

# An Analysis upon Various Perspectives for Development of Right to Information Act in India

Rachna Chauhan<sup>1\*</sup> Dr. Giriraj Singh Ahirwar<sup>2</sup>

<sup>1</sup>Research Scholar, SSSUTMS, Sehore

<sup>2</sup>UTD, SSSUTMS, Sehore

**Abstract – The Right to Information Act 2005 was passed by the UPA (United Progressive Alliance) Government with a sense of pride. It flaunted the Act as a milestone in India's democratic journey. It is five years since the RTI was passed; the performance on the implementation front is far from perfect. Consequently, the impact on the attitude, mindset and behaviour patterns of the public authorities and the people is not as it was expected to be. Most of the people are still not aware of their newly acquired power. Among those who are aware, a major chunk either does not know how to wield it or lacks the guts and gumption to invoke the RTI. A little more stimulation by the Government, NGOs and other enlightened and empowered citizens can augment the benefits of this Act manifold. RTI will help not only in mitigating corruption in public life but also in alleviating poverty- the two monstrous maladies of India.**

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## INTRODUCTION

The liberalization of the Indian economy has created an environment in which there has been increasing emphasis on responsive administration. This requires transparency in administration, drastic reforms in Civil Services and a system which functions as a means for the quick redressal of citizens' grievances. The RTI Act, 2005, introduced by the Indian government is a step towards cleaning the Indian administrative system. The following section discusses the struggle that led to the enactment of the RTI Act.

1990 along with a number of peasants and workers from villages around Devdungri in Rajsamand District of Rajasthan formed Mazdoor Kisan Shakti Sangathan (MKSS hereafter). Their organisation raised the RTI issue in such a compelling manner that it changed the discourse on what had been seen for many years largely as an academic issue (Singh, 2007). This movement struggled to get the right to information passed in the state of Rajasthan and joined with other activists and movements to form a national platform called the National Campaign for People's Right to Information (NCPRI hereafter) in 1996 to fight for the national RTI law.

Our capacity as human beings to acquire, use and store information is essential for our survival. At a practical level disasters are avoided, accidents prevented and sustenance provided by our use of information. While information itself is important, our ability to discern the degree of the reliability of the information provided is essential in the exploitation of resources or

relationships, or in the exposure of sham. Information in the form of facts constitutes the basis of the order in our lives, of community, regularity and knowledge.

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? It adds something new to awareness. Information is needed by human beings to realize their full social, political and economic potential. It entails a spectrum of knowledge about various issues and involves different stakeholders from market to government. It is the key which helps make decisions. It is also a public resource collected and stored by government in trust for people.

The right to information has another sublime dimension. Every politically aware person desires to play a part in the direction of the affairs of the community. Thereby he realizes his identity and feels he is a public contributory to social welfare. A culture of individual action, political consciousness and public spirit is the basis for the success of democracy. The justification of right to information is to be found in the interests of individual self-fulfillment. This right has also been derived from the notions of an individual in his capacity as a member of his community.

The liberal society, as it was first conceived, aims to guarantee freedom of religion, freedom of speech and expression, freedom of information, freedom from illegitimate authority, etc. while in western countries disclosure of information is mandatory, till the

introduction of the Right to Information Act, 2005 it was discretionary in India.

India always took pride in being the largest democracy, but with the passing of the Right to Information Act in 2005, it has also become an accountable, interactive and participatory democracy. This right has catapulted the Indian citizen on a pedestal from where he can take stock of administrative decisions and actions and make sure that his interests are protected and promoted by the Government. The Right to Information Act is an important landmark for Indian democracy. By this Act the citizen of India has been empowered like never before. He can now question, audit, review, examine, and assess government acts and decisions to ensure that these are consistent with the principles of public interests, good governance and justice.

This act promotes transparency and accountability in administration by making the government more open to public scrutiny. Before this Act, the accountability of public authority was practically minimal. The people who voted for the formation of democratically elected governments and paid taxes to finance public activities had no legal rights to know as to what process has been followed in framing the policies affecting them, how the programmes have been implemented, who are the concerned officials associated with the decision making process and execution of the schemes and why the promises made for delivery of essential goods and services to the poor have not been fulfilled? Not surprisingly, the culture of secrecy beginning from the colonial rule till the first six decades of independence fuelled rampant corruption. Lack of openness and accountability in the functioning of the government not only bred inefficiency but perpetuated all forms of poverty, including nutritional, health and educational. In order to rectify the deficiencies in the mechanism, which denied the reach of entitlements to the intended beneficiaries, the people in general and civil society groups and non-governmental organizations (NGOs) in particular, demanded for greater access to the information held by the public bodies, which were acceded to by the Government in 2005. Information can empower poor communities to battle the circumstances in which they find themselves and help balance the unequal power dynamic that exists between people marginalized through poverty and their governments. (Puddephatt, McCall, Wilde, 2006).

The Right to Information Act was passed on 15 June 2005 by the United Progressive Alliance I (UPA) Government and came into effect from Oct. 12, 2005. It has been five years now since the Right to Information is being implemented. It is sufficient enough a period to give us an idea of its value and worth. This paper briefly discusses the salient features of Right to Information, reviews its implementation, explores its impact and attempts to offer suggestions for its optimum use.

The Right to Information Act 2005, the RTI hereinafter, was enacted by the National Parliament to dismantle the culture of secrecy and to change the mindset of the bureaucrats and political leaders and to create conditions for taking informed decisions. The RTI provides a framework for promotion of citizen-government partnership in carrying out the programmes for the welfare of the people. The principle of partnership is derived from the fact that people are not only the ultimate beneficiaries of development, but also the agents of development. The stakeholders' participation leads to better project and more dynamic development. (Ansari, 2008)

The idea of Right to Information started taking shape in the 1970s only, with the liberal interpretation by the judiciary of various fundamental rights specifically the right to freedom of speech and expression. In the case of Bennett Coleman and Co versus the Union of India in 1973, the majority opinion of the Supreme Court then put it, 'freedom of speech and expression includes within its compass the right of all citizens to read and be informed.' The 1981 judgment in Manubhai D. Shah versus Life Insurance Corporation reaffirmed the point: 'The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know'. There have been numerous cases favouring disclosure of government information and transparency. As a result of a lack of clear legislation on this, people had to knock at the doors of courts every time they wanted to enforce this right. Courts have almost always responded positively. But this course at best restricted enforcement to the aware and the literate for their own limited concerns. The common citizen had neither the means nor the time and inclination to get into convoluted legal processes and even public interest litigation was a tool which could reach only a few. The movement for the RTI received a fresh impetus from a courageous and powerful grassroots struggle of the rural poor for the right to information to combat rampant corruption in famine relief works. This struggle was led by a people's organization, Mazdoor Kisan Shakti Sangathan (MKSS) that literally means organization for the empowerment of workers and peasants. The reverberations of this struggle led to a nationwide demand for a law to guarantee the RTI to every citizen, with wide spread support from social activists, professionals, lawyers and media who are committed to transparent and accountable governance and people's empowerment. Growing public concern about callousness and corruption in government resulted in a clamour for greater transparency culminating in a demand for a RTI Act. The consumer protection law created and strengthened the notion of citizens as consumers of government services. The MKSS movement in Rajasthan was a turning point in the RTI movement and showed that even illiterate, socially mute and

exploited labourers could assert and get their other rights conceded by invoking the RTI.

The Government of India, based on the recommendations of the Chief Secretaries' conference on "Responsiveness in Government," appointed the Shourie Committee to suggest a draft RTI Bill. The draft, called the Freedom of Information Bill 2000 was passed into law in January 2003. But the law was not notified and finally repealed. In the mean time several State Governments had already passed their own versions of RTI Acts.

For example, in 1997 the RTI was passed in two states Tamilnadu and Goa. Soon other states followed. By 2005, nine states had passed RTI but with the passing of RTI by the Union legislature, the State level RTI became redundant. The RTI Act 2005 applies to the whole of India except Jammu and Kashmir (J.K.), but J.K has its own RTI. Act. People in these states took recourse to the various provisions of transparency norms to obtain information held by the public bodies.

## **RTI IN INDIA : BACKGROUND**

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 stated 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.

Most radical provision of the Act is that the information seeker needs 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.

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.

The reason 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. The National Advisory Council, which was set up to oversee implementation of the CMP since its inception, took a close interest in RTI. 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 Access –**

Any citizen, including overseas citizens of India and persons of Indian origin, can ask for information under this law. This right includes inspection of work, documents and records, taking notes, extracts or certified copies of documents or records, and taking certified samples of material held by the public authority or under its control.

## **Procedural Guarantees –**

A citizen, who desires to obtain any information under the Act, should submit an application to the PIO of the concerned public authority. The application should be precise and specific with name and complete postal address of the applicant. There is no prescribed format of application for seeking information. The application need to be submitted along with an application fee as prescribed in the Fee Rules.

If a public authority fails to comply with the specified time limit, the information to the concerned applicant would have to be provided free of charge.

## **Duty to Publish –**

The Act, in particular, requires every public authority to publish 16 categories of information. This includes the particulars of its organisation, functions and duties; powers and duties of its officers and employees; procedure followed in the decision making process; norms set for discharge of its functions; rules, regulations, instructions, manuals and records, held by it

or under its control or used by its employees for discharging its functions; etc.

### Exceptions –

The Act enumerates the types of information(s) that are exempted from disclosure. However, these exempted information(s) or those exempted under the Official Secrets Act can be disclosed if public interest in disclosure outweighs the harm to the protected interest.<sup>5</sup> Also the exempted information(s) would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates.

### Appeals –

If an applicant is not supplied information within the prescribed time of 30 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. If still not satisfied the applicant may prefer a second appeal with the Central Information Commission (CIC)/State Information Commission (SIC) within 90 days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

### Sanctions and Protections –

Where the Information Commission at the time of deciding any complaint or appeal is of the opinion that the PIO has without any reasonable cause, refused to receive an application for information or not furnished within the time specified or denied the request for information or knowingly given incorrect, incomplete or misleading or distorted information it shall impose a penalty of ₹250 each day till application is received or information is furnished subject to the condition that the total amount of such penalty shall not exceed ₹25,000.

## IMPLEMENTATION OF THE RTI ACT

Successful implementation of the RTI Act depends on a variety of factors, both technical and political. The Government of India chose to provide this law for making governance effective and transparent. Neuman and Calland (2007) suggests that in the Indian case the civil society played a critical role in advocating a stronger RTI Act and lobbied around for key provisions which resulted in the true flourishing of the information regime. Effective monitoring and testing of the system is done by the civil society organisations which emerged from the campaigns of the law in India thereby urging greater government compliance (Neuman and Calland, 2007).

Effective implementation of the RTI Act requires political commitment from the top. The Indian government is inured to working in a secretive fashion and the notion of

transparency is far beyond the range of experience and mind-set of most public bureaucrats. Therefore strong political will is necessary to have a fundamental mind-shift.

Indian Prime Minister Dr. Manmohan Singh both in the past and present has shown such political will. The Third Annual Convention on Right to Information was inaugurated by the Prime Minister Dr. Manmohan Singh on November 3, 2008. The theme of the Convention

was 'Right to Information and its Ramifications for Good Governance'. The Prime Minister restated his commitment at the annual convention: 'Our Government takes great pride in the implementation of the Right to Information Act. This transition from a tradition of secrecy in official matters has of course not been easy. It has involved not only setting up of an appropriate institutional mechanism but also a change in the mindset of public servants.'

The Government of India has established internal systems and processes to generate and provide information and training of civil servants to ensure understanding and compliance – the mechanics of supply side. The Indian government has constituted Information Commissions which can exercise its powers without being subjected to direction by any authority. These Commissions have been established across the country and their main function is to receive and inquire into the complaints from citizens regarding their RTI applications. These Commissions have powers of Civil Court to settle RTI cases.

Information Commissions are the appellate authority under the RTI Act, which would be called upon to objectively deliver judgment on disputes over access to information between the citizen and the government. They are playing the crucial role of an oversight authority that through its orders and judgments is expected to initiate a change in the mind-set of the bureaucracy. Further, appropriate training is provided to the Public Information Officers across the country to deal with request from citizens seeking information under the Act and render reasonable assistance to them. One of the criteria for measuring the popularity of the RTI can be indicated by the number of RTI applications filed over a period of time.

According to the 2010-11 Annual Report prepared by the Central Information Commission, the number of information seekers increased by 2 times (5,55,726 requests) over the previous year 2009-10. This also demonstrates the success of the RTI Act in creating conditions of free flow of knowledge, as envisioned by the Parliament on passage of the RTI Act. Also, only 5.2% RTI requests received were rejected in the year 2010-11 in comparison to 6.43% in the previous year. The PM also praised the decrease in the number of rejections and commented that it can be one of the

measures of success in empowering citizens with information.

The global experience indicates that freedom of information has dramatic effect on corruption. Out of the top ten countries on the Annual Corruption Perception Index 2011 prepared by Transparency International, eight had effective legislation for public access to government records whereas out of the ten 'most corrupt' countries, none had a functional access to information. Obviously, access to information has emerged as a tool to combat corruption.

## METHODOLOGY

In order to test whether the RTI Act is promoting transparency in the Indian administrative system, information from both supply side (public officials) and demand side (representatives of civil society i.e. RTI activists) was insightful. Media, civil society organisations, and social activists have played a critical role in generating awareness about the RTI Act at a mass scale. Awareness has been primarily generated through news articles based on RTI investigation. Therefore primary sources of data collection were newspapers articles, interviews, and internet research.

Face to face fully standardised in-depth interviews were conducted with Indian bureaucrats and RTI activists. Going by the thumb rule, one researcher should roughly do 15-25 interviews, 15 interviews were conducted which included 7 with RTI activists and 8 with public officials. Interviews were conducted with only those RTI activists (purposive sampling) who have been working on the RTI before the Act was passed by the Parliament so that they can describe their experiences with the Indian bureaucracy both before and after the Act was passed. The interviews were held between July 2009 and August 2009. Content analysis of the newspaper articles was carried out. Articles were from India's leading newspaper 'Hindustan Times' and magazine 'India Today'. They were selected because of their prominent presence at national level.

As suggested by Krippendorff (2004), content analysis of media can be done to measure public opinion. Further, Krippendorff (2004) suggests that content analysis enables researchers to go through large volumes of data with relative ease in a systematic fashion. It allows inferences to be made, which can then be corroborated using other data collection methods. Therefore, interviews with public officials and RTI activists were conducted to further explore the grassroots reality. It is further backed by secondary data analysis of the study done by Price Water House Coopers in collaboration with the DFID and Management Consultants, namely Development Alternatives.

## RESULTS –

The result section broadly has four parts – a) Content Analysis, b) Interview with RTI Activists, c) Interview with Indian Bureaucrats and d) Secondary Data Analysis. Each section discusses the results of the study.

## RIGHT TO INFORMATION AGAINST GOVERNMENT AND PRIVATE PERSON

An individual may seek information from the government either as a public citizen or as private person or even as a surrogate. People may seek information for different purposes. In cases where individuals seek information with an eye to help others or with public interest in mind, they become surrogates for the community at large.

The category in relation to providing or receiving information from the government can be further divided into the following heads:

- [1] When is an individual required to give information to the state
- [2] When can an individual withhold information from the state?
- [3] When is the state bound to give such information?
- [4] When is the state not free to give information to the individual?

Why is the freedom of the media considered one of the essential features of a democracy? Democracy revolves round the basic idea of citizens being at the centre of governance — rule of the people. We need to define the importance of the concept of freedom of the press from this fundamental premise. It is obvious that the main reason for a free press is to ensure that citizens are informed. If this is one of the main reasons for the primacy given to the freedom of the press, it clearly flows from this that the citizens' right to know is paramount. Also, since the government is run on behalf of the people, they are the owners who have a right to be informed directly.

This right to information of one person against another is an obligation as well as a privilege under the law. A person is not obliged to give information to any other except when law has placed such obligation. If a person knowingly withholds information and thus in turn causes hurt, harm or injury to another then it may amount to a penal offence. Not giving information may affect the validity of certain transactions. Such liability is implicit in the law of contract. Free consent entails with it an

implicit provision of revealing all information necessary as well as incidental to the matter under consideration.

A person also has a privilege not to give information, as it concerns itself with the right to privacy. Moreover certain professionals by virtue of their professions have the privilege to refrain from disclosing the information about their client. For example a journalist who needs to keep his source of information private to maintain an uninterrupted flow of information to himself. Another example could be the information provided by a patient to his doctor or a client to his chartered accountant or lawyer. They are all instances of a privileged communication.

## 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.

The study clearly showed that the RTI Act has given a historic opportunity to root out corruption and the culture of secrecy from the Indian government affairs and pave the way for governance reform, greater accountability and transparency in government affairs.

Across the country, a growing number of people are using the RTI applications as a weapon to fight corruption and demand their rights. The RTI is enabling people to say no to bribes. The RTI has been used to bring about policy changes as well as to feed hungry mouths. It is an all-encompassing act with consequences that have prompted some to say that it is the most important legislation since independence.

The study supports that aligning public service architecture with appropriate transparency mechanisms does promote transparency. The study also supports the point raised by Jenkins and Goetz (1999) that the power of the RTI should not be underestimated. The literature of corruption and anti-corruption overemphasizes the role of the state as cause and remedy and fails to recognize the role of social movements in surfacing the existence of different forms of corruption. But much needs to be done before full power of the RTI can be realized. Indian Government should provide better infrastructure and ensure speedy processing of the RTI cases to motivate the demand side i.e. civil society. Signs of transparency are becoming visible and if the current trend has to continue and to comply with the Act in letter and in spirit, a fundamental change in the attitude within the bureaucracy is necessary. Therefore,

for the Act to be utilised to its full potential, Indian Government will have to make serious efforts to inculcate in the bureaucracy respect for citizens' right and give up its old functioning style characterized by cloak of secrecy and opaqueness.

## REFERENCES

- Alasdair Roberts (2010). A great and revolutionary law? The first four years of India.s right to information act, Suffolk University Law School, Revised March 2010.
- Ansari MM in a lecture entitled (2008). "Impact of Right to Information on Development: A Perspective on India's Recent Experiences", delivered at UNESCO headquarter, Paris, France, May 15.
- Baisakh Pradeep (2007). "Human Rights, Villagers push for work benefits in Orissa", India Together, digital edition, Feb 27.
- Florini, A. (2007). The Right to Know: Transparency for an Open World. New York: Columbia University Press.
- Kejriwal Arvind (2007). "RTI Act, One Year of Unfreedom", Combat Law Magazine March 1, 2007,
- Krippendorff, K. (2004). Content analysis: an introduction to its methodology. London, Sage.
- Kumar Anu (1999). Right to Information — Background and Perspective. (Info-change India)
- M. M. Ansari (2008) Impact of Right to Information on Development: A Perspective on India's Recent Experiences, United Nations Educational Scientific and Cultural Organization.
- Puddephatt Andrew (2006). McCall Elizabeth, Wilde Alexandra," A. Guuide to Measuring the Impact of Right to Information Programmes, Practical Guidance Notes, Democratic Governance Group, United Nations Development Programme April, 2006 [www.undp.org/.../A%20Guide%20to%20Measuring%20the%20Impact%20of%20Rig...](http://www.undp.org/.../A%20Guide%20to%20Measuring%20the%20Impact%20of%20Rig...) accessed on 7.9.10
- Right to Information (2005). Path to Swaraj, Shailesh Gandhi, The Hindu; Oct. 07.
- Singh, S. (2007). India: grassroots initiatives. In A. Florini (eds.) The right to know: transparency

for an open world, Columbia University Press:  
New York.

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**Corresponding Author**

**Rachna Chauhan\***

Research Scholar, SSSUTMS, Sehore

E-Mail - [chairman.iab@gmail.com](mailto:chairman.iab@gmail.com)