomes only a statutory right.²⁵

RIGHT TO INFORMATION ACT, 2005

➤ Objective of the Act²⁶

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

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25. Supra Note 18

26. Right to Information and Good Governance, available on <http://www.legalindia.in/wp-content/uploads/2013/03/RTI.pdf> browsed on dated 04.05.2014 at about 9 A.M

➤ **Important Features of Right to Information Act, 2005**²⁷

- ❖ All citizens possess the right to information
- ❖ The term Information includes any mode of information in any form of record, document, e-mail, circular, press release, contract sample or electronic data etc.

- ❖ Rights to information covers inspection of work, document, record and its certified copy and information in form of diskettes, floppies, tapes, video cassettes in any electronic mode or stored informations in computer etc.
- ❖ Applicant can obtain Information within 30 days from the date of request in a normal case.
- ❖ Information can be obtained within 48 hours from time of request. If it is a matter of life or liberty of a person.
- ❖ Every public authority is under obligation to provide information on written request or request by electronic means.
- ❖ Certain informations are prohibited.
- ❖ Restrictions made for third party information Appeal against the decision of the Central Information Commission or State Information Commission can be made to an officer who is senior in rank.
- ❖ Penalty for refusal to receive an application for information or for not providing information is Rs. 250/- per day but the total amount of

penalty should not exceed Rs. 25,000/-.

- ❖ Central Information Commission and State Information Commission are to be constituted by the Central Government and the respective State Governments.

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27. Supra Note 26

- ❖ No Court can entertain any suit, application or other proceedings in respect of any order made under the Act.

The aforesaid mentioned principles promote transparency in government organisations, makes them function more objectively thereby enhancing predictability. In a fundamental sense, right to information is a basic necessity of good governance.²⁸

The intelligence and security organizations established by the Central Government **not under the purview of the RTI Act, 2005**²⁹

- ❖ Intelligence Bureau

- ❖ Research and Analysis wing of the Cabinet Secretariat
- ❖ Directorate of Revenue Intelligence
- ❖ Central Economic Intelligence Bureau
- ❖ Directorate of Enforcement
- ❖ Narcotics Control Bureau
- ❖ Aviation Research Centre
- ❖ Special Frontier Force
- ❖ Border Security Force
- ❖ Central Reserve Police Force
- ❖ Indo-Tibetan Border Police
- ❖ Central Industrial Security Force
- ❖ National Security Guards
- ❖ Assam Rifles
- ❖ Sasastra Seema Bal
- ❖ CID Special Branch, Andaman and Nicobar

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28. Supra Note 27
 29. Supra Note 25

- ❖ The Crime Branch – CID – CB, Dadra and Nagar Haveli
- ❖ Special Branch, Lakshadweep Police
- ❖ Special Protection Group

- ❖ Defence Research and Development Organisation
- ❖ Border Road Development Board
- ❖ Financial Intelligence Unit, India

➤ **No Right to Information in the Private Sector**³⁰

The Right to Information Act, 2005 is applicable in respect of public authorities established, owned or substantially financed by the Central Government, State Government, administration of Union Territories, panchayat, municipality or local bodies. Under Section 2(h) of the Act 'public authority' means anybody or institution or authority constituted or established

- (a) by or under the Constitution of India
- (b) by any law made by the Parliament
- (c) by any law made by the State Legislature
- (d) by any notification issued by the appropriate government and includes

(1) Body owned, controlled or substantially financed

(2) NGOs established, financed (directly or indirectly) by the Government

From the above discussion it is clear that the ambit of the Right to Information Act covers only public sector. So far as private sector is concerned like partnership

business, private companies and factories, multinational companies which have their head offices outside India, NGOs not financed by the government etc. the Act remains silent. Therefore private bodies or authorities are not under obligation to furnish any sort of information if asked for. The Act is operative in the public sector only. The Act has no application in the private sector.

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30. Supra Note 29

➤ **Limitations under Indian Law on Right to Information**³¹

There are certain laws which are contrary to the Right to Information in India and need to be amended in order to safeguard the Right to Information Act. Sections 123, 124, and 162 of The Indian Evidence Act provide to hold the disclosure of documents. Section 123 provides that any head of department may refuse to provide information on affairs of state by stating that it is a state secret will entitle not to disclose

the information. In a similar manner section 124 states that no public officer shall be compelled to disclose communications made to him in official confidence. Section 162 provides court not to inspect a document relating to matters of state. The Atomic Energy Act, 1912 provides that it shall be an offence to disclose information restricted by the Central Government. Similarly the Central Civil Services Act, 1965 provides a government servant not to communicate or part with any official documents except in accordance with a general or special order of government. The Official Secrets Act, 1923 as evident from its name, under section 5, provides that any government official can mark a document as confidential so as to prevent its publication.

LANDMARK DECISIONS REGARDING RIGHT TO INFORMATION³²

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31. Global Media Journal - Indian Edition, Winter Issue / December 2010, DEMOCRATIC NEED OF RIGHT TO INFORMATION ACT IN INDIA by Mr. Subhrajyoti Kundu, Lecturer, Department of Mass Communication, University of North

Bengal, Darjeeling, West Bengal. Available on <https://www.caluniv.ac.in/Global%20mdia%20journal/WINTER%202010%20COMMENTARIES/Commentaries%202.pdf> browsed on dated 04.05.2014 at about 8.48 A.M

32. Supra Note 12

➤ **Prabhu Dutt v. Union of India**³³

The court held that there could be no reason for refusing permission to the media to interview prisoners on death row. Repeated violations of civil rights by the police and other law enforcement agencies have compelled the courts to give directions to the concerned agencies for ensuring transparency in their functioning.

➤ **Sakal Newspapers (Private) Ltd. v. Union of India**³⁴

The Supreme Court held that the impugned Act and the Order imposed unconstitutional restriction on the freedom of the press. The court also held that restriction upon freedom of speech was to be examined with lesser presumption of constitutionality than the restrictions upon freedom of trade or

business. The court brought in the preferred freedom doctrine in Indian Constitution.

➤ **Romesh Thappar v. State of Madras**³⁵

One of the earliest cases where the Supreme Court laid emphasis on the people's right to know. There the petitioner had challenged an order issued by the then Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the circulation of the petitioner's journal Cross Roads was struck down as violative of the right to freedom of speech and expression under Article 19(1)(a).

➤ **Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd.**³⁶

Justice Mukharji recognized the right to know as emanating from the right to life. The question which arose was whether Reliance Petrochemicals Ltd. was entitled to an injunction against Indian Express which had published an article questioning the reliability of the former's debenture issue. The learned Judge observed:

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33. AIR 1982, SC 6

34. AIR 1962, SC 305

35. AIR 1950, SC 124

36. AIR 1989 SC 190

—We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age on our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform.

➤ **Tata Press Ltd. v. MTNL**³⁷

The Supreme Court, while considering the scope of Article 19(1)(a) in the context of advertising or commercial speech, held that the public has a right to receive information. The question which arose in that case was whether advertisements being for commercial gain could avail of the protection guaranteed under Article 19(1)(a). The Supreme Court held: — Advertising as a 'commercial speech' has two faces. Advertising which is no more than a commercial transaction, is nonetheless

dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisements. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The economic system in a democracy would be handicapped without their being freedom of _commercial speech.‘ Examined from another angle, the public at large has a right to receive the _commercial speech‘. Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfillment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of _commercial speech‘ may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life-saving drug may be of much more importance to general

public than to the advertiser who may be having purely a trade consideration.

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37. (1995) 5 SCC 139

➤ **In Dinesh Trivedi v. Union of India³⁸**

Which concerned the questions of the disclosure of the Vohra Committee Report, the Supreme Court once again acknowledged the importance of open Government in a participative democracy. The Court observed that: —In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare.¶ It went on to observe that —democracy expects openness and openness is concomitant of a free society and the sunlight is a disinfectant.

➤ **Indira Jaising v. Registrar General, Supreme Court of India**

A Senior Advocate practising in the Supreme Court filed a petition demanding the publication of the inquiry report. The Court declined disclosure with a reasoning

that is difficult to reconcile with its own bold pronouncements in the past:

A report made on such inquiry if given publicity will only lead to more harm than good to the institution as judges would prefer to face inquiry leading to impeachment. In such a case the only course open to the parties concerned if they have material is to invoke the provisions of Article 124 or Article 217 of the Constitution, as the case may be. The said report is only for the purpose of satisfaction of the Chief Justice of India that such a report has been made. It is purely preliminary in nature, ad hoc and not final ... the only source and authority by which the Chief Justice can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made the subject- matter of a writ petition to disclose a report made to him.

➤ **Association for Democratic Reforms v Union of India**

The Delhi High Court has emphasized that the right to information acquires great significance in the context of elections. It is now common knowledge that there is

criminalization of politics in India. It is a matter of great concern that anti-social and criminals are seeking to enter the

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38. (1997) 4 SCC 306

political arena through the mechanisms of elections to State Legislatures and even to Parliament. Parliament has not yet been able to enact a law to uproot this evil. In this scenario, the Delhi High Court has sought to cleanse the electoral process through the mechanism of the right to know of the people and laid down certain conditions which the apex court also agreed on appeal. The apex court went on to say that one-sided information, disinformation, mis-information and non-information will equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.

➤ **M. Nagaraj v. Union of India**³⁹

It was held that right to know and right to access information is implicit in the right of

free speech and expression guaranteed under Article 19(1) (a).

The right to information has both intrinsic and instrumental value. Its intrinsic value comes from the fact that citizens have a right to know. It is a crucial step towards a deeper, more meaningful democracy. More tangibly, in a country like India it can promote action for development and therefore has considerable instrumental value. Information enables people to make enlightened choices, and keep tabs on elected representatives and officials who claim to act on their collective behalf. Thus, accountability and transparency are both enhanced radically.

➤ **PUCL v. Union of India**

Section 14 of POTA the obligation to furnish information was held to be intra-vires Articles 14, 19, 20(3) and 21. Neither a lawyer can claim professional communication beyond what is permitted under section 126 of Indian Evidence Act, nor is there any law permitting a newspaper or a journalist to withhold relevant information from courts, nor can withholding of such information be traced to the right to privacy, which itself is not an absolute right.

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39. AIR 2007 SC 71

➤ **Landmark Judgments by Central Information Commission⁴⁰**

❖ **CIC asks UPSC to show marks to Civil Services aspirants**

The CIC directed the Union Public Services Commission (UPSC) to declare individual marks scored by 2,400 candidates appeared for the Civil Services Preliminary examinations in 2006 and ordered it to declare cut-off marks for each subject (CIC/WB order, November 13, 2006)

❖ **Record management to be improved by all public authorities**

Case: In the case of Paramveer Singh vs Punjab University, the applicant applied for information regarding the merit list for selection of candidates to a particular post in the university. However, no proper information was provided (CIC/OK/A/2006/00016, 15/6/06).

Judgment: The Commission held that every public authority, must take all measures in pursuance of Section 4(1)(a), to implement efficient record management systems in their offices so that the requests for information can be dealt promptly and accurately.

❖ Property statements filed by civil servants are not confidential information

Case: In the case of Shyam Yadav vs Department of Personnel Training, the applicant had sought details of property statements filed by bureaucrats (CIC/WB/A/2009/000669, June 17, 2009).

Judgment: The Commission held that property statements filed by civil servants are not confidential and information can be disclosed after taking the views of concerned officials as per the provisions of the RTI Act.

❖ Set guidelines for redressing the grievances of citizens: decision given by CIC

Case: In case of Ram Bhaj vs Delhi government, the appellant has sought information about

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40. Supra Note 15

whether the guidelines issues by the Department of Personnel and Training regarding disposal of public grievances with a specific time frame have been notified by the Delhi government (CIC/SG/A/2010/000537+000538/7492, April 19, 2010).

Judgment: CIC directed the Delhi government to inform the common man about the timeframe required to redress their grievances.

CRITICISMS OF RIGHT TO INFORMATION IN INDIA⁴¹

The Act has been criticized on several grounds. It provides for information on demand, so to speak, but does not sufficiently stress information on matters related to food, water, environment and other survival needs that must be given pro-actively, or suo moto, by public authorities. The Act does not emphasize active intervention in educating people about their right to access information -- vital in a country with high levels of illiteracy and poverty -- or the promotion of a culture of

openness within official structures. Without widespread education and awareness about the possibilities under the new Act, it could just remain on paper. The Act also reinforces the controlling role of the government official, who retains wide discretionary powers to withhold information.

The most scathing indictment of the Bill has come from critics who focus on the sweeping exemptions it permits. Restrictions on information relating to security, foreign policy, defence, law enforcement and public safety are standard. But the Right to Information Act also excludes Cabinet papers, including records of the council of ministers, secretaries and other officials, this effectively shields the whole process of decision-making from mandatory disclosure.

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41. Right To Information Act- An Overview, available on <http://www.legalserviceindia.com/articles/rtdh.htm> browsed on dated 04.05.2014 at about 8.36 A.M

Another stringent criticism of the Act is the recent amendment that was to be made allowing for file notings except those related to social and development projects to be exempted from the purview of the Act. File notings are very important when it comes to the policy making of the government. It is these notes that hold the rationale behind actions or the change in certain policy, why a certain contract is given or why a sanction was withheld to prosecute a corrupt official. Therefore the government's intention to exempt the file notings from the purview of the Act has come in for stringent criticisms.

RECOMMENDATIONS REGARDING RTI⁴²

Access to information laws should provide clear guidance to public servants as to how to respond to requests when the information is not held by the public body, even if it relates to its functions and responsibilities. If information does not exist, public officials should be prepared to inform the requester. Such responses are a key part of open government and can form the basis of constructive dialogue between the administration and the public about the

type of information needed in order to improve government efficiency and increase the quality of decision making and policy making.

- Public authorities should have the duty to inform the information commissioner or similar oversight body of instances when requests were refused for lack of information. Such requirements are particularly important in transitional and developing countries like ours where information management can be deficient.
- Establishing indexes of the information held by particular bodies, and making these indexes public can greatly assist information officers in rapid retrieval of information upon receipt of a request, or in quick identification of the nonexistence of information. Such indexes should also list the titles of documents subject to classification under other laws, in order to facilitate requests for these documents and review of the necessity of the classification according to the standards

established by the access to information law.

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42. Supra Note 32

- Proactive transparency and the posting of materials on government websites facilitates access to information, but cannot in them self guarantee the right of access to information. At a minimum, where requesters do have Internet access, officials should provide exact URLs, a service which entails little effort and no expense. Homepages are not sufficient. Where requesters do not have Internet access, the government body must print out the relevant pages and provide them to the requesters (charging any standard copying costs provided for bylaw). Such obligations should be clearly stated in relevant legislation and guidelines.
- A standard part of training in any access to information regime is to ensure that public officials

understand the presumption of openness, and that exemptions can only be applied when information harms a protected interest and is not overridden by a public interest.

- Public officials must be aware that refusals can only be written—never oral—and must state the relevant exemptions that justify refusal.
- Information officers, or their equivalent, should have the authority to decide on information disclosure. Information should only be denied following a transparent internal review process that includes senior officials to ensure that exemptions have been properly applied.
- The national legislature, an information commission or commissioner, or other monitoring bodies or officials charged with overseeing implementation of access to information laws should, in a timely manner, review the issuance, by public bodies and bodies performing public functions, of written refusals for requests for information to ensure that exemptions are being applied appropriately and that denials of

requests are not being based upon inappropriate fees, demands to clarify requests, inquiries as to why the information is being requested, etc.

- Access to information training at public bodies should include instruction in the partial release, or “severing” of documents, to ensure that non-harmful information in classified documents can enter into the public domain.

CONCLUSION

RTI is a powerful tool that can deliver significant social benefits. It can provide a strong support to democracy and promote good governance, by empowering the Citizen’s ability to participate effectively and hold government officials accountable. Rather than just providing information, RTI Act in most of the countries has served to be an effective watchdog ensuring all those coming in purview of the Act to work in accordance with rules and regulations, without any irregularities.⁴³

However, stricter implementation of this law requires not only political will but also active civil societies, RTI activists and

few key democratic features, such as respect for the rule of law. Currently, the RTI Act in India is passing through a decisive phase, much more needs to be done to facilitate its growth and development. Mere protest against the lack of implementation of this law alone is not sufficient, one needs to encourage this initiative taken, for the law to grow and mature.⁴⁴

Thus it can be concluded that citizens have a right to information and right to know about public affairs and

governmental functioning. The legislature, realizing the need and urgency of this requirement, has shown its sensitivity and positive attitude by conferring upon citizens of India various statutory rights, which advance the Right to information and expand its horizons to the deserving limits.⁴⁵

43. Supra Note 40

44. Ibid

45. Supra Note 17

References:

1. Right To Information Act- An Overview, available on http://www.legalserviceindia.com/articles/rti_dh.htm browsed on dated 04.05.2014
2. Global Media Journal - Indian Edition, Winter Issue / December 2010, DEMOCRATIC NEED OF RIGHT TO INFORMATION ACT IN INDIA by Mr. Subhrajyoti Kundu, Lecturer, Department of Mass Communication, University of North Bengal, Darjeeling, West Bengal. Available on <https://www.caluniv.ac.in/Global%20mdia%20journal/WINTER%202010%20COMMENTARIES/Commentaries%202.pdf> browsed on dated 04.05.2014
3. Analysing the Right to Information Act in India, available on http://www.cuts-international.org/cart/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf browsed on dated 04.05.2014
4. Right to Information- National Documentation Centre On Mass Communication, Research, Reference And Training Division (Ministry Of Information And Broadcasting), available on <Http://Www.Rrtd.Nic.In/Right%20to%20information.Html> browsed on dated 04.05.2014
5. Global Media Journal – Indian Edition, Winter Issue / December 2010, LIMITATIONS OF THE RIGHT TO INFORMATION ACT, 2005 by Priyanka Jana, Advocate, Calcutta High Court, Email: priyanka_mandal_kol@yahoo.co.in, available on



<https://www.caluniv.ac.in/Global%20mdia%20journal/WINTER%202010%20ARTICLES/Article%204.pdf>
f browsed on dated 04.05.2014

6. THE EXPANDING HORIZONS OF RIGHT TO INFORMATION BY PRAVEEN DALAL available on <http://cic.gov.in/CIC-Articles/Praveen%20Dala-02-13052006.pdf> browsed on dated 04.05.2014
7. Right to Information in India: A Hallmark of Democracy by Varun Malik, Assistant Professor, Rayat College of Laws, Railmajra, Punjab, India- International Journal of Management and Social Sciences Research (IJMSSR) ISSN: 2319-4421 Volume 2, No. 2, February 2013, available on <http://www.irjcjournals.org/ijmssr/Feb2013/8.pdf> browsed on 04.05.2014