



The Right To Information Act, 2005: A Critical Analysis

¹Sahil Jindal

¹ Research Scholar, Department of Laws, Panjab University, Chandigarh, India.

Abstract: In the developing countries like India, a sizable portion of the population still lives in abject poverty despite the massive administrative structure established to spearhead national developmental initiatives. The last ten years have seen a growing disparity in wealth distribution, with the rich becoming increasingly affluent while the poor continue to struggle, widening the gap between the two socioeconomic groups. Social justice demands focused attention on the underprivileged to help them escape poverty, requiring efficient administration and a revamped structure for socio-economic development. Effective governance, including empowering citizens through the RTI Act, is crucial for keeping a check on our sarkar. Only then can developing countries meet their constitutional goals to improve the lives of millions suffering from poverty and other socio-economic issues. This study is undertaken to unravel the scenario regarding the implementation of RTI Act and its effectiveness in promoting government accountability and citizen empowerment.

Index Terms: Information, Corruption, Democracy.

I. INTRODUCTION

Access to information is foundational for developing a vibrant civil society.² People constantly seek to stay informed through newspapers, news channels, and the internet, highlighting the essential role of information in everyday decisions. From consumer choices to informed political engagement, information equips citizens to act meaningfully in various spheres of life. The Right to Information (RTI) is vital for promoting good governance by ensuring transparency, accountability, and participation, while simultaneously working as a powerful tool to combat corruption. RTI has become essential in modern democracies, often referred to as the "fifth pillar" in ensuring their proper functioning.³

However, information is often withheld, even when citizens are exercising their democratic rights, such as voting. A lack of transparency in the workings of government ministries, the performance of politicians, and the qualifications of candidates can lead voters to make uninformed choices, relying on narrow personal or societal affiliations. A well-informed electorate leads to better governance and more responsive legislators. Transparency in elections allows voters to make educated decisions, thereby strengthening democracy.⁴

¹ Research Scholar, Department of Laws, Panjab University, Chandigarh, India.

² Kailash Thakur, "The Right to Information Act, 2005: A Movement from Darkness to Light" 48 *Civil and Military Law Journal* 166 (2012).

³ A.T. Jagadish, "Right to Information-A Silver Lining in Democracy" 2 *Karnataka Law Journal* 57 (2012).

⁴ M. Sarojamma, "Right to Information and the Voters Right to know: An Analysis" 48 *Civil and Military Law Journal* 99 (2012).

Thus, the global significance of the right to information has been recognized in various forms but lacked uniform codification until recent advancements, particularly with the development of information and communication technologies. The Right to Information Act, 2005 in India represents a significant step towards open governance. India, the world's largest democracy, has seen the RTI Act empower citizens by granting them the right to know about public transactions and government actions. Although secrecy has long been a norm in governance, particularly regarding national security and public order, the RTI law challenges this, promoting a culture of openness and accountability.

Prof. Amartya Sen has identified five substantive freedoms as being integral to the concept of development, namely; political freedom, economic facilities, social opportunities, transparency, and security. "Transparency guarantees deal with the need for openness that people can expect: the freedom to deal with one another under guarantees of disclosure and lucidity. When that trust is seriously violated, the lives of many people both direct parties and third parties may be adversely affected by the lack of openness. These guarantees are instrumental in preventing corruption, financial irresponsibility, and underhand dealings."⁵

The RTI Act has transformed Indian society by making government institutions more transparent and responsive. While it has been described as a powerful tool against corruption and arbitrary misuse of power, challenges remain in fully realizing its potential. The effectiveness of the RTI Act depends on continued efforts to raise awareness among citizens, especially in rural areas, and ensuring that government institutions adhere to the law in both spirit and letter.

II. MEANING OF INFORMATION

The word "information" has its roots in the Latin word "informare" which means to fashion, shape, or create, essentially to give form to something. Information serves as a representation of an idea, image, or thought, enabling communication from one mind to another, whether through spoken or written words. The law dictionaries often provide definitions of "information" that differ from its broader contemporary understanding. The Ballentine's Law Dictionary describes it as acquired knowledge or facts that guide toward the acquisition of the knowledge.⁶ In a broader context, information is data that is (1) accurate and timely, (2) specific and organized for a purpose, (3) presented in a meaningful context, and (4) can lead to an increase in understanding and decrease in uncertainty.

The Right to Information Act, 2005 defines information in Section 2(f) as any material in any form including the records, documents, memos, e-mails, opinion, advice, press releases, circulars, orders, log books, contracts, reports, papers samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force. This broad scope underscores the versatility and significance of information in various contexts.⁷

III. IMPORTANCE AND NEED OF INFORMATION

Information is a powerful catalyst for knowledge which provokes thought and reflection, without which expression would be impossible. In a democratic society, freedom of expression is a fundamental pillar, and information acts as the oxygen that fuels this vital exchange.⁸ Information plays a crucial role in dismantling the unnecessary secrecy that often surrounds government decision-making. By promoting transparency, it enhances the quality of public policy and administrative decisions. Access to information empowers citizens to understand government actions and the rationale behind them, enabling them to make informed judgments about public policies. This, in turn, allows citizens to influence policy formulation and decision-making processes more effectively.

Too often, governments withhold information from their own citizens, citing feudal, colonial, or technical reasons. However, the principles of transparency, accountability, and fairness demand equality and openness, which are essential to good governance. Information serves three key purposes:

⁵ Amartya Sen on Development as Freedom, *available at*: <https://www.asiancenturyinstitute.com/development/333-amartya-sen-on-development-as-freedom> (last visited on August 20, 2024).

⁶ Ballentine, James A., LEXIS, Third edition, Matthew Bender & Company (2010).

⁷ The Right to Information Act, 2005, s. 2(f).

⁸ Madabhushi Sridhar, *Right to Information Law and Practice* 25 (Wadhwa & Company, Nagpur, 1st edn., 2006).

- It allows citizens to evaluate government actions.
- It enables citizen participation in public decision-making processes.
- It helps keep a check on government actions and ensures accountability.

Ultimately, a well-informed citizenry is the bedrock of a functioning democracy, promoting better governance and ensuring that the voices of the people shape the course of public affairs.

IV. MEANING OF RIGHT TO INFORMATION

The Right to Information (RTI) is founded on the principle that information held by public authorities should be freely accessible to the public as a natural part of governance. It should not be withheld from citizens without justifiable reasons. The core objective of RTI is to allow for greater probity in the functioning of the government departments so as to promote transparency and accountability in the working of the public bodies and contain the scourge of corruption, which are critical for ensuring good governance and development.⁹

In a democratic country, citizens have the fundamental right to know the actions and decisions made by the government on their behalf. The "right to know" serves as an essential tool for public enlightenment, providing citizens with access to government records and documents. It empowers them with the knowledge needed to understand how government functions and what decisions are being made.¹⁰

A common misconception is that the right to information only refers to the ability to seek information. However, the Right to Information Act, 2005 clarifies this by offering a more comprehensive definition, which includes:

- The right to seek information.
- The right to obtain information.
- The right to store information.¹¹

Thus, RTI is a social legislation designed for the benefit of society at large and is regarded as a basic human right, fundamental to a well-functioning democracy.¹² As noted by legal expert Soli Sorabjee, "Absence of transparency in administration was one of the main grounds for all permeating corruption and using right to information would lead towards openness, accountability and integrity". The implementation of the RTI Act marks a significant milestone in the journey toward building an informed and prosperous society. The exercise of this right is not a privilege of the few but a right of all citizens.

In its narrow sense, RTI refers to the ability to access information held by public bodies. However, in a broader sense, RTI extends to accessing information from both public and private entities that possess or control the information. Importantly, the right to information is not confined by national borders; it is a global right. It extends beyond citizens to legal entities, foreigners, and even multinational corporations. This broad scope makes the RTI an essential tool for ensuring transparency not only within national governments but also in the international arena.

V. THE RIGHT TO INFORMATION ACT, 2005: HISTORICAL ASPECT

Though freedom of information has been just beginning at a strong pace only in recent times, but it is hardly a new concept. The root of concept may be traced back in the 18th century, an era regarded as a significant period for the development of the freedom of information. In India, however, transparency in government was historically hampered by laws like the Official Secrets Act of 1923, a colonial relic that fostered secrecy and bred corruption by preventing public access to government records and decision-making processes. Despite calls to abolish this outdated law, including recommendations from figures like Veerappa Moily and the Administrative Reforms Commission, bureaucratic resistance especially from intelligence agencies kept it in place even after the enactment of the Right to Information Act, 2005.

The global recognition of the right to information gained prominence in the mid-20th century, notably through the inclusion of the right to seek, receive, and impart information under Article 19 of the Universal Declaration of Human Rights, 1948. This led India's Supreme Court to recognize the right to know as a fundamental part of the right to free speech and expression under Article 19(1)(a) of the Indian Constitution. Although the right to information was not explicitly stated in the Constitution, the judiciary expanded its interpretation over the years, embedding it within the broader framework of democratic governance. The

⁹ J.P. Rai, "The Right to Information Act, 2005: Retrospect and Prospects" 42 *The Banaras Law Journal* 76 (2013).

¹⁰ Ibid.

¹¹ A.T. Jagadish, "Right to Information-A Silver Lining in Democracy" 15 *Karnataka Law Journal* 61 (2012).

¹² Manish Kumar Chaubey, "Right to Information Act-An Overview" 50 *Civil & Military Law Journal*, 121 (2014).

Supreme Court ruled that the right to freedom of speech and expression guaranteed by Art. 19(1) (a) included the right to information and the disclosure of any information in relation with the functions of the government must be a rule.¹³ However, reasonable restriction can be placed upon the freedom of speech and expression as well as State is also free to make laws in future imposing such restriction.¹⁴

Explicit exercise of this right was not possible due to its derivative and implicit existence within the Constitution. This facilitated the need of a specific legislation enabling the citizens to enjoy the right available to them. In 1997, a conference of Chief Ministers unanimously recognized the need for a law guaranteeing the right to information. The demand gained momentum through various parliamentary reports and judicial rulings. The freedom of information Act, 2002, was enacted by the government of India to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto.¹⁵ However, with the passage of time, it was found that this Act did not fulfill the aspiration of the citizens of India. Consequently, the RTI Act of 2005 was introduced to provide a more effective and meaningful framework for citizens to access government information. The Act has since become a milestone in Indian social legislation, promoting openness and accountability in governance and helping curb corruption.

VI. THE RIGHT TO INFORMATION ACT, 2005- LEGISLATIVE PROVISIONS

In order to ensure greater and more effective access to information, common people of the country have a fundamental right to know what is being done by their government in its own name. In any democratic country, the free flow of information is essential for political development, acting as a safeguard against the misuse of power by public authorities. The RTI Act was enacted by the Indian Parliament to break the longstanding culture of secrecy in government operations. One of the key objectives of the Act is to harmonize the conflicting public interests, that is, ensuring transparency to bring in accountability and containing corruption on the one hand, and at the same time ensure that the revelation of information, in actual practice, does not harm or adversely affect other public interests which include efficient functioning of the government.¹⁶

The RTI Act sets up a legal and institutional framework that provides practical access to information held by public authorities. It mandates the disclosure of key information and requires the appointment of Public Information Officers (PIOs) in all public authorities to respond to citizen requests within a stipulated time frame. Citizens can appeal decisions made by PIOs to designated appellate officers, ensuring a structured process for grievances. Additionally, the Act establishes the Central Information Commission and State Information Commissions to handle complaints, hear appeals, and guide the effective implementation of the law.

While the RTI Act provides a formal process for requesting information, many areas of government information are already accessible through existing laws, without the need for formal applications. Laws related to criminal justice, business regulation, intellectual property, and employment rights often include provisions for public access to information. This demonstrates that access to government information is not only guaranteed through RTI but also supported by a broader legal framework that ensures transparency in various areas of governance.

VII. JUDICIAL APPROACH

Though the word "information" is not explicitly mentioned in Article 19(1)(a) of the Indian Constitution, the judiciary through its interpretative process has recognized the right to information as an integral part of the right to freedom of speech and expression. This right enables citizens to seek information, and at the same time, imposes a duty on the state to disclose it. However, not all information is freely accessible under the RTI Act. In the case of *Girish Ramchandra Deshpande v. Information Commr. and Ors.*¹⁷ the Supreme Court held that the details disclosed by an individual in their income tax returns are considered "personal information." According to Section 8(1)(j) of the RTI Act, such personal information is exempt from disclosure unless there is a larger public interest involved. This case highlights the fine balance between an individual's right to privacy and the public's right to information.

In *G.R..Deshpande v. Cen. Information Commr.*¹⁸, the Supreme Court observed that an employee's performance in an organization is primarily a personal matter between the employee and employer, typically

¹³*Bennette Coleman v. Union of India*, 1973 AIR106.

¹⁴*Secretary, Ministry of I & B, Government of India v Cricket Association of Bengal*, AIR 1995 SC 1236.

¹⁵Right to Information; A brief Introduction, available at : <http://www.legalserviceindia.com/legal/article-636-right-to-information-act-a-brief-introduction.html> (last visited on August 25, 2024).

¹⁶The Right to Information Act, 2005, preamble.

¹⁷2013(1) ABR 230.

¹⁸2012 (8) MLJ 122 (SC).

governed by service rules. Such information falls under "personal information" and its disclosure generally has no connection to public activity or interest. Furthermore, revealing this information could constitute an invasion of the individual's privacy. However, if the concerned information officer or appellate authority determines that a larger public interest justifies the disclosure, they may authorize it. The petitioner, however, cannot demand this information as an absolute right.

In *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors.*¹⁹, a student requested to inspect his answer sheet after receiving lower marks than expected. The CBSE denied the request, citing that the right to information under Article 19 of the Constitution is subject to reasonable restrictions and exemptions under the RTI Act. CBSE argued that granting such inspections for millions of answer sheets would hinder its functioning, requiring significant additional resources. The Supreme court held that the examining bodies (Universities, Examination Boards, CBSE etc.) are neither security nor intelligence organisations and therefore the exemption clause will not be applicable on such bodies. The evaluation of answer sheets is considered "information" under the RTI Act, and therefore students have the right to inspect their answer sheets. This right exists even if CBSE by-laws do not allow for such inspection, though it must be done within a specified time, and answer sheets are only required to be kept for three months.

In *M.P. Varghese v. Mahatma Gandhi University*²⁰, it was held that the definition of "public authority" under RTI Act has a much wider meaning than that of "State" under Article 12 of the Indian Constitution. Further in *Reliance Industries Ltd. v. Gujarat State Information Commission*²¹, it was held that, "It is duty vested in the Public Information Officer to give an opportunity of personal hearing to the third party, to get his submissions, whether he treats the information as confidential and whether information should be disclosed, if the information is relating to or is supplied by the third party."

VIII. CONCLUSION

India, as a welfare state, has seen a significant expansion in governmental activities, which has led to increased bureaucracy and administrative processes. With greater administrative power comes the risk of abuse, maladministration, and corruption. While discretion in administration cannot be eliminated, the RTI Act is seen as a way to introduce controls that reduce the misuse of power. The law fosters transparency, making government officials more accountable and responsive to public inquiries. Thus, good governance and the Right to Information (RTI) Act are deeply intertwined, with the success of one reliant on the other.

However, implementing the RTI has been met with resistance due to the entrenched culture of secrecy among civil servants. Over time, the Act is expected to shift the governance culture from secrecy to openness, personalized despotism to accountability, and unilateral decision-making to participatory governance. Currently, the RTI Act remains underutilized by the general public, with most users being journalists, activists, and politicians. Structural challenges, such as the appointment of Information Commissioners from bureaucratic or political backgrounds rather than social service or academic fields, as stipulated in the Act, have also hindered its broader success. Additionally, rural awareness of the Act is low, and it has largely become a grievance redressal tool for government employees rather than a means for the common citizen to hold authorities accountable.

Thus it can be concluded that one single law obviously cannot change everything. But this fine legislation is an important beginning to change. While it shows great potential to check corruption and promote good governance, greater awareness, proper institutional arrangements, and genuine administrative commitment are necessary to fully realize its benefits.

¹⁹(2011) 8 SCC 497.

²⁰ AIR 2007 Ker 230.

²¹ AIR 2007 Guj 203.