

RIGHT TO KNOW UNDER THE CONSTITUTION OF INDIA: A CRITICAL APPRAISAL

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Abstract:

Transparency in public affairs is sine-qua-non to flourish and grow a democratic societal set up. Transparency in public offices' work schedule is a way towards accountability, which is a kind of check on corruption. India is a big democratic country and giving right to know to the citizens is a step towards the transparency in public matters. In a Democratic set up, government is formed by the people for the people. That's why people must be aware about the functioning of the government and if there is any delay in any work then they must be aware about the reasons of the delay. The Preamble to the Constitution of India secures to all its citizens liberty of thought and expression which can be fulfilled only with the right to know. A citizen can express his views only when he knows about the public matter or the functioning of the government or its related offices. Right to know coincides with of right to information. Only with the information a person can exercise his fundamental right of free speech and expression guaranteed by the Constitution of India. Although, right to know is a part of fundamental right of free speech and expression but access to information from the public authority was not possible prior to 2005. In 2002, Freedom of Information Bill was passed and got the approval of the President but it was not notified. In 2005, Right to Information Act was passed and put into effect on October 12, 2005. This Act gives right to the citizens to get information about the affairs of the government. No doubt there are many weaknesses in this Act but this Act has proved to be a milestone to provide right to know to the citizens in its practical form. The main aim of this research paper is to find out the lacuna of this Act, to make it more effective and to make it a real tool in the hands of the citizens, which can be used to combat the corruption and to flourish our democracy.

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1. Introduction:

"The power to withhold the facts of government is the power to destroy that government."¹

India is a democratic country. The term 'democratic' indicates that the constitution has established a form of government which gets its authority from the will of the people. The democratic set up can be of two types that are direct and indirect. Indian democratic set up is of indirect type. In the indirect system of democracy, it is the representatives of the people who exercise the power of legal as well as political sovereignty.² When the government is formed of the members elected by the people then the people must be aware about the functioning of the government. In the democracy people have the power to change the government. Constitution of India provides 'Right to Know' as a constitutional right to the citizens. Preamble to the constitution secures to every citizen the liberty of thought and expression and the right to access information is prerequisite condition for the fulfillment of the purpose of the preamble. Long time before, the Supreme Court gave constitutional status to the right to know in the case of State of U.P. vs Raj Narain³ and held that in a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can 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. The supreme court also held in the case of People's Union for Civil Liberties vs Union of India⁴ that right of information is a facet of 'speech and expression' as contained in Article 19(1)(a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right.

Constitution of India under Article 19 (1) (a) provides right to freedom of speech and expression to the citizens. It means citizens in India have the fundamental right to say and express the views and it can be possible only with the right to know as to how the government works. Freedom of speech and expression in this Article 19 (1) (a) has involved four broad special purposes to serve; i) it helps an individual to attain self fulfillment, ii) it assist in the discovery of

¹ <http://RTI\U.S. GOVERNMENT Introduction to the U.S. System Democracy Papers.htm>

² Dr Pandey J.N., Constitutional Law of India 44th ed., published by central law agency, 2007 p. 30

³ AIR 1975 SC 875

⁴ AIR 2004 SC 1442

truth, iii) it strengthens the capacity of an individual in participating in decision making and iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of the society should be able to form their own beliefs and communicate them freely to others. So, this fundamental principle involved here is the people's right to know.

But there is also requirement of restriction on this right on reasonable ground. Article 19(2) of the Constitution of India imposes restriction on the right to freedom of speech and expression on the grounds of security of the state, friendly relations with foreign states, public order, decency and morality, contempt of court, defamation, incitement of offence and integrity and sovereignty of India.⁵ Similarly, Right to Know provided by any legislature cannot provide absolutely the Right to Information. Restriction on this right is compulsory on the reasonable ground and it is not an easy task to mark which restriction is reasonable and which is unreasonable. Government has to establish a balance between reasonable and unreasonable ground for the proper transparency in the functioning of the government and related offices work schedule. Transparency provides good governance. Good governance happens when the government acts as a facilitator and not as a controller- an agency for smoothly providing the public with different basic and other facilities. However, the government's role often tends to become that of a controller.⁶ But passing of the Right to Information Act is a landmark tool in the history of Indian administration. It gives right to the citizens to know what is going on in the government offices or what the government is doing to find out what is right and what is wrong and to raise a slogan in case they find any wrong. Or in other words it can be said that citizens of India can stand themselves against corruption. Indian constitution also imposes duties upon the citizens under Article 51 A. but duties can be performed meaningfully if they are adequately informed. Hence right to information is prerequisite to the performance of duties. Only a well informed citizen can fulfill his duty sincerely. Right to Information Act gives right to the citizens to access any information prescribed in the Act. This Act came fully into enforce on October 13, 2005. It covers in its purview all the constitutional authorities including legislative, executive and judiciary. Now every citizen of India can ask for and get details about any schemes, projects and works done or to be done. This research paper has been divided into four parts.

⁵ Supra note 2 p. 172.

⁶ <http://www.foiadvocates.net/en/india-2005>

2. Importance of Right to Know:

Right to access information from the public office is very significant right. The Supreme Court has given a clear directive on May 2, 2003 that the people have a right to access public documents.⁷ But the statute to empower the citizen with right to know was passed in the year 2005. Until 2005, an ordinary citizen had no access to information held by a public authority. Even in matters affecting legal entitlements for such subsidized services as food for work, wage employment, basic education and health care, it was not easy to seek the details of decision making process that affected or harmed him. By this right a citizen can access the information about his matters and the public related matters from the public offices.⁸ Now, the role of right to information is quite effective in informing crores of grassroots people whose development is marred due to corruption. Even today the greatest challenge of India is bad governance. The use of RTI at the lowest level of the administrative arrangement, i.e. at the village, block and district levels has shown tremendous possibilities in making democracy dynamic, energetic and useful for the public.⁹ Information is Power and as the former Prime Minister Atal Behari Vajpayee had 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. The Freedom of Information Bill 2000 was introduced in the Lok Sabha on 25th July 2000 and passed but could not be notified.¹⁰ In India Right to Information Act was passed in 2005. This RTI Act gives right to access information to the Indians. This Act is a noteworthy achievement for the citizens. It is passed with a view to provide for setting out the practical regime of right to information for citizens to secure access to information which is under the control of public authorities, in order to promote transparency and accountability in the working of every public

⁷ G:\RTI\InfoChange India News & Features development news India - Triveni Devi and 109 other women vanquish corrupt ration shop dealers.htm

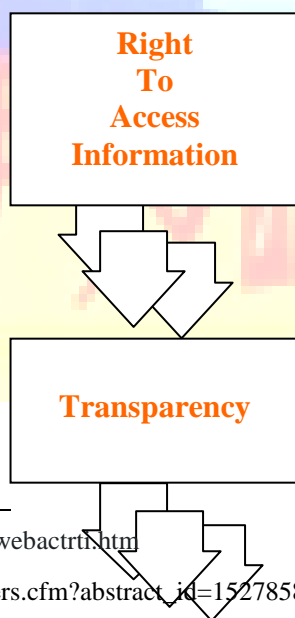
⁸ http://portal.unesco.org/ci/en/files/26828/12113837623A_perspective_on_India_Recent_Experiences.pdf/A%2Bperspective%2Bon%2BIndia%2BRecent%2BExperiences.pdf

⁹ <http://www.caluniv.ac.in/Global%20mdia%20journal/WINTER%202010%20COMMENTARIES/Commentaries%201.pdf>

¹⁰ <http://www.rtrd.nic.in/RIGHT%20TO%20INFORMATION.html>

authority.¹¹ The passing of this Act is a historic development in the administration of India. Lord Meghanad Desai while speaking to a National Conference in Delhi in October 2009, called this Act "a great and revolutionary act . . . another step further in the embedding of democracy."¹²

This Act is a legal tool that will help to check corruption and hold the various departments, agencies and officials of the Government accountable. The Act prevents arbitrary action by any government servant. The RTI Act proposes a mission statement of sorts by stating that it is essentially a practical roadmap detailing the ways by which citizens of India can gain access to information that can promote good governance.¹³ The scope of the right to know under the Right to Information Act is inclusive. It covers all bodies of public sector which come under government notification including NGOs' which are owned, controlled or are substantially financed by the government. The RTI Act confers right to the citizens to know as to how the taxpayers' money is being spent by the government. Now citizens can seek information by taking certified copies of documents or records.¹⁴ The right of the people to know the working and performance of its government is one of their predominant rights. Such rights enable transparency in the governmental affairs and necessitate accountability towards the people¹⁵ and this right to know given to the citizens will certainly result in combating corruption as is shown in below mentioned table:



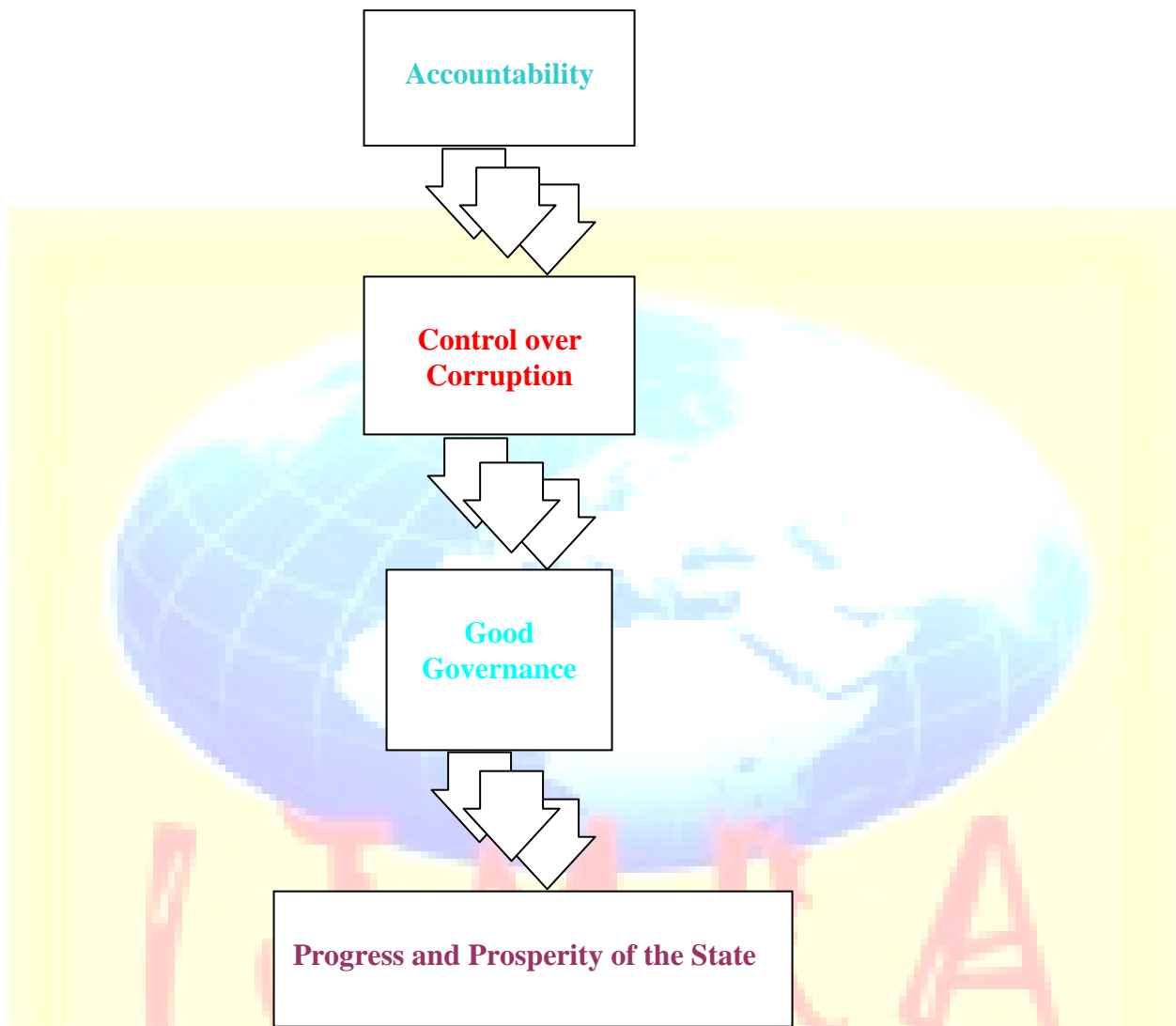
¹¹ <http://righttoinformation.gov.in/webactrti.htm>

¹² http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527858

¹³ <http://india.5thpillar.org/~pillar/india/HowToUseRTI.html>

¹⁴ <http://rti.india.gov.in/?page=2>

¹⁵ <http://rti.kerala.gov.in/articles/art001eng.pdf>



The above mentioned chart clearly shows that giving this right to the citizens is useful in the progress and prosperity of the country because corruption is like a termite which directly affects on the progress. And by accessing information, corruption can be controlled to some extent. Accesses of information can be categorized into four parts;

1. Information relating to the information seekers;
2. Information relating to others than information seeker;
3. Information relating to the information seeker and others;
4. Information relating to the public interest;

3. Limitations over the Right to Know:

Although the right to access information is a part of fundamental right and passing of the Right to Information Act is a mile stone in this regard but still there are a number of barriers which are needed to be removed or controlled or imposed after considerable deliberation.

Limitation over the right to know can be searched out as under:

- i) Right to Information Act 2005 itself imposes limitations over the right to know. Section 8 of this Act provides the exemption clause which is inclusive in its nature.
- ii) Section 9 of this Act provides that a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.
- iii) Section 24 of this Act prohibits accessing information to certain organizations. These are the intelligence and security organizations specified in the Second Schedule of the Act, as organizations established by the Central Government. The Act also cannot be applied for certain intelligence and security organizations established by the State Government as that Government may, by notification in the Official Gazette specify. Information pertaining to the allegations of corruption and violation of human rights shall not be excluded under this Section. Only one exception is that if the information in respect of violation of human rights is there, after obtaining the approval of Central Information Commission such information shall be provided.
- iv) Citizens including RTI activists are facing a number of problems while accessing information.
- v) Limitation over the right to know is also imposed by some Acts i.e. All India Service (Conduct) Rules 1968, The Atomic Energy Act 1962, The Completion Act, 2002, Bureau of Indian Standard Act, 1986, The Indian Evidence Act, 1872, The Official Secrets Act, 1923.
- vi) There is initial application fee for accessing information which depends upon State to State. This fee is also a barrier in implementation of this Act.

- vii) Most of the PIOs' are not much acquainted with Right to Information Act. Lack of information and knowledge about this Act is a hurdle in the strong and effective implementation of the Act. Training of the officials and the systematic management of the record is also not well versed. Indian Prime Minister Dr Manmohan Singh has also expressed concern about the difficulties being faced by information-seekers under the RTI Act. At the third convention on RTI, organized by the Central Information Commission, focusing on 'RTI and Transparent Governance', he admitted that in many places adequate attention had not been paid to training personnel and modernising record management systems. The prime minister called on officials for more pro-active and voluntary disclosure of information.¹⁶
- viii) Implementation of section 4 of the RTI is also very poor. Generally, public offices don't upload all the necessary information on its web sites and the uploaded information is also not upto date. I want to give here an example i.e. I had been notified Doctorate in law on 23rd December 2011 and I also applied for the consequential benefits. But this information was not uploaded on the web site till April 16th 2012.
- ix) RTI Act does not provide any provision for the safety, protection of the RTI activist and in case of any loss about the compensation to him. It is also a limitation because it disappoints the RTI activists. No doubt RTI Act empowers the millions and gave new meaning to the motto "seek and you shall find." But some RTI activists could only find an answer in death. Since 2010, 14 RTI activists were killed, which is shown as under:¹⁷

¹⁶ G:\RTI\InfoChange India News & Features development news India - The right to know.htm. according to the preliminary findings of the ongoing study by the Right to Information Assessment and Analysis Group (RAAG) and the National Campaign for People's Right to Information (NCPRI) in partnership with a number of academic institutions and voluntary agencies across five states and 120 villages. "Almost half the PIOs (public information officers) interviewed in rural India said they were not aware that they were PIOs".

¹⁷ <http://www.hindustantimes.com/India-news/NewDelhi/rTI-activists-attacked-and-murdered/Article1-734218.aspx> and <http://righttoinformation.info/974/list-of-rTI-activists-killed/>

S. No.	Name	Place	Form of Attack	Probable Cause	Date
1	Satish Shetty	Pune	Assaulted by assailants	Exposed major land scams, near Mumbai-Pune expressway	Jan 13, 2010
2	Vishram Laxman Dodiya	Ahmadab'd	Shot dead	Sought info on illegal electricity connections in the city	Feb 11, 2010
3	Shashidhar Mishra (street vendor)	Begusarai, Bihar	Shot dead	Filed more than a 1000 petitions before his murder	Feb 14 2010
4	Arun Sawant	Badlapur, M'rashtira	Shot dead	administrative corruption	Feb 26, 2010
5	Sola Ranga Rao	Krishna Andhra Pradesh	murdered	Filed a petition on funding of the village draining system	April 11 2010
6	Vitthal Gite	Beed, M'rashtira	Killed by under the members scanner.	Exposed irregularities in a school in his village	April 21, 2010
7	Dattatreya Patil (farmer)	Kohlapur, M'rashtira	Beaten up and slashed with swords	Filed RTI against horse trading in Kohlapur Municipal Election	May 31, 2010
8	Amit Jethwa	Gujarat	Shot dead	Enquiries about illegal mining that were a danger to the Gir reserve	July 20 2010
9	Babbu Singh	Bahraich Uttar Pradesh	killed	Information about government funds & work done by his village pradhan	July 25 2010
10	Ramdas Ghadegaokar	Nanded, M'rashtira	Stoned to death	exposing sand mafia	August 2010

11	Irfan Yusuf Qazi	Jaitapur, M' rashtra	Killed when his scooter was hit by a police jeep	Protested against nuclear power plant in Jaitapur	Dec.18 2010
12	Niyamat Ansari	Latehar Jharkhand	Beaten to death	NREGA activist	March 2,2011
13	Shehla Masood	Bhopal, M. Pradesh	Shot dead	campaign for wildlife and tiger conservation	Aug.16 2011
14	Nadeem Saiyed	Ahmedab'd Gujrat	brutally killed	illegal cow slaughter and beef trade in the state	Nov. 5, 2011

4. Conclusion and Suggestions:

The study reveals that Right to Information Act empowers the citizens to access information and to know about the functioning of the government and its related offices. Now one can know about the public spending. It creates a fear in the minds of the officials and they avoid to refuse the citizen to give information. It also imposes a check on the laziness of the officials. No doubt in the interest of the democracy secrecy is must but what will be the level of secrecy, it is a debatable issue. Government is made by people, so the level of restriction on the access to information must be put after considering the interests of the society. The mind set of the officials need to be refreshed. Provision should be made in this Act for the protection of the RTI activists and for providing the compensation in case of any physical or other loss. It is also true that some times this tool is also being misused and for avoiding its misuse, the reason for seeking information should be mentioned in the RTI application.

The study finds out that the initial application fee on the personal information and information relating to the public interest should be abolished completely and the cost of providing such information should also be abolished completely. All information about the functioning of all government or its related departments of Centre and States, except relating to national security and integrity, should be loaded on their web cites. All government departments should prepare a category wise list about which information will not be disclosed and the reason for non-disclosure of the information should also be uploaded on the web cites. The study stresses that training programmes for the PIOs' should be launched by the central government and the

state government, so that they can be made well versed with the Right to Information Act and may handle the problems of the information seekers in a better way.

Public offices are not serious about the implementation of section 4 of the RTI Act. All the departments dealing in public affairs should be directed to implement this section completely and to upload all information relating to the department, about the functioning of every work/file and its progress on the net. With these efforts, minimum information will be sought from the offices, which will reduce the number of RTI applications.

Information should be provided free of cost to the information seeker if the information is related to the information seeker or relating to the information seeker and the others or relating to public interest. The awareness amongst the citizens about this Act is also compulsory and the educated people of every category should do something for spreading the awareness.

Succinctly, it can be said that right to know is very important right which has been provided by the Right to Information Act 2005. It has made a dynamic change in the governance in India and suggested changes are wanted to be made to strengthen the Right to Know in India.