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**A COMPARATIVE RESEARCH ON THE ROLE OF
RTI IN THE INDIAN LEGAL SYSTEM:
CONSTITUTIONAL PROVISIONS AND JUDICIAL
ATTITUDE**

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A Comparative Research on the Role of RTI in the Indian Legal System: Constitutional Provisions and Judicial Attitude

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Abstract – The Indian Legal System, largely being a colonial vintage, stresses on secrecy laws and such provisions are contained in Official Secrets Act 1923, sections 123, 124 & 162 of the Indian Evidence Act 1872, the infamous Rowlatt Act 1919 and Bengal Criminal (Amendment) Act 1925 etc. After the birth of Republic, freedom of expression became a fundamental right under Art 19(1)(a) of the Constitution.

The right to information movement, first of all, started in Rajasthan in the last phase of 19th century with the efforts of Mazdoor Kisan Shakti Sangathan (MKSS) an Non-Governmental Organization (NGO's) led by Meghse Awardee Aruna Rai. Right to Information Laws were enacted by several states. Tamil Nadu was the first state to pass such legislation in 1996 and the states of Goa, Karnataka, Maharashtra, Rajasthan and Delhi followed the suit.

Madhya Pradesh and Uttar Pradesh passed executive orders for providing access to information. A very important legislative step was taken in the history of right to information movement in India in the form of Freedom of Information Act 2002. Though it was adopted in January 2003 but it never came into force.

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INTRODUCTION

The Indian Legal System, largely being a colonial vintage, stresses on secrecy laws and such provisions are contained besides, Official Secrets Act 1923, in the Indian Evidence Act 1872 (Chapter IX sections 121 to 131), the infamous Rowlatt Act 1919 and Bengal Criminal (Amendment) Act 1925 etc. After the birth of Republic, freedom of speech and expression became a fundamental right under Article 19(1)(a) of the Constitution. Similarly some provisions of other laws i.e. The Representation of the People Act 1951, The Companies Act 1956, The Code of Criminal Procedure 1973, The Bureau of Indian Standards Act 1986, The Geographical Indications of Goods (Registration and Protection) Act 1999, The Trade Marks Act 1999, The Designs Act 2000, The Information Technology Act 2000, The Protection of Plant Varieties and Farmers' Right Act 2001, The Competition Act 2002, The Medical Termination of Pregnancy Regulations 2003 etc. though indirectly, deal with right to get information.

The battle for appropriate legislation for the right to information in our country has been fought on two main planks, the first being a demand for amendment of the draconian colonial Official Secrets Act 1923 and

the second in the form of a campaign for an early and effective law on right to information. Very serious objections to Official Secrets Act were raised in 1948 when the Press Laws Enquiry Committee recommended certain amendments in it. In 1977, Working Group was formed by the government to look into possibilities of amending this Act to enable greater dissemination of information to the public.

The right to information movement started in Rajasthan in the last phase of 19th century with the efforts of Mazdoor Kisan Shakti Sangathan (MKSS), an Non-Governmental Organization led by Meghse Awardee Aruna Rai. This movement led to the enactment of Right to Information laws in several states. Tamil Nadu was the first state to pass such legislation in 1996 and the states of Goa, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan and Delhi followed the suit⁷. Uttar Pradesh passed executive orders for providing access to information⁸. After years of struggle for the central legislation on right to information the civil society groups emerged into the National Campaign for People's Right to Information (NCPRI) in 1996. Justice P.B.Sawant, the Chairman of Press Council of India and other prominent persons drafted a Bill for NCPRI, known as Press Council Draft. This was the first major draft legislation

on right to information in the country that was widely debated and generally welcomed and was circulated by Press Council of India in 1996. The most detailed proposed Freedom of Information Bill was the one drafted by the Consumer Education Research Council (CERC).

The Report of National Commission to Review the Working of Constitution, 2002¹³ also stressed on citizen's access to information. The Commission suggested that right to information should be guaranteed and needs to be given real substance. In this regard government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The Commission also recommended that the Union Government should take steps to move the Parliament for early enactment of freedom of information legislation which will be a major step forward in strengthening the values of a free and democratic society.

LITERATURE REVIEW

In order to accomplish the present work effectively, there was a need to be familiar with the law dealing with right to information. An attempt has been made by the researcher to review some of the most prominent works dealing with this branch. Review of literature has helped the researcher to understand the research problem in a better way. The researcher has studied the literature from the sources like books, journals, newspaper articles, magazines, research articles etc. The relevant and important work on law relating to right to information has been reviewed as under -

Right to Information (Law and Practice) (2005) by Dr. Madabhushi Sridhar is a real attempt to explain this right with all the scope for exploring information and possible implications leading to excluding the information under plethora of exceptions and ambiguous expressions. The book contains an exhaustive commentary on introduction, struggle for information right, an analysis of right to information Act, 2005, regime of secrecy and need for disclosure, voter's right to information etc. In short the author has made an attempt to educate us about information as a right, as an instrument and as a need. P.K. Doss's Right to Information Act, 2005 (2005) in this field is totally involved with dedication and sincere efforts. A humble attempt has been made by the author to make the full coverage of the subject. The book gives the simple meaning and interpretation of the words used in the Article 19 and clause (1) (a) of the Constitution of India of which Right to Information is the product. He explains how the government functions must be transparent and the three instrumentalities i.e. executive, legislative and judiciary of the state should be prevented from deceiving people. He thus explains how one-sided information, disinformation, misinformation, and no information all equally create uninformed citizen.

Naresh Kumar's Right to Information: Implementing Information Regime attempts to outline the significance of the Right to Information and its role in creating a better society. The contents include introduction, access to information, right to information in India, global trends on right to information. The author has made a serious attempt to empower the ordinary citizens by providing authentic information regarding this right.

A. Saxena in his work Right to Information and Freedom of Press has tried to analyse the relationship between right to freedom of information and freedom of press. He quotes that access to information is lifeline of a progressive society and a vibrant citizenry is a pre-requisite for survival of a democratic system and governance.

S. P. Sathe's The Right to Know (2006) has presented a lucid and analytical commentary on Right to Information Act, 2005. He has traced the history of this legislation and also the evolution of the right to information as a Constitutional right. He has also explained the administrative process involved in the implementation of this Act. He has focused on the judicial decisions on this right and the problems that might be faced while implementing the Act. Wadia Angela (2006) has comprehensively covered the Right to Information Act, 2005 and the challenges thrown by this Act. He has explained the duties of PIOs (Public Information Officers), the powers and functions of CIC (Central Information Commission) and SIC (State Information Commission) and the role of Government in promoting RTI Act. He has also explained the procedure for request of Information. Dr. J.N. Barowalia's Commentary on The Right to Information Act, 2005⁴⁹ gives the simple meaning and interpretation of the words used in the Article 19 and clause (1) (a) of the Constitution of India of which Right to Information is the product. He explains how the government functions must be transparent and the three instrumentalities i.e. executive, legislative and judiciary of the state should be prevented from deceiving people. S.N. Jain's Official Secrecy and the Press explains how one-sided information, disinformation, misinformation, and non-information all equally create uninformed citizen. As per the author there is one feature which should be particularly noted by the information seekers. They can ask only information on what exists with the Public Information Officer or ask for copies of documents which the Information Officer has in his possession or which he could have called for. The access to information is lifeline of a progressive society and a vibrant citizenry is a pre-requisite for survival of a democratic system and governance.

Another article by Shreyas Navare entitled "Whistling in the Dark" highlighted the necessity of whistleblower protection, which is lacking in the Indian access to information law. It also reiterated the fact that the voices of those who are brave enough to speak up against dishonesty are often throttled and that Right to

Information activists all over the country are feeling the heat. Navare goes on to state that Satyendra Dubey of the National Highways Authority of India and Manjunath Shanmugham of the Indian Oil Corporation were killed because they too had stood up against the corrupt and the same was the fate of the activists like Satish Shetty and Datta Patil, who, similarly, had exposed several land scams and corrupt politicians and bureaucrats in Maharashtra. After such incidents, there was much soulsearching about how to protect the whistleblowers and the Public Interest Disclosure (Protection of Informers) Bill, 2006 as well as the Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010 were drafted but have not become a law yet.

There are lot of journals which has been relied upon by the researcher such as All India Reporter, Hindu Law Reporter, Supreme Court Cases and Information Decisions. Other journals which provided a lot of valuable information on the subject are Journal of the Indian Law Institute, Orient Journal of Law and Social Sciences and Indian Journal of Public Administration. These Journals are very informative and provide invaluable details pertaining to the freedom laws in general and the Indian law in particular.

The book on Constitutional Law of India, (2008) written by eminent legal luminary, Dr. Subash C. Kashyap, is a systematic explosion of the provisions of the Constitution. He has intended to constitute an objective and faithful commentary on the text of the Articles of the Constitution without any pre-conceived notions or encumbrances. The emphasis is on the original source of each Article, how it evolved through the different stages of the Constitution-making in the Constituent Assembly and ever since 1950. The study spread over two compact volumes, is divided into four parts, viz. (1) Introduction and Background, (2) Provisions of the Constitution and a commentary on their evolution, operation and interpretation, (3) Evaluation, Review and Reforms, and (4) Documents. The significance of this book is that it combines all aspects of the Constitution.

In Dynamic Lawyering, (2010) Justice V. R. Krishna Iyer written on each and every aspect of law and beyond, maintaining lucidity and depicting ocean deep knowledge of the subject. His dynamic and enlightened idea on law and contemporary jurisprudence is a pathmaking course for the present and future judicial system.

The Textbook on the Code of Civil Procedure (2012) presents the accurate exposition of the statutory provisions and complicated provisions of Civil Procedure Code in a facile manner with the help of leading cases, illustrations and decisions of the Supreme Court as well as various high Courts. Different amendments made in the year 1976, 1999 and 2002 have been incorporated in appropriate

areas. Moreover, impact of limitation on civil suit and advantages of Lok Adalat have also been interested to enhance the qualitative value of the book. A large number of decided cases have been included in the book in a simple and lucid manner, so that students of law and aspirants of various competitive examinations can easily understand the convoluted and complicated questions of law.

CONCEPT OF RIGHT TO INFORMATION

Right to Information means the right to information which can be obtained from the public authorities or which is held by or under the control of any public authority and includes the right to:

- (i) Inspection of work, documents, records;
- (ii) Taking notes, extracts or certified copies of documents or records;
- (iii) Taking certified 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 device⁴⁵.

According to Madison, "a popular government without popular information, or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both." Right to Information empowers every citizen to seek any information from the Government and the authorities acting under the authority of the Government. This right is regarded as oxygen of democracy as because exercise of this right ensures transparency and prevention of corruptions in the functioning of the Public Authorities and thereby helps to survive and strengthen the democracy.

The concept of democracy in India is enshrined in the Preamble to the Constitution of India wherein opening words provide that "We, the People of India —and in the end it lays down give to ourselves this Constitution". The citizens have the fundamental right to know what the government is doing in its name. Freedom of speech is the lifeblood of democracy. The Apex Court in the case of K. v. Secretary of

State for the Home Department Ex. P. Simms, held that 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 in the country.

Ancient India had a feudal culture and hierarchical social structure. The Maharaja's, the Mughals and the British Rulers defended themselves behind ramparts of secrecy. The Britishers passed Official Secrets Act 1923, which was mainly a defense mechanism against the rising tide of nationalism initiated by M.K. Gandhi in 1917. As Indians were distrusted by British Government, so nobody had any access to official information under this Act. The Indian Legal System, largely being a colonial vintage, stresses on secrecy laws and such provisions are contained in Official Secrets Act 1923, the Indian Evidence Act 1872 and the infamous Rowlatt Act 1919 etc.

After independence India adopted democratic form of government, which implies the government of the people, by the people and for the people. Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of government. It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy. "Knowledge", said James Madison, "will forever govern ignorance and a people who meant to be their own governors must arm themselves with the power knowledge gives. The Supreme Court in the case of S.P. Gupta v Union of India held that "the citizens' right to know the facts, the true facts, about the administration of the country is, thus, one of the pillars of a democratic State and that is why the demand for openness in the government is increasingly growing in different parts of the world.

In view of the significant changes proposed in the existing Act, the government decided to repeal the Freedom of Information Act and in the proposed legislation to provide an effective framework for effectuating the right to information. Indian Parliament passed the Right to Information Act, 2005, which came into force on 15.06.2005. This enactment set out its objectives in the Preamble, which aims to promote transparency and accountability in the working of every public authority. This Act was brought into Statute book on the premise that informed citizenry and transparencies of information are vital to the vibrant democracy.

Thus, the Right to Information Act, 2005, which came into force in India in totality, is regarded as a milestone in the history of social legislation to impart information to citizens of India regarding working of the government and its corporations, etc. to make them more transparent as a result of which corruption, if not eliminated at all, would be checked to a greater extent. The Right to Information Act thus provides an effective framework for effectuating the right of information, a

fundamental right, recognized under Article 19 of the Constitution of India.

RTI AND CONSTITUTION OF INDIA

India, being welfare state, it is the duty of the Government to protect and enhance the welfare of the people. It is obvious from the Constitution of India that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of government. It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy. And that is why the demand for openness in the government is increasing in different parts of the world¹². Law is a regulator of human conduct but no law can indeed effectively work unless there is an element of acceptance by the people and the society. No law works out smoothly unless the interaction is voluntary. In order to make the human conduct in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires and what would be the effect of its disobedience to create an element of acceptance that the requirement of law is grounded upon a philosophy which should be followed.

The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government and spells out the Fundamental Rights, Directive Principles and Duties of Citizens. It is the lengthiest written constitution of any sovereign country in the world, containing more than 395 Articles in 24 Parts and 12 Schedules for a total of 117,369 words in the English language version. Besides the English version, there is an official Hindi translation. It was passed by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950, which was chosen to commemorate the declaration of independence of 1930. It declares the Union of India to be a Sovereign, Socialist, Secular, Democratic Republic, assuring its citizens of justice, equality, liberty and, endeavors to promote among them all, fraternity. The words "socialist", "secular", and "integrity" were added to the definition of Preamble in 1976 by constitutional amendment. India celebrates the adoption of the Constitution on 26 January each year as Republic Day. After coming into effect, the Constitution replaced the Government of India Act 1935 as the governing document of India.

RTI AND INDIAN JUDICIARY

The Indian Judicial system is one of the oldest legal systems of the world. It is part of the inheritance, India

received from the British after more than 200 years of their colonial rule, and the same is obvious from the many similarities the Indian legal system shares with the English legal system.¹ The framework of the current legal system has been laid down by the Indian Constitution and the judicial system derive its powers from it.² The Constitution of India is the supreme law of the country, the fountain source of law in the country. It not only laid the framework of Indian judicial system,³ but also has defined the fundamental rights and duties of the people and directive principles which are the duties of state.

The citizens' right to know the true facts about the administration of a country is one of the vital ingredients of a democratic State. People can play an 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. A citizen cannot achieve knowledge unless he has certain basic freedoms such as freedom of thought, information, conscience, speech, expression, locomotion and so on and so forth. The freedom of information as one of the members of the Constituent Assembly said is one of the terms around which the greatest and the bitterest of constitutional struggles have been waged in all countries where liberal constitutional prevail.

The people of India declared in the Preamble of the Constitution which they gave unto themselves their resolve to secure to all citizens liberty of thought and expression. This resolve is reflected in Article (19)(1)(a) which is one of the Articles found in Part III of the Constitution which enumerates the Fundamental Rights.

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.

CONCLUSION

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 refusal on the part of the Government to

release information to civil society on such issues indicates that the right to information must be strengthened and implemented effectively.

On the basis of study and examination of different facets of RTI Law, observations have been made and several conclusions are drawn. It is concluded that the main aim of the law of right to information is to operationalize the very important and sacrosanct right to information; to set up systems and mechanisms that helps people to have easy access to information; to bring transparency and accountability in governance; to control corruption and inefficiency in public offices and to ensure people's active participation in governance at all levels of government in a democratic set up and decision making.

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