



## OUR INFORMATION, OUR RIGHTS

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### INTRODUCTION

The free flow of information is a must for a democratic society as it helps assist the society in reaching its optimum potential and retaining among its people the spirit of debate and discussion. This freedom of information (Hereinafter, known as FOI) brings openness in the administration which helps to promote transparency in state affairs, keep government more accountable and ultimately, reduce corruption and benefit the entire society. FOI also makes people aware of the rights vested in themselves. These rights are essentially human rights which are vested in us from our birth to death. The Universal Declaration of Human Rights is generally agreed to be the foundation of international human rights treaties. It represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone<sup>1</sup>. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups<sup>2</sup>. The point to be noted here is that since human rights apply on a domestic scale as well, the Government of the country needs to act appropriately to ensure human rights and fundamental freedoms within the country too.

Article 19 of the International Covenant on Civil and Political Rights (list of rights granted<sup>3</sup>) states that 'Everyone shall have the right...to seek, receive and impart information and ideas of all kinds, regardless of frontiers'<sup>4</sup> as it was considered that having access to information is necessary to know and secure our rights. It took 58 years for the Government of India to realise the importance of accessible information to the public. The Right to Information Act, 2005 came into force with the aim of securing access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority<sup>5</sup>.

### FORMAL RECOGNITION OF RIGHT TO INFORMATION- II

The RTI law of 2005 has enabled any citizen to question decisions and policies made by the Government and their implementation as well. After a prolonged grass root level agitation by civil rights activists, the Central Government passed the much awaited Right to Information Act in the year 2005. As a result of this, all the information in relation to administration and governance, except classified and confidential sensitive information relating to national security, is now available to any citizen of our country<sup>6</sup>. India's RTI Act is generally claimed as one of the world's best law with an excellent implementation track record. From the day the Act came into force, enlightened citizens have started 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 need not to give any reason for it or prove his *locus standi*. Yet the

<sup>1</sup> The Universal Declaration of Human Rights, Human Rights Law [http://www.un.org/en/documents/udhr/hr\\_law.shtml](http://www.un.org/en/documents/udhr/hr_law.shtml) Last Accessed on: 31.18.2018

<sup>2</sup> United Nations Human Rights, OCHR, <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx> Last Accessed on: 31.18.2018

<sup>3</sup> International Covenant on Civil and Political Rights, [http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/8\\_udhr-abbr.htm](http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-5/8_udhr-abbr.htm) Last Accessed on: 31.03.2018

<sup>4</sup> Article 19(2) reads as: *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

<sup>5</sup> Centre for Development of Telematics, <http://www.cdote.in/rti-act.htm> Last Accessed on: 31.03.2018

<sup>6</sup> Right to Information For All, <http://www.rtiforall.com/> Last Accessed on 31.03.2018



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<sup>7</sup>.

The formal recognition of a legal RTI in our country took place more than two decades before the legislation was finally enacted, when the Supreme Court ruled in *State of UP Vs. Raj Narain*<sup>8</sup> that the right to information is implicit in the right to freedom of speech and expression which has been explicitly guaranteed by Article 19<sup>9</sup> of the Indian Constitution. Similar views were upheld in cases like *Bennett Coleman & Co Vs. Union of India*<sup>10</sup>, *Peoples Union for Civil Liberties Vs. Union of India* and *Secretary, Ministry of Information and Broadcasting Vs. Cricket Association of Bengal*<sup>11</sup>. In *S.P. Gupta v. Union of India*<sup>12</sup>, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described.

The idea of a right to information, hence, was evolved by the judiciary by reading the same along with the fundamental right of a citizen's freedom of speech and expression. As a reaction to this, several states of India began enacting their individual laws in relation to this newly evolved Right to Information. So, it can be said that Right to Information is a derivative of Article 19 of the Indian Constitution. It is to be noted that this entire Act can thrive only in awareness of the citizens of the country<sup>13</sup>. One

major problem that comes while implementing this Act is the lack of awareness<sup>14</sup>.

### A DECADE OF RTI ACT, 2005- USE AND MISUSE- III

RTI has been used as a tool not only to address personal grievances but also to shed light on various social banes like corruption. RTI is used as a tool of disclosure; providing statistics and other data. This data plays a key role in understanding the extent and nature of any problem. There are various social issues where RTI has been used as an instrument for positive change:

#### **1) Sexual Harassment and Other Crimes Against Women**

Realizing the importance of data and statistics, CSR filed an RTI on the Government of India's RTI portal, requesting to know how many calls pertaining to crimes against women in India, specifically Delhi, were received. The data was requested for a period between 31 Dec 2012 to 15 March 2015. While going through the data, we discovered that a total of 10,35,238 calls were received in the specified time period. The calls (categorized into various case types) were analysed and the most frequent case types were clubbed into five broad categories, based on similarity of case type.

- Dangerous attack and Domestic Violence- 94,211 cases
- Dowry Death and Dowry violence and property cases- 10,210 cases

<sup>7</sup> Briefing Paper, Analyzing The RTI in India [http://www.cuts-international.org/cart/pdf/Analyzing\\_the\\_Right\\_to\\_Information\\_Act\\_in\\_India.pdf](http://www.cuts-international.org/cart/pdf/Analyzing_the_Right_to_Information_Act_in_India.pdf) Last Accessed on: 31.03.2018

<sup>8</sup> AIR 1975 SC 865

<sup>9</sup> *Constitution of India, 1949: Article 19* reads: Protection of certain rights regarding freedom of speech etc (1)All citizens shall have the right(a)to freedom of speech and expression;(b)to assemble peaceably and without arms;(c)to form associations or unions; (d)to move freely throughout the territory of India;(e) to reside and settle in any part of the territory of India; and

(f) omitted(g) to practise any profession, or to carry on any occupation, trade or business

<sup>10</sup> AIR 1973 SC 106

<sup>11</sup> AIR 1995 SC 1236

<sup>12</sup> AIR 1982 SC 149

<sup>13</sup> Rediff, article dated 07.11.2008 <http://www.rediff.com/news/2008/nov/07interview-with-shailesh-gandhi-cic.htm> Last Accessed on: 31.03.2018.

<sup>14</sup> The Hindu, article dated 11.12.2017 <http://www.thehindu.com/news/cities/Vijayawada/many-yet-to-realise-utility-of-rti-act-says-sc-judge/article21389096.ece> Last Accessed on: 31.03.2018



- Illegal Confinement, Mental trauma and Stalking- 8,650 cases
- Abduction, Acid Attack, Kidnapping, Missing and Murder- 17,543 cases
- Penetrative Sexual Assault, Sexual Abuse at Workplace and Sexual Assault- 35,025 cases

This data is extremely useful for any organization working for women's causes as it helps in identifying the exact case types and their occurrences. Also, the data for sexual abuse is of particular importance as there is hardly any data available for these cases (especially those taking place at work). Thus, we can say that this RTI is in that sense, a revelation, and will set the way for more and better information at our disposal<sup>15</sup>.

Acting on the 2011 Supreme Court directive to states to formulate a plan to provide relief and rehabilitate women who had been assaulted or raped, Kansara (A common man from Rajasthan) has used RTI to make sure the verdict is implemented. In the process, he has brought succour to a minor rape victim in his locality, a woman publicly molested in Guwahati and several trafficked children in Delhi<sup>16</sup>. The curiosity of a rape convict couple to know about a dead woman through RTI proved costly for them as it helped police establish their involvement in three murders, leading a local court to sentence them to life<sup>17</sup>. A different approach was taken on the usage of RTI when a woman filed an RTI application to find out all details about her prospective groom<sup>18</sup>.

<sup>15</sup> Gender Matters article dated 2.04.2015 <http://gender-matters.in/2015/04/increasing-crime-against-women/> Last Accessed on: 28.09.2015

<sup>16</sup> DNA India article dated 18.08.2013 <http://www.dnaindia.com/india/report-with-rti-rajasthan-man-brings-succor-to-sexual-crime-victims-1875917> Last Accessed on: 31.03.2018

<sup>17</sup> India Today article dated 02.06.2015 <http://indiatoday.intoday.in/story/rape-convict-couples-curiosity-lands-them-in-jail-for-life/1/278010.html> Last Accessed on: 31.03.2018

<sup>18</sup> The Telegraph, India [http://www.telegraphindia.com/1110426/jsp/nation/story\\_13903326.jsp](http://www.telegraphindia.com/1110426/jsp/nation/story_13903326.jsp) Last Accessed on: 31.03.2018

## 2) Corruption

The Merriam-Webster dictionary defines corruption as dishonest or illegal behaviour especially by powerful people (such as government officials or police officers)<sup>19</sup>. September 28 is celebrated internationally as Right To Know Day, highlighting the critical importance of people's right to access information held by their governments. Social activists, civil society organizations, and ordinary citizens have effectively used the Act to tackle corruption and bring greater transparency and accountability in the government. Social activist Aruna Roy has described India's RTI Act as "*the most fundamental law this country has seen as it can be used from the local panchayat (a unit of local government) to parliament, from a nondescript village to posh Delhi, and from ration shops to the 2G scam.*"<sup>20</sup> Right to Information Maws, or "sunshine" laws as they are commonly called, grant citizens the legal right to access information held by their governments, bringing much-needed transparency in the otherwise opaque functioning of government<sup>21</sup>.

The Supreme Court has also stated that RTI is a formidable tool to fight corruption.<sup>22</sup> From the Commonwealth Games to the 2G scam, RTI queries have been the starting point of exposure in a score of recent cases of corruption. Not surprisingly, the success of the law has been its greatest threat<sup>23</sup>.

Queries under Right to Information (RTI) Act have unearthed a scam in Maghamela - a festival which is observed by lakhs in the Oriya month of Magha. Queries by a lo-

<sup>19</sup> Merriam Webster Dictionary <http://www.merriam-webster.com/dictionary/corruption> Last Accessed on: 31.03.2018

<sup>20</sup> An Open Access Journal from The Law Brigade (Publishing) Group January 2018. <http://ijldai.thelawbrigade.com/wp-content/uploads/2018/01/Aparajita.pdf> Last Accessed on: 31.03.2018

<sup>21</sup> ibid

<sup>22</sup> The Hindu, article dated 14.08.2012 <http://www.thehindu.com/news/national/rti-a-formidable-tool-to-fight-corruption-supreme-court/article2354447.ece> Last Accessed on: 31.03.2018

<sup>23</sup> The Hindu, article dated 05.11.2012 <http://www.thehindu.com/opinion/editorial/the-power-of-rti/article4064958.ece> Last Accessed on: 31.03.2018



cal activist under RTI Act revealed that the kerosene supplied was not provided to people instead it was misappropriated by the retailers. Copies of the distribution register exposed forged signatures and thumb impressions of the beneficiaries<sup>24</sup>.

With 'Adarsh' scam, India's corrupt bureaucracy came to the forefront revealing few shocking facts. Then-Chief Minister of Maharashtra Ashok Chavan resigned when his name cropped up in this controversy along with few other politicians and bureaucrats. Government land— reserved for housing supporting war widows, was acquired for use building posh apartments priced below market value that violated most building regulations. It was only when Simpreet Singh, a citizen journalist, filed an application under the Right to Information Act that this scam was exposed, creating a stir amongst the politicians and the citizens of India<sup>25</sup>. To cite another example, the media exposed a scam that indicted 40 bureaucrats including Sangli municipal commissioner D P Metake, conservator of forests Sunil Limaye and assistant collector Ajit Relekar of having allegedly grabbed government land personally or through their relatives in posh areas near circuit house in Kolhapur city, in southern Maharashtra.<sup>26</sup> As recently as 25.03.2018 notice was issued to 11 officials for not giving information under RTI Act.<sup>27</sup>

CBI was included in the second schedule of the Section 24 of the RTI Act which allows national and security organisations of the country listed under it from making any disclosures under the transparency. The agency,

which is probing number of high profile corruption cases such as 2G scam, NRHM scam, Illegal ore mining, CWG scam, Tatra BEML scam besides other such cases pleaded that disclosure of information would defy the objective of keeping it in the exemption list which is why all such requests would have to be dealt with on a case to case basis and appropriate order passed.<sup>28</sup>

### 3) Public Policies

In any society, governmental entities enact laws, make policies, and allocate resources. This is true at all levels. Public policy can be generally defined as a system of laws, regulatory measures, courses of action, and funding priorities concerning a given topic promulgated by a governmental entity or its representatives<sup>29</sup>. RTI Act upholds the principles of accountability and transparency. These two pillars of the Act enable the civil society to improve public policy and efficiency<sup>30</sup>. In India, the society has been divided into a number of classes. Where public policies are introduced for the betterment of the society as a whole, it is often seen that the rich are favoured and the basic human rights of the rest are grossly violated. RTI Act, if used intelligently and tactfully, can solve many of these problems<sup>31</sup>. RTI got evolved to empower the Dalits, minorities,

<sup>24</sup> Young India <http://youngindia.net.in/flashnews/news-foruse/rti-reveals-huge-kerosene-scam/> Last Accessed on: 31.03.2018

<sup>25</sup> WIRE, article dated 05.03.2015 <http://simc-wire.com/chapter-5-scams-uncovered-through-rti/> Last Accessed on: 31.03.2018

<sup>26</sup> Deccan herald, article dated 17.08.2011 <http://www.deccanherald.com/content/184246/power-rti-act-cracking-land.html#> Last Accessed on: 31.03.2018

<sup>27</sup> The Hindu dated 25.03.2018 <http://www.the-hindu.com/news/national/karnataka/notice-issued-to-11-officials-for-not-giving-information-under-rti-act/article23350130.ece> Last Accessed on: 31.03.2018

<sup>28</sup> India Today, article dated 02.11.2012 <http://indiatoday.intoday.in/story/disclose-information-related-to->

[corruption-cases-cic-to-cbi/1/227403.html](http://www.cic-to-cbi/1/227403.html) Last Accessed on: 31.03.2018

<sup>29</sup> Dean G. Kilpatrick, Ph.D. National Violence Against Women Prevention Research Centre, Medical University of South Carolina <https://mainweb-v.musc.edu/vawprevention/policy/definition.shtml> Last Accessed on: 31.03.2018

<sup>30</sup> Making the Forest Sector Transparent, Annual Transparency Report <http://www.foresttransparency.info/background/forest-transparency/32/transparency-and-the-right-to-information/> Last Accessed on: 31.03.2018

<sup>31</sup> DNA India, article dated 07.02.12 <http://www.dnaindia.com/mumbai/report-rti-act-has-solved-many-problems-of-common-man-1647022> Last Accessed on: 31.03.2018



backward classes, the economically weaker sections and vulnerable groups<sup>32</sup>.

An RTI query unearthed a major scam in the Public Distribution System, as many as 42 lakh bogus ration cards have been issued in Maharashtra leading to large scale theft of food grain<sup>33</sup>. Under the health sector of public policy, a recent RTI revealed that Out of 227 corporators, 61 have not asked a single question on health since being elected in the last three years from March 2012 to March 2015, while two corporators who have consistently been members of the Public Health Committee have not asked a single question on health. Elected representatives should become more engaged in the debates on public health policies, proposed legislations like Clinical Establishment Act, Health Surveillance Reports, etc., so as to preserve the basic human rights of people when it comes a health<sup>34</sup>. Ram Kumar Thakur had filed RTIs which led to the unravelling of the MNREGA scam in Bihar. He had filed around seven Right to Information (RTI) applications to expose the irregularities in payments under the rural employment scheme. The RTI replies were used as a legal document to force the State Rural Development Ministry to conduct a social audit of the scheme in the village<sup>35</sup>.

### **MISUSE OF RTI: An Issue of Concern**

There are numerous instances of Right to Information (RTI) Act, 2005, being misused.. Bhaskar Patil, State Information Com-

missioner in Nagpur, said that *"There are instances where RTI information was sought on the same subject pertaining to particular ration card shop as many as 10 times. It clearly indicates that something is fishy. Even information of hotel owners was demanded. There is definitely third party interest involved in such applications. But providing information can't be denied as activists are smart enough to turn it into a public cause. In hotel owners' case, they may say that they want to check any violations in obtaining hotel licenses."*<sup>36</sup> An excellent example of the same would be the recent news about 2 netas caught extorting builders by misusing RTI information.<sup>37</sup> Justice S H Kapadia said a very good law like Right to Information (RTI) was being misused to ask irrelevant and intrusive questions seriously impeding the working of the Judges and the Supreme Court<sup>38</sup>. Indiscriminate and impractical demands by applicants with no relation to transparency, accountability and eradication of corruption are proving to be counterproductive.<sup>39</sup> The same statement has been reiterated by Justice Manmohan, who said the Right to Information (RTI) was a *"cherished right"* and seeking answers to *"meaningless and vague queries"* would adversely affect the efficiency of the administration and result in the executive getting bogged down with non-productive work of collecting and furnishing information.<sup>40</sup> Some persons, in the garb of RTI activists and out of vengeance and personal vendetta, have misused the provisions of this Act. Having ulterior motive in mind, they have

<sup>32</sup> The Shillong Times, article dated 23.08.2013 <http://www.theshillongtimes.com/2013/08/23/rti-a-tool-for-good-governance-and-also-its-misuse/> Last Accessed on: 31.03.2018

<sup>33</sup> CNBC Money Control, article dated 05.12.2011 [http://www.moneycontrol.com/news/current-affairs/rti-query-busts-major-pds-scammaharashtra\\_629116.html](http://www.moneycontrol.com/news/current-affairs/rti-query-busts-major-pds-scammaharashtra_629116.html) Last Accessed on: 31.03.2018

<sup>34</sup> DNA India, article dated 22.07.2015 <http://www.dnaindia.com/mumbai/report-netas-not-doing-enough-to-follow-up-on-health-issues-says-report-2106836> Last Accessed on: 31.03.2018

<sup>35</sup> Down to Earth, article dated 26.03.2013 <http://www.downtoearth.org.in/news/lawyer-cum-rti-activist-who-exposed-mgnrega-scam-in-bihar-shot-dead--40688> Last Accessed on: 31.03.2018

<sup>36</sup> Times of India, article dated 17.03.2018 <http://timesofindia.indiatimes.com/city/nagpur/RTI-Act-being-misused-many-a-time-State-Information-Commissioner/articleshow/19013579.cms> Last Accessed on: 31.03.2018

<sup>37</sup> Times of India, article dated 31.03.2018 <https://timesofindia.indiatimes.com/city/mumbai/netas-using-rti-to-extort-bldrs-booked/articleshow/63562290.cms> Last Accessed on: 31.03.2018

<sup>38</sup> The Times of India, article dated 13.04.2017 <http://timesofindia.indiatimes.com/india/Right-to-Information-good-law-but-being-misused-S-H-Kapadia/articleshow/12642471.cms> Last Accessed on: 31.03.2018

<sup>39</sup> Supra Note 31

<sup>40</sup> The New Indian Express, article dated 01.03.2014 <http://www.newindianexpress.com/nation/RTI-is-Cherished-Dont-Misuse-It-Delhi-HC/2014/03/01/article2084971.ece> Last Accessed on: 31.03.2018



asked absurd, irrelevant and uncalled for questions under the Act. In order to get recognition in public offices, these RTI activists ask some very embarrassing questions under the Act, unmindful of the fact that the answer to these questions may involve wasting of lots of time of public authorities without serving any purpose at all<sup>41</sup>. Speaking at the 7th annual convention of the Central Information Commission (CIC), Manmohan Singh pointed out that such unproductive queries are not only a waste of time but serve no social purpose<sup>42</sup>.

The Fate of RTI users: Aruna Roy, a social activist, says "Attacks on activists are part of a deeply worrying trend where anyone challenging the power nexus of corporations-states-big money is brutally silenced and clamped down upon." The National Crime Records Bureau (NCRB), for the first time, will begin collecting data from across the country on attacks on Right to Information (RTI) activists, journalists, social activists and whistleblowers. But the manner in which the data is being collected is likely to lead to under-reporting of the cases in the government database. However, the database will record only in cases of 'grievous hurt of varying degrees', covered by Sections 325, 326, 326A and 326B of the Indian Penal Code.<sup>43</sup> A list of activists who have been attacked in the past can be seen [HERE](#)<sup>44</sup>. Maharashtra is a state that has recorded the highest number of attacks, both fatal and otherwise, on RTI activists in India, a decade after the country passed its sunshine transparency act<sup>45</sup>. Expressing concern over spurt in attacks on activists in the State, RTI activists under the banner 'Youth Social Workers' have demanded a

crime branch enquiry into the brutal attack on disabled RTI activist Kesab Mahakud of Nagaygarh district. Condemning the attack, social workers here have demanded proper protection to the RTI activists and demanded crime branch enquiry into the attack.<sup>46</sup>

However not all is doom and gloom, action has been taken in many of the cases referred to above. Recently on 26.03.2018 the state information commissioner (SIC), Nagpur, Dilip Dharurkar, issued show-cause notice and also imposed penalty of Rs 2,000 to chief general manager (CGM) of Forest Development Corporation of Maharashtra (FDCM) for violating RTI Act provisions by causing delay in providing information by deliberately transferring application to irrelevant authorities.<sup>47</sup>

#### LIMITATIONS OF THE ACT- IV

RTI Act, 2005 is considered among the best of its kind throughout the world. However, where the practical aspect of the Act comes into play, it is safe to say that only the educated masses can utilise the benefits that arise from this Act. The illiterate people lack awareness, are unable to complete the process required and are often ill treated by the PIOs. In a way, it can also be said that the RTI Act, unintentionally, caters the rich or educated people. The following points summarise the implementation problems and limitations of the said Act:

**1) Lack of awareness:** An Act can only be enforced and its strengths can be utilised only when the masses are aware of it. Though the

<sup>41</sup> Supreme Court Cases, Right To Information: Use and Misuse, Dr. Ajay Kumar Jain, [http://www.supremecourtcases.com/index2.php?option=com\\_content&ititemid=5&do\\_pdf=1&id=20391](http://www.supremecourtcases.com/index2.php?option=com_content&ititemid=5&do_pdf=1&id=20391) Last Accessed on: 31.03.2018

<sup>42</sup> India TV USA <http://www.indtvusa.com/indian-pm-raises-concern-over-misuse-of-right-to-information-act/> Last Accessed on: 31.03.2018

<sup>43</sup> Business Standard, article dated 23.07.2015 [http://www.business-standard.com/article/current-affairs/ncrb-to-collect-data-on-attacks-on-journalists-whistle-blowers-rti-activists-115072300045\\_1.html](http://www.business-standard.com/article/current-affairs/ncrb-to-collect-data-on-attacks-on-journalists-whistle-blowers-rti-activists-115072300045_1.html) Last Accessed on: 31.03.2018

<sup>44</sup> Attacks on RTI Activists <https://docs.google.com/spreadsheets/d/1FTKRk-FmsXN1YHEVUx7->

[07OeaRZLNakf2Fn9MIICIA/edit?hl=en#gid=0](http://www.timesofindia.indiatimes.com/india/Maharashtra-most-unsafe-for-RTI-activists-10-killed-in-10-years/articleshow/48840985.cms) Last Accessed on: 31.03.2018

<sup>45</sup> The Times of India, article dated 06.09.2015 <http://timesofindia.indiatimes.com/india/Maharashtra-most-unsafe-for-RTI-activists-10-killed-in-10-years/articleshow/48840985.cms> Last Accessed on: 31.03.2018

<sup>46</sup> The Hindu, article dated 29.09.2015 <http://www.thehindu.com/news/national/other-states/handicapped-rti-activist-alleges-attack-for-copbashing/article7699687.ece> Last Accessed on: 31.03.2018

<sup>47</sup> The Times of India dated 26.03.2018. <https://timesofindia.indiatimes.com/city/nagpur/show-cause-fine-against-fdcm-for-rti-violation/articleshow/63472450.cms> Last Accessed on 31.03.2018



Right to Information (RTI) Act ensures transparency in democratic governance, lack of awareness and the indifference of officials are a cause for concern, according to activists<sup>48</sup>. Implementation of the Right to Information Act is still facing teething problems in most of the departments due to lack of understanding among the officials and lack of awareness among the information seekers.<sup>49</sup> Sometimes, not only the citizens of our country, but even the officials (PIOs) lack awareness<sup>50</sup>. Low awareness level: Section 26 of the Act states that the appropriate Government may develop and organize educational programmes to advance the understanding of the public, especially disadvantaged communities, regarding how to exercise the rights contemplated under the Act. However, as per the survey it was revealed that only 15% of the respondents were aware of the RTI Act<sup>51</sup>.

**2) Constraints faced in filing an RTI Application:** Non availability of user guides for RTI implementation for information seekers, no standard forms for RTI application, inconvenient submission channels for RTI application and the dubious payment mechanism are just some of the problems that are being constantly faced by RTI application filers. The RTI application filers lack assistance on filling of such form and the unfriendly attitude of the PIOs does not help as well<sup>52</sup>.

**3) Miscellaneous Issues:** The Implementation of RTI requires the PIOs to provide information to the applicant through photocopies, soft copies etc. While these facilities are considered to be easily available at a district level, it is a challenge to get information from Block/ Panchayat level. In addition to lack of resources, PIOs lack the motivation to implement RTI Act. During the RTI workshops organised in the surveyed states, PIOs cited that there were no incentives

for taking on the responsibility of a PIO; however penalties were imposed in cases of non compliance<sup>53</sup>.

#### SUGGESTIONS- V

In light of all the information stated above, the following are the suggestions by the author of this paper.

**1) Anonymity:** As has been earlier stated, attacks on RTI activists are common these days. The Act, though well drafted, has forgotten how to protect the identity of the person. There should be a sense of anonymity in the RTI form whereby the RTI application filer should not be compelled to disclose his name. Even if the name must be disclosed it must fall upon the Government to ensure that the name of the RTI activist is not revealed to the Public at least until the issue has been dealt with. To do so the Government must come up with more stringent norms and rules which would actively penalise the source of such leaks, even criminalise such acts.

**2) Include Private Sector:** The Act has clearly dealt only with relation to public bodies, leaving the private and equally important sector of the society closed from the scrutiny of the public.. So far as private sector is concerned like partnership business, private 10 companies and factories, multinational companies which have their head offices outside India, NGOs not financed by the government etc. the Act remains silent. Therefore, private bodies or authorities are not under obligation to furnish any sort of information if asked for. For betterment of the society, at least certain sections of the private sector (For instance, health and education)

<sup>48</sup> The Hindu, article dated 03.08.2009 <http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/concern-over-lack-of-rti-act-awareness/article195474.ece>  
Last Accessed on 31.03.2018

<sup>49</sup> Marathi News, article dated 25.08.2015 <http://marathinews.indiareckoner.net/2015/08/rti-issue-lack-of-understanding-among-officials-lack-of-awareness-among-seekers-tv9part2/> Last Accessed on: 31.03.2018

<sup>50</sup> The News, article dated 10.06.2015 <http://the-news.co.in/viewinterview-majoritypioslackawarenessofrtiact> Last Accessed on: 31.03.2018

<sup>51</sup> Key Issues and Constraints in Implementing RTI [http://rti.gov.in/rticorner/studybypwc/key\\_issues.pdf](http://rti.gov.in/rticorner/studybypwc/key_issues.pdf)  
Last Accessed on: 31.03.2018

<sup>52</sup> Supra Note 49

<sup>53</sup> ibid



should be included within the purview of this Act<sup>54</sup>.

**3) Clear Filing Process:** A standard form should be used. The officers present to assist the RTI application filers should have been properly trained unlike the past, where they had no information themselves<sup>55</sup>. If the guidelines and templates of pro-active disclosures implemented, it will help a lot to bring transparency in administration and lower the pendency of appeals before the Gujarat Information Commission (GIC) as citizen have to approach to GIC even in matters which should be available on pro-active disclosure<sup>56</sup> whereas experiences suggests that governments have not been implementing it and people have to file RTI applications which ideally should be available on pro-active disclosure where one need not to file an RTI application<sup>57</sup>.

In a welcome move the The Supreme Court, on 20.03.2018, directed all government authorities to ensure that the fee for a Right to Information (RTI) application does not exceed Rs. 50 and the fee for photocopying is not more than Rs. 5. The Bench comprising A.K. Goel and Justice U.U. Lalit issued the following directions:

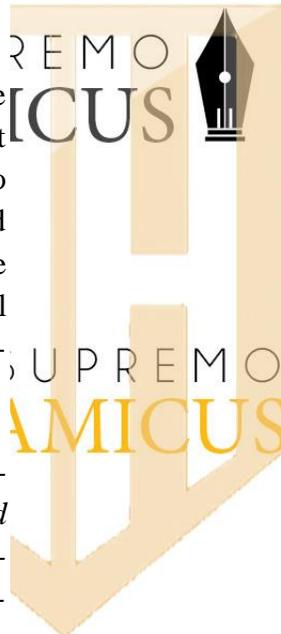
On the fee: *“We are of the view that, as a normal Rule, the charge for the application should not be more than Rs.50/- and for per page information should not be more than Rs.5/-. However, exceptional situations may be dealt with differently. This will not debar revision in future, if the situation so demands.”*

On disclosure of motive: *“With regard to the requirement of disclosure of motive for seeking information, the Court ruled, “No motive needs to*

*be disclosed in view of the scheme of the Act.”*

On disclosure of information on matters pending adjudication: *“With regard to the Rules debarbing disclosure of information on matters pending adjudication, the Court clarified that “the same may be read consistent with Section 8 of the Act, particularly sub-section (1) in Clause (J) thereof”<sup>58</sup>*

All steps which will surely make the RTI act more effective in going ahead with its execution.



<sup>54</sup> In the landmark decision of Sarbajit Roy v. Delhi Electricity Regulatory Commission, [viii] the Central Information Commission also reaffirmed that privatized public utility companies continue to be within the RTI Act, notwithstanding their privatization.

<sup>55</sup> The WIRE article dated 28.03.2018 <https://thewire.in/government/rti-implementation-study> Last Accessed on: 31.03.2018

<sup>56</sup> The Times of India, article dates 28.11.2013 <http://timesofindia.indiatimes.com/city/rajkot/Government-issues-guidelines-for-better-implementation-of-RTI-Act/articleshow/26536308.cms> Last Accessed on: 31.03.2018

<sup>57</sup> ibid

<sup>58</sup> livelaw.in dated 20.03.2018. <http://www.livelaw.in/fee-rti-application-not-exceed-rs-50-rs-5-per-pages-motive-need-not-disclosed-read-sc-directions-read-order/>. Last accessed on 31.03.2018