



A CRITICAL ANALYSIS HOW RTI ENSURES TRANSPARENCY AND GOOD GOVERNANCE WITH SPECIAL REFERENCE TO PROTECTION TO WHISTLE BLOWER¹

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ABSTRACT

In the words of Prime Minister of India, Narendra Modi “people power must be combined with good governance to bring about real, deep and lasting change. This combination can achieve almost everything from eliminating corruption to ending malnutrition and illiteracy”

It has been universally accepted that democracy, liberty and rule of law are three basic characteristics of a civil society. Protection of citizen's right and liberties are the State's functions to serve the interests and welfare of its people and its susceptibility to public opinion constitute the basic functions of the State in a civil society. The extent to which the manner of exercising these functions would however, depend on the country's economic and social conditions and the population components of the civil society. In order to ensure transparency and openness in the civil society, the right to information serves as an effective tool for a vigilant citizenry.

The concept of civil society presupposes more and more powers by the State for

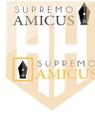
ensuring people's well being. In order to accomplish this objective, the administrative powers of the executive branch of the government need to be expanded, which being discretionary are likely to be exceeded or misused and therefore, a system of checks and balances has to be established to ensure transparency without hindering the functions of the State which require confidentiality or privileged communications.

INTRODUCTION

Good Governance may be termed as a synonym for the work carried out by a Government where the maximum benefit is given to the maximum number of people. India being a huge democracy needs participation from every front to implement the objective of good governance. The scenario often turns that laws of public interest and benefit is mostly used by the elite section of the society. However, this piece of legislation stands as an exception as it has reached its extent to the remote corner of the country.

The right to information is implicitly guaranteed by the Constitution. However, with a view to set out a practical regime for securing information, the Indian Parliament enacted the Right to Information Act, 2005 and thus gave a powerful tool to the citizens to get information from the Government as a matter of right. This law is very

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comprehensive and covers almost all matters of governance and has the widest possible reach, being applicable to Government at all levels- Union, State and Local as well as recipients of government grants.

India is the largest democracy in the world having a population which equals to the aggregate population of the next five democracies including USA and Brazil.² Much of the credit goes to the founding fathers of the Indian Constitution who introduced a democratic model of governance for independent India, which they considered which they considered to be suited to a big country like ours with diversity of people in terms of race, religion, language, culture, heritage, regional imbalances etc.

The first two decades of the post- Indian independence, mainly because of the fact that those who were at the helm of the government were the top leaders and persons who had actively participated in the Indian freedom movement and sacrificed their lives for the cause of the nations. The path set by the framers of the Indian Constitution and followed by their illustrious successors such as Dr. Ambedkar, Morarji Desai, Lal Bahadur Shastri and Dr. Zakir Hussain to name only a few, gradually started drowning in cynicism and hopelessness which touched its climax during the Emergency period from 25th June 1975 to 21 March, 1979 under the Late Prime Minister Smt.

Indira Gandhi's regime. Gradually manoeuvring of power, corrupt practices, use of muscleman, violence and criminalization of politics threw the ideals of democracy to the winds and people's participation remained utopian to the society in the absence of fair and transparent election process.

The system of governance developed flaws and imperfections due to our elected representatives controlling the various government departments in their capacity as Ministers, Deputy Ministers etc., thoughtlessly indulged in the sloth corrupt and mal-practices forgetting that they are meant to serve the people and are not the masters.³ Hence such type of legislation is badly needed for making the public authorities accountable. *The paper will study the implementation and extent of this prominent law to the grass root level of India through the participation and activeness of common people who thrive to promote good governance through their extra ordinary works. In addition, the paper also highlights the need to amend the Act so as to protect the activists who often risk their lives for public interest.*

Keywords: Right to Information, Participatory Democracy, grass root level, Fundamental Right Implementation, Good governance, RTI Activists.

DEFINITION OF 'GOOD' AND 'GOVERNANCE'

² It is bigger than the population of U.S., Indonesia Brazil, Russia and Bangladesh put together, which adds upto 74.9 Crores.

³ N.V Paranjape " Right to Information Law in India", published in 2014, Lexis Nexis Publication



GOOD

The term ‘Good’ has been derived from the word ‘God’ which is related to the knowledge of the idea of God. In Greek theory it means the knowledge of that absolute power which is supreme and the foundation of all material things. The word ‘good’ carries an innate sense of judgment- what is right, what is wrong, what is just, what is unjust.

GOVERNANCE

‘Governance’ means the processes by which decisions are made and implemented(or not implemented). Governance can be used in several contexts such as corporate government, international governance, national governance and local governance. Since governance is the process of decision making and the process by which decisions are implemented, an analysis of the governance focuses on the formal and informal actors involved in implementation of such decisions. The word ‘governance’ derived from a latin term which means ‘steering’. It basically includes:-

- a. Voice and accountability which includes civil liberties and political stability
- b. Government effectiveness which includes th quality of policy making
- c. The quality of regulative frame work
- d. The rule of law, which includes protection of property rights
- e. Independenc of the Judiciary
- f. Cribbing corruption

THE GENESIS AND EVOLUTION OF THE RTI ACT, 2005⁴:

The evolution of the act can be traced back to the following:

- i) Good Governance
- ii) Global trend
- iii) Democratization of government
- iv) Peoples participation
- v) Public accountability
- vi) Rule of Law and Right to information
- vii) Combating corruption
- viii) Checking the misuse of discretionary powers
- ix) Administrative efficiency
- x) Creating a more democratic and open society
- xi) Protection of civil liberties
- xii) Reducing poverty and achieveing the millennium development goals (MDGs)
- xiii) Effective implementation of government schemes
- xiv) Reforming administration
- xv) Right to information as a fundamental right
- xvi) Media’s effectiveness
- xvii) Movement for transparency

ORIGIN OF RIGHT TO INFORMATION ACT 2005

In the International arena, the need to disseminate information was hugely felt and the first ever RTI law was enacted by Sweden in 1766, largely motivated by the parliament’s interest in access to information held by the King. The Swedish example was later followed by

⁴ Manzra Dutta and Nandita Chauhan, Right to Information and Good Governance, <https://www.legalindia.com/wp->



the US, which enacted its first law in 1966 and then by Norway in 1970. Similarly, several western democracies enacted their own laws (France and Netherlands 1978, Australia, New Zealand and Canada 1982, Denmark 1985, Greece 1986, Austria 1987, Italy 1990).

By 1990, the number of countries with Freedom of Information (FOI) laws climbed to thirteen. A big step forward was the European Union Charter of Fundamental Rights in 2000, which included both freedom of expression and the right of access to documents. By 2010, more than eighty five countries had national-level RTI laws or regulations. In Asia so far almost 20 nations have adopted.

RTI: AN INTEGRAL ELEMENT OF PARTICIPATORY DEMOCRACY

An efficient representative democracy presupposes free access to information held by public authorities by making disclosure of information in public domain. A truly democratic set-up requires an informed citizenry who is direct stakeholder in every public authority's action. People have a basic right to know the process of working of the government. Therefore, there is a direct link between the right to information and good governance because it is by the disclosure of information by public authorities that transparent public system public system of governance accountable to the people is possible.

The Supreme Court in **Reliance Petrochemicals Ltd. v. Properties, Indian Express newspapers (P) Ltd. Bombay**⁵ observed that right to information is an essential ingredient communities coming together shrinking their distances, the expression 'liberty' appearing in Article 21 of the Constitution needs to be given an extended meaning and instead of confining it to the freedom of bodily restraint, it should be extended to include within it, the right to hold a particular order, a right to know and have information.

Francis Bacon, as early as in the year 1957 said, "*Information is the oxygen of democracy, it invigorates wherever it percolates.*" And he further stated that information is 'power' and a tool for ensuring transparency and accountability in the government and helps in reducing corruption.

MAXIMUM DISCLOSURE AND MINIMUM SECRECY PRINCIPLE

The principle of maximum disclosure of information with minimum non-disclosure or secrecy presupposes that:

1. All public bodies and authorities are under a duty to release information regarding is acts, policies, plans or schemes etc. and public have a reciprocal right to know or be informed.
2. The right to access to information can be claimed by any person even without spelling out the purpose for which such information is sought;

⁵ AIR 1989 SC 190



3. Where the State or a public body does not deem it proper to release the information, it has to justify the refusal with sufficient reasons;

4. The public bodies should not only release the information when asked for, but it should publish and disseminate information of significant public interest.

5. The disclosure of information should be subject to protection of rights and freedom of other persons and it may be denied where wider public interest so warrants.

Harmony b/w 3 organs of Adequate the government infrastructure

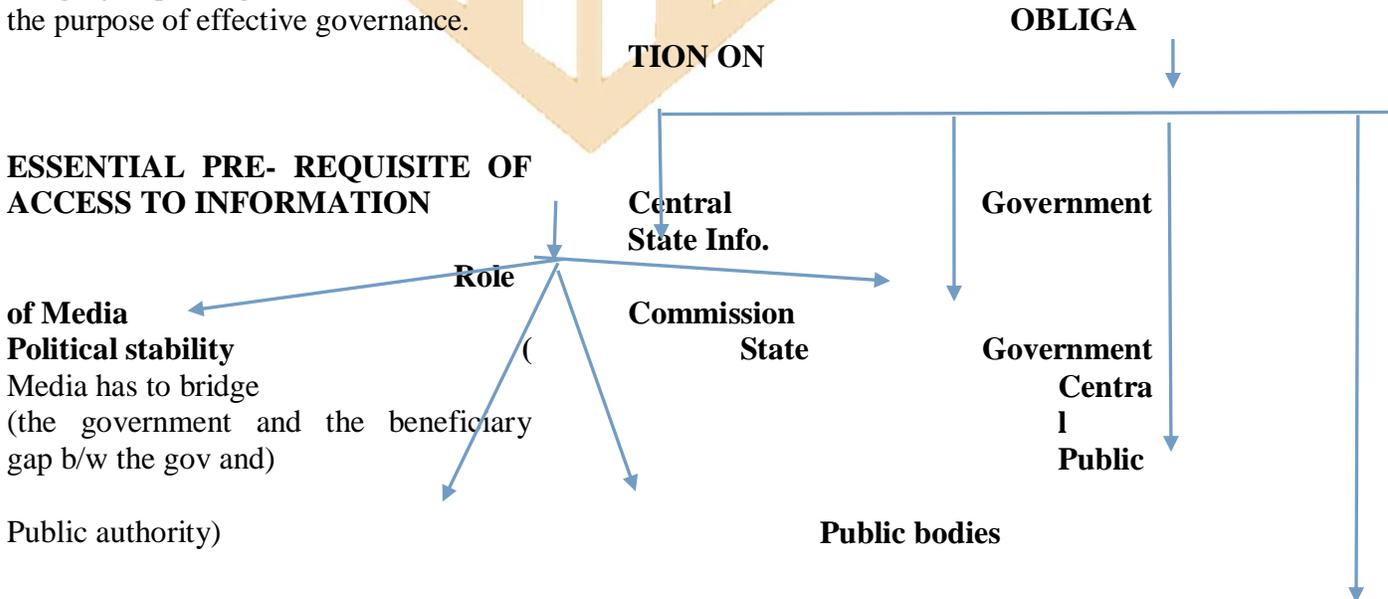
OBLICATIONS IMPOSED ON VARIOUS STAKEHOLDERS UNDER THE ACT

Unless it is exempted u/s. 8 of the Act. Few of the grounds are as follows:

- A. Threat to national security or friendly relationship with foreign states
- B. Endangers the safety of public or an individual
- C. Detrimental to judicial proceedings
- D. Undermines the effectiveness and integrity of government decision making process
- E. Confidential communications between two governments or falls under the category of privileged communication for the purpose of effective governance.

Any legislation to be effective has the identity of the stakeholders who would be instrumental in giving effect to the underlying policy and promulgated plan.

The primary stakeholders so far as the Right to Information Act is concerned and the role envisaged for them by categorising the critical functions, assignments, obligations, etc, to be discharged by them, include the following:-





(Self government, Municipal Corp.,
Zila info. Seekers/ RTI
activists
& Nagar Panchayats)
Whistle blowers
Central Info. Commission

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that the right to know news and information regarding administration of the Government is included in the freedom of press. There were many more such decisions that reiterated the fundamental right to know and access information.

ACCESS TO INFORMATION: A BASIC AND FUNDAMENTAL RIGHT (ROLE OF INDIAN JUDICIARY)

The Supreme Court in **Bennett Coleman & co. v. U.O.I.**⁶ observed that freedom of speech and expression under Article 19(1)(a) impliedly includes freedom and right to information. It protects two kinds of interests, viz, person's freedom to express his views and opinions freely to subject to reasonable restrictions laid down in sub clause (2) of Article 19 and individual's social interest in knowing about the happenings around him and in the governance.

In such circumstances, the Indian judiciary played a vital role to strengthen the spirit of democracy. The Supreme Court in **S.P. Gupta v. Union of India**⁷ endorsed the view that under a democratic set up, the people have right to know about the functioning of the Government. Again in **Prabhu Dutt v. Union of India**⁸, the Supreme Court held

Much before the legislative enactment our Judiciary, in a progressive interpretation of the Constitutional provisions, had paved the way towards delineating the Right to Information. In 1975, in **State of UP vs. Raj Narain**⁹ case, Justice Mathew had ruled;

"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries."

In **Secretary, Ministry of I&B, Government of India v Cricket Association of Bengal**¹⁰, the Supreme Court held that the right to impart and receive information from electronic media was included in the freedom of speech.

In **People's Union for Civil Liberties v. Union of India**¹¹, the right to information was further elevated to the status of a

⁶ AIR 1973 SC 106

⁷ 1993) 4 SCC 441

⁸ AIR 1982 SC 6

⁹ 1975 SCR (3) 333

¹⁰ 141995(002) SCC 0161 SC

¹¹ 162003(001)SCW 2353 SC



human right, necessary for making governance transparent and accountable.

In subsequent judicial pronouncements, the ‘**Right to Know**’ was further elaborated as being inherent in the Fundamental Rights. The judicial interpretation found reflection in a wide-spread public movement demanding statutory provisions for such a right. The spirit behind the movement for Right to Information was summed up in pithy slogans like;

“hamara paisa, hamara hisaab hum janenge, hum jiyenge .”

In **Indira Jaisingh v. Registrar General, Supreme Court of India**¹² it was held that information concerning judiciary or judicial proceedings may be refused to the public of the citizen regarding the conduct of the judges or judicial officers.

Landmark Decisions by the Chief Election Commission:

In the case of **Paramveer Singh v. Punjab University**¹³, the applicant applied for information regarding the merit list for selection of candidates to a particular post in the university. However, no proper information was provided. The Commission held that every public authority, must take all measures in pursuance of Section 4(1) (a)

to implement efficient record management systems in their offices so that the requests for information can be dealt promptly and accurately.

In the case of **Shyam Yadav v. Department of Personnel Training**¹⁴, the applicant had sought details of property statements filed by bureaucrats. The Commission held that property statements filed by civil servants are not confidential and information can be disclosed after taking the views of concerned officials as per the provisions of the RTI Act.

In case of **Ram Bhaj v. Delhi Government**¹⁵, the appellant sought information about the guidelines issued by the Department of Personnel and Training regarding the disposal of public grievances within a specified time frame. The CIC directed the Delhi Government to inform the common man about the timeframe required to redress their grievances.

A recent International Index published by a Paris- based organization called ‘*Reporters without Borders*’ has ranked India 140th out of 180 countries if the context of freedom of press and information.¹⁶

¹² (2003) 5 SCC 494

¹³ (CIC/OK/A/2006/000669, 15/6/2006).

¹⁴ CIC/WB/A/2009/000669, 17/6/2009).

¹⁵ 19(CIC/SG/A/2010/000537+000538/7492, 19/4/2010).

¹⁶ N.V Paranjape, “ Right to Information Law in India” , published in 2014, Lexis Nexis Publication



Vice President(Hamid Ansari) highlighted three aspects:¹⁷

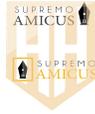
- Until the passage of this Act, the disclosure of information held by public authorities in India was governed, exclusively, by the Official Secrets Act, 1923. It was a legacy of the British colonial rule, encouraged secrecy and opaqueness in administration and was designed to deny information about government activities to the people.
- The RTI Act is different from other enactments in its operation. For most other laws, the executor of the law is government; and the citizen is normally required to comply by these laws. The RTI Act is the very opposite. Here, the citizen is the executor and the government has to act in response to a directive from the citizen. It thus reverses the roles of the public and the government. This is a new situation and requires getting used to by the administrators.
- A third radical provision of the Act is that the information seekers need not give a reason for demanding the information held by public authority or prove his/her locus standi for it. This allows activists and civil society organizations to take up issues on behalf of the marginalized and the unempowered.

IMPORTANT FEATURES OF RIGHT TO INFORMATION ACT, 2005

1. All citizens possess the right to information

2. The term Information includes any mode of information in any form of record, document, e-mail, circular, press release, contract sample or electronic data etc.
3. Rights to information covers inspection of work, document, record and its certified copy and information in form of diskettes, floppies, tapes, video cassettes in any electronic mode or stored informations in computer etc.
4. Applicant can obtain Information within 30 days from the date of request in a normal case
5. Information can be obtained within 48 hours from time of request. If it is a matter of life or liberty of a person.
6. Every public authority is under obligation to provide information on written request or request by electronic means.
7. Certain informations are prohibited.
8. Restrictions made for third party information Appeal against the decision of the Central Information Commission or State Information Commission can be made to an officer who is senior in rank.
9. Penalty for refusal to receive an application for information or for not providing information is Rs. 250/- per day but the total amount of penalty should not exceed Rs. 25,000/-.
10. Central Information Commission and State Information Commission are to be constituted by the Central Government and the respective State Governments.

¹⁷ Press Information Bureau, RTI is a Powerful tool that Strengthens Democracy and Promotes good Governance by Enhancing People's



11. No Court can entertain any suit, application or other proceedings in respect of any order made under the Act.

RTI ACTIVISTS: THREATENED GROUP OF THE SOCIETY (PROTECTION TO WHISTLE BLOWERS)

Though the RTI Act is helping in promoting good governance, yet it has major lacunae when it comes to the safety and security of the activists who risk their lives for public good. The RTI activists are the risk takers who often put their life into danger for the benefit of others. Yet it is a bitter truth that the risk that they take to expose corrupt practices many times end with the end of their lives. Media and civil society organizations have particularly been instrumental in raising the issue of protection of the RTI users with the policy makers. It has now been widely accepted that RTI users are prone to victimization by those with vested interests and a protective mechanism needs to be in place to curb such a practice.¹⁸

Whistle- blowers are persons who are reporting corruption or wilful misuse of discretion which causes demonstrable loss to the government or who report commission of a criminal offence by a public servant. Thus, whistle- blowers are persons who release information to the public about wrong doing of any public authority or official and disclose corrupt practices. A Whistle blower must possess

the quality of a crusader and leaves no room for any doubt.

The RTI activists had been campaigning for an effective Bill for seeking adequate protection to persons reporting *corruption or wilful misuse of power* by the public authorities. The Bill called the **Whistle Blowers Protection Bill** was passed by House of People 2011 and was taken up by the Upper House in 2012 for consideration. Rajya sabha finally passed the Bill on February 21, 2014 and it got President's assent on May 9, 2014 and came into force on May 12, 2014. The Act seeks to establish a mechanism to receive complaints relating to disclosure or any allegation of complaint or *wilful misuse of power or misuse of discretion* against any public servant and to ensure or cause any injury into such disclosure and to provide *adequate safeguard against victimization* of persons making such, complaints or matters connected therewith and incidental thereto.

It may be pointed out that, even before the enactment of the *RTI Act, 2005*, the *Law Commission Of India in its 179th report of 2001* had recommended passing of the **Public Interest Disclosure (Protection to Informers) Bill, 2002** on the pattern of the **U.S. Whistle Blowers Protection Act, 1989** but the Government wanted to play safe, rejected the same holding that there was no need for any specific provision for protection to whistle blowers in the RTI Bill as the provisions of the IPC and CrPC were sufficient to

¹⁸ 20Manu Moudgil, Analysing victimisation of RTI applicants and strategies for their protection, (2/10/2017, 12.17pm),

http://rti.gov.in/manu_moudgil_rti_fellowship_report.pdf



take preventive and punitive action against threats or attacks on whistle blowers.

The issue to protect the whistleblowers caught the attention of the entire nation when National Highways Authority of India engineer Satyendra Dubey was killed after he wrote a letter to the office of the then Prime Minister detailing corruption in the construction of highways. His confidential letter was leaked out and after a few days he was murdered. This led to a national outcry regarding the safety of RTI activists. The Supreme Court taking the notice of this issue pressed the Government to take notice of this matter and give immediate effect to the cause. Many times the issue has been raised in the parliament yet no permanent solution is achieved.

Even The National Human Rights Commission (NHRC), mandated to protect the Human Rights of citizens have also reported that they get ample of complaints about attacks on RTI activists and have begun to take cognizance of these attacks.

Because of all these reasons there is an urgent need for amendment of the Right to Information Act, 2005 so as to provide protection for those seeking information under the Act. The Asian Centre for Human Rights recommended that a separate chapter, "Protection of those seeking information under the (RTI) Act" be inserted in the Act.

Threats and attacks as complaints received under Section 18(1) (f) of the RTI Act and, where prima facie merit is found in the complaint, the IC should institute an inquiry under Section 18(2)¹⁹ read along with Section 18(3) which grants IC the powers of civil court and Section 18 (4)²⁰. The report goes on to suggest that such intimidation, threat or attack can also qualify as obstruction and falls within the gamut of Section 20(1) as an offence liable for penalty.

CONCLUSION AND SUGGESTIONS

RTI – the significant instrument to access public information is a unique legislation that puts a common man in the same footing as that of an MP, MLA or any other member within the authority to seek accountability and appropriation of the functioning of the Government.

Though the RTI is a remarkable piece of legislation yet it has issues and challenges in its execution and implementation especially in the downtrodden areas. For the effective application of the Act, the following suggestions are put forward:

1. The technicalities of filing an RTI application should be more simplified. The literacy rate of rural India is quite low and thus they find it quite difficult to comply with the procedural formalities.
2. The report of the second Administrative Reforms Commission entitled, "Right to Information – Master Key to Good Governance" recommends that the Official Secrets Act, 1923, should

¹⁹ Reasonable ground for inquiry

²⁰ Power to examine any record



be repealed, as it is incongruous with the regime of transparency in a democratic society. This recommendation should be adhered to.

3. RTI gives twin effect of good governance and inclusive development. Thus, the usability and effect of the RTI should be publicized by awareness campaigns to the general people especially for the poor and marginalized people who are more victimized when compared to the rest. In this aspect, the role of NGO'S and the media is highly anticipated.

4. There is an urgent need to protect the whistle blowers who are targeted or attacked so easily. The impending bill should be passed or else an ancillary strict measure should be taken in this regard.

5. The disposal rate of RTI application is quite low. Unless and until the pendency rate is curtailed, the objective of the Act would not be met. Thus, the Information Commission needs to be more active in their functioning.

The stricter implementation of this law not only depends on the political will but also active civil societies. Currently, the RTI Act in India is passing through a decisive phase, much more needs to be done to facilitate its growth and development. Mere protest against the lack of implementation of this law alone is not sufficient, one needs to encourage this initiative taken, for the law to grow and mature.

