

## RIGHT TO INFORMATION: ACCOUNTS AND ACCOUNTABILITY

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### Abstract

Public participation is the most important factor which has the potential to ensure transparency in governmental decision making. It lays the foundation for efficient self-administration and decentralization. Access to Information plays a vital role in the area of better democratic governance. It endorses better transparency and makes the organs of the government accountable to the people of the state thus helps in checking corruption and malpractices. Right to Information Act 2005 is thus considered to be one of the cornerstones with respect to better accountability and governance with respect to India. The RTI Act provides for access of every public document to every citizen of India, hereby promoting the Right to life and personal liberty and freedom of expression enumerated under Article 19 and Article 21 of the Constitution of India. This paper discusses the aim and objectives of the Right to Information Act and also provides for the undermined fact that the Right to Information is not an absolute right and subject to certain limitation. Further this paper seeks to discuss various modes through which the said legislature can be improvised in practice so that the best of it could be achieved by the citizens to insure a better, transparent and accountable democracy

*“The fight for the right to information is the fight for survival of democracy in India. The stakes are too high for us to ever give up. So we will never give up.”*

*-ArvindKejriwal*

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## Introduction

Information is the most decisive source of power in the hands of citizens of the democratic States. Easy access to public documents is an essential aspect of Modern governance which is required in a democratic country. The democracy expects openness and openness is a concomitant of free society. The concept of openness can only be exercised by the citizens if they are vested with the 'Right to Know'. In a democratic setup where the people elect their representatives there must be a statutory right that enables the citizen to know about the actions of their representatives. Hence, information is indispensable for the transparency and accountable functioning of a true democratic government. It provides an important guard against abuse of power, corruption and corrupt practices. It is also beneficial to the governments transparency in the decision-making process assist in developing citizen's trust in governmental actions and maintaining a civil and democratic society. More than 177 years ago, James Madison, the fourth President of the US said: "*A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance; And a people who mean to be their own governors, must arm themselves with the power which knowledge gives.*"<sup>1</sup>

Citizen's Access to Information (ATI) is an essential step in ensuring transparency and accountability in government systems and processes. When a government is transparent, there is less chance for corruption and more room for accountability. That's why Freedom of Information Acts (FOIAs) are becoming standard good practice in the international arena. The RTI generally understood as the right to access information held by public authorities is not just a necessity of the citizens; it is a precondition to good governance. To be specific, ATI makes democracy more vibrant and meaningful and allows citizens to participate in the governance process of the country. In particular, it empowers ordinary citizens, especially those in rural areas.

When people have ATI they naturally tend to make more meaningful decisions, raise informed opinions, influence policies affecting their society and even help shape a more assured future for

<sup>1</sup> Letter to Edward Livingston (7.10.1822), *quoted* from the article by Justice Ruma Pal "Information and Fundamental Rights" (2009) 10 SCC (J) pp. 49-59.

the next generation. RTI has been recognised in Sweden<sup>2</sup> for over 200 years. Importantly, however, over the last ten years it has gained widespread recognition in all regions of the world. While related legislations were adopted only by 13 countries in 1990, this number has now grown to 85<sup>3</sup> and more, and similar such pieces of legislations are under active consideration in many other countries.

The information regarding the government empowers and enables the state and its citizens to exercise their civil, political and social rights in an efficient manner. Keeping in view all these, almost every society has made endeavour by way of putting in place the mechanisms for free flow of information and ideas so that people can access them whenever it is required. In this manner they are empowered to participate in the development process and enjoy the fruits of development. There are multifarious and multidimensional facets that components that emphasize the importance and requirement of this statutory right in a country like India, which is many times considered to be one of the most corrupt nations in the world. The right to information is thus a potent tool for countering corruption and for exposing corrupt officials. It also helps in limiting abuse of power and discretion by officials for various political or other vested interests. The right to information is also necessary for protecting civil liberties, as it makes easy for civil society groups to monitor illegal encounter killings or the abuse of the Preventive Detention laws. The regular denial on the part of the state to release information to the public at large with respect to related issues provides for the inefficiency and lack of transparency in the system which must be strengthened by making Information a statutory obligation.

### History

India was one of the signatories to the International Covenant on Civil and Political Rights (ICCPR) and because of which India was under an international obligation to effectively guarantee the right to information as per Article 19 of the ICCPR.<sup>4</sup> Furtherance to which a formal recognition to a statutory Right to information was enacted by the parliament of India through the establishment of the Right to Information Act 2005. The reason why it took so much

<sup>2</sup> Swedish Freedom of the Press Act, 1766

<sup>3</sup> ARTICLE 19 Welcomes UNESCO Declaration on Right to Information, Press Release, ARTICLE 19, 4 May 2010.

<sup>4</sup> International Covenant on Civil and Political Rights (ICCPR) 23 March 1976

time was because there were many pre-constitutional laws blocking the enactment of RTI(Right to Information) Act The Official Secrets Act 1923, Section 123 of the Indian Evidence Act 1872 which provides that the Head of the Department can refuse to part with information,<sup>5</sup> Rule 11 of CCS Conduct Rules 1964 which states that no govt. servant shall communicate any official document or information to any other person to whom he is not authorized to communicate such document or information. It was because of the aid of various judgements of Supreme Court in several cases from time to time to define that the right to information is implicit in the constitutionally enshrined rights to freedom of speech and expression and right to life and liberty.<sup>6</sup> The first Supreme Court ruling on the right to information dates back to 1975 when K. K. Mathew J in the case of State of UP V. Raj Narain,<sup>7</sup> explicitly held the right to information to be our fundamental right. Justice Mathew ruled, *“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 1982 the right to know matured to the status of a constitutional right in the landmark judgement of S P Gupta V. Union of India,<sup>8</sup> popularly known as Judges Case. The Supreme Court elevated the right to know and the right to information to the status of a fundamental right, on the principle that certain unarticulated rights are immanent and implicit in the enumerated guarantees. The court declared - The concept of an open government is 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). The Supreme Court of India has emphasized in the SP Gupta case (1982) that 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. In 1986, the Bombay High Court followed the SP Gupta judgment in the well-known case Bombay Environmental Group and others V. Pune Cantonment Board.<sup>9</sup> The Bombay High

<sup>5</sup> Indian Evidence Act 1872 Section 123

<sup>6</sup> The Constitution of India 1950 Article 19 (1) (a) and Article 21

<sup>7</sup> (1975) (4) SCC 428

<sup>8</sup> (AIR) 1982 SC (149)

<sup>9</sup> (AIR) 1982 Bom (273)

Court distinguished between the ordinary citizen looking for information and groups of social activists. This was considered another landmark judgment concerning access to information.

The inception of the right to information movement in India was the MazdoorKisan Shakti Sangathan (MKSS). In early 1990s, in the Bhim Tehsil of Rajasthan, MazdoorKisan Shakti Sangathan (MKSS) started informing and leading people to exercise their access to information by asking for copies of bills and vouchers and names of persons who have provided with salary remuneration and wages mentioned in muster rolls on the construction of schools, dispensaries, small dams and community centres. The state legislature aptly passed the bill but it was found by the locals and villagers that the funds which were allotted to them were gravely misappropriated. Thus the struggle of MKSS to access the accounts of village and transparent administration was widely appreciated and it ignited the torch of right to information movement across India.

The chairman of Press council of India Justice P B Sawant first proposed the bill for Right to Information in 1966. The core of the Bill is clause 3 which says: 1. Every citizen shall have the Right to Information from public body; 2. It shall be the duty of the public body to maintain all records duly catalogued and indexed; 3. The public body shall be under a duty to make available to the person requesting information, as it is under an obligation to obtain and furnish and shall not withhold any information or limit its availability to the public except the information specified in Clause 4, and 4. All individuals whether citizens or not, shall have the right to such information that affects their life and liberty; The Govt. of India, Department of Personnel decided to set-up a Working Group on January 2, 1997 under the chairmanship of Mr. H D Shouri. The Working Group on the 'Right to Information and Promotion of Open and Transparent Government' submitted its comprehensive and detailed report and the draft Bill on Freedom of Information on 24 May 1997. Apart from recommendations like appointment of a Public Information Officer to the time limit of 30 days, it suggested suitable amendment in section 5 of the Official Secrets Act and clauses 123 and 124 of the Indian Evidence Act. Finally the Central Government enacted the Indian Freedom of Information Act in 2002. The Act represents an important step towards actualizing the Right to Information, but has been criticized for not going far enough.

At the state level Tamil Nadu was the first State to enact a right to information law, in 1997, followed by Goa in the same year. Seven other States had passed legislation by 2003 - Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003) and Jammu and Kashmir (2003). Uttar Pradesh framed an executive code on access to information in 2000 and draft bills have been prepared by the Governments of Kerala and Orissa. What proved to be the landmark legislative action was the Right to Information Act (RTI) 2005. The act gives the right to information on matters in the possession of the state and public agencies that are covered by the Act. It seeks to promote transparency, arrest corruption and to hold government and its instrumentalities accountable to the governed. Subject to a few exceptions.

### Overview of the Act:

Right to Information is recognized under Article 19 (1) (a) of the Constitution and taking in regard the constitutional framework the Right to Information Act 2005 was enacted. The ambiguity as to the right to information is mentioned in the fundamental right to freedom of speech contained in Article 19(1) of the Constitution of India or not has since been clarified and the Apex Court finally ruled that the Right to Information is as much as fundamental right as Right to Freedom. This judgement has drastically changed the very fibre to understand of the right to freedom of information. The right as mentioned under Article 19(1)(a) it is imperative that there must be knowledge and information. The Right to Information Act, 2005 has been enacted by the Parliament, while repealing the 2002 Act, for setting out the practical regime of right to information with a vision of creating a new stratosphere of transparency and sharing of information and provide every Indian citizen the basic constitutional, statutory and democratic right to gain access to certain information that may be held by public authorities and ensure transparency and accountability.

The main aim and objectives for which the act has been enacted is very concisely mentioned in the preamble of the act. Like every legislature the preamble of the RTI Act has to be Read as the part of Act itself. The scope of the RTI Act 2005 has been clearly mentioned in the preamble itself as to what extent the information can be shared and what information shall be withheld.

The Right to Information Act is enacted with a view to that the citizens can exercise their Right to Information which is withheld by the public officials and public offices in order to promote transparency and accountability in the working of every public authority, because of the same, Central Information Commission and State Information Commission and constituted. It also appends the fact that in a democratic country people should be informed about the things happening around there without any failure. Transparency of information is considered as a vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. The provisions ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, effective mechanism for access to information and disclosure by authorities. Democracy requires informed citizens and transparency of information. The Act provides for setting out Central Information Commission and State Information Commissions to promote transparency and accountability in the working of every public authority.<sup>10</sup>

### Critical Appraisal:

Indian Courts in its various judgements have by time to time established that Right to Information is a right enumerated under Article 19 and Article 21 respectively along with Right to freedom of Speech and Expression Right to Life and Personal Liberty. It is awell-established principle that corruption thrives on secrecy. Transparency may lead to its eradication and right to information, in its undiluted form, would be an essential tool to prevent corruption. The long title of the RTI Act lays stress for transparency and accountability in the working of every public authority to keep the citizenry informed and to make the Government and their instrumentalities accountable to the governed. While transparent governance is essential to restore accountability and increase the efficiency, accountability of the governors to the governed is an essential feature of good governance. It however must be taken into consideration that the information relating to every matter of governance of a state cannot be made accessible to the citizens although Right to Information is a Right of every Citizen the right is not absolute in nature, matters related to Security of State i.e defence matters or certain matters that if disclosed to the public will cause or which are likely to cause any type of damage to the nation itself cannot be disclosed by the state. The RTI Act seeks to distinguish and segregate such information which could be made easily available to the public and to which an Indian citizen has a right to ready access in order to

<sup>10</sup>Right to Information in India: A critique of the Right to Information Act by *Maninder Pal Singh*

preserve and uphold the true worth of the country's democratic ideals. The Right to information is definitely a very powerful tool for exercising the fundamental right to freedom of speech and expression. Information is indispensable for the functioning Information always empowers people and ensures transparency of administration.

No doubt, there are some hindrances in its implementation but it can be concluded from above discussion that the right to information is facet of and underlies all fundamental rights whether it be equality, liberty or any of the six freedoms guaranteed to citizens under the Constitution as also social, economic and political justice referred to in then Preamble to the Constitution because it can act as a check against the misuse of power by those who are constitutionally bound to ensure the realization of those rights. It is now for the public to be alert and watchful of their right to such information and compel disclosure because ultimately it is for them to use this weapon against all public functionaries across the board by ferreting out the truth and fixing accountability.<sup>11</sup>

The Right to Information Act, 2005 seems to be an effective legislation but no matter however effective the legislation the legislation can only be deemed to be effective with its effective implementation. Therefore it requires aware and educated people who can use it for their welfare of the state. Thus, it is again on the shoulders of government to educate the people of the nation so that they can utilise the legislation in a proper and effective manner and the establishment of such an act does not go in drain. Also a high order Judicial Activism is also necessary regarding the implementation. If it succeeds in its purpose it will necessarily increase public participation. Thus, it is an opening way to true democracy. A fully informed citizen will be able to perform his duties in a better manner and if we stand together we can build a better tomorrow for our country. Implicit in this assertion is the proposition that in transactions which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated. 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. In actual practice, revelation of information is likely to conflict with other public interests, including efficient operations of the Governments, optimum

<sup>11</sup> Justice P.B. Sawant, "Right to Information" Press Council of India Review 1997 May-July



use of limited fiscal resources and the preservation of confidentiality of sensitive information. It is necessary to harmonise these conflicting interests while preserving the paramount status of the democratic ideal. In a democratic society, where the Government is selected by the will of the people, there is a need for maintaining a relationship which ensures trust in all sense. A free flow of information can be an important tool for building a trust between the Government and the citizens. It also improves communication within the government to make the public administration more efficient and effective in delivering services to its constituency.

Further in a path breaking recent judgement, the Central Information Commission (CIC) has brought the office of the Chief Justice of India within the scope of the Right to Information Act. In *Nemi Chand Jain v. Supreme Court of India*,<sup>12</sup> it was observed, the CIC that the office of Chief Justice of India was a Public Authority within the meaning of Section 2 (h) of the RTI Act. The Supreme Court of India challenged this order of the CIC before Delhi High Court. The Delhi High Court declined the argument made on behalf of the Supreme Court and ruled that the office of the Chief Justice of India comes within the ambit of the Right to Information Act saying judicial independence is not a judge's privilege but a responsibility cast upon him. A three-judge bench comprising Chief Justice A.P. Shah and Justices Vikramjeet Sen and S Muralidhar dismissed the plea of the Supreme Court which contended that bringing the CJI's office within the RTI act would 'hamper' judicial independence.

### Conclusion

On the basis of above discussions, it can be concluded that the right to information act is one of the most important and pivotal part of democratic governance. All the organs of the government including executive, judiciary and legislature have been brought under the scope of the RTI Act to provide the citizens of the state every public information and through which we can achieve a better democratic order in the nation.

<sup>12</sup>[Appeal No. CIC/WB/A/2009/000279 date of decision announced: 10.5.2010]