



EXEMPTIONS UNDER RIGHT TO INFORMATION ACT, 2005: A CRITICAL ANALYSIS

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“Information is a seed for an idea and grows only when it is watered.”

Introduction :

The Right to Information Act, 2005 is an Act of the Parliament that made the right to information a practical reality for the citizens. It replaced the Freedom of Information Act, 2002. It was enacted by the Parliament of India on 15th June 2005 which fully came into force on 12th October 2005.

Under the provisions of the Act, any citizen can claim information from a public authority which responds within 30 days for a reasonable charge usually of Rs.10. Also, it shall be noted that if the information relates to a person's personal life and liberty then it shall be provided within 48 hours of the request. Besides, The Act makes it obligatory for every public authority to make suo motu disclosure of the information for it would help in 2 important ways. Firstly, the number of applications would be reduced and Secondly, it would facilitate the process of providing information.

The Act also requires every public authority to computerize their records for wide distribution of information proactively so that the citizens need minimum recourse to request for information formally. There are the Central Information Commission and State Information Commission for providing information at both Central and State level.

In the long history of RTI Act 2005 in India, there were various objections to surmount. Since British times, there have been many laws that prohibited implementation of right to information. From time to time, there have been many moves by government as well as private institutions to bring the right of information to the citizen. Also, The Mazdoor Kisan Shakti Sanghatan (MKSS) started a huge campaign for Right to Information – demanding information for the development of rural Rajasthan. This movement grew and finally resulted in the government of Rajasthan to enact a law on Right to Information in 2000. Various bills were passed in the Houses of Parliament but all in vain.

Finally, after immense efforts, RTI Bill was passed in Lok Sabha on 11th May 2005, and in Rajya Sabha on 12th May 2005. It had received the acquiescence of President of India on 15th June 2005, and was published in the Gazette of India on 21st June 2005. RTI Act, 2005 came into force from 12th October 2005, and known as Right to Information Act, 2005.

Exemptions Under Right to Information Act, 2005 :

Though it is the duty of the public authorities to disclose information upon requests made; through the exemptions provided in Section 8 and Section 9 of the Right to Information Act,2005 the public authorities might refuse to disclose the information.

The right to information is not absolute. Not all data that the Government generates will or should be presented out to the open. Everyone would there are some pieces of



information, which are so sensitive that if they were released to the public, they might actually cause serious harm to more important interests.

For instance, if at a time of conflict, if someone wanted to know how many troops were being deployed and where they were being sent, the Government might legitimately want to keep these information secret because if this information fell into the erroneous hands, it could pose a great risk to the national security of India. Yet, if someone requested the same information two years after the war, it would be less clear that the information should be kept secret because the probability of harm being caused by revelation would probably be less. All of India's right to information laws contained exemptions provisions. In the Central Act, Section 8 (1) lists all of the exemptions.

The main grounds under which the Public Authorities might refuse to disclose information if such information violates the following grounds :

- National Security or Sovereignty
- National Economic Interests
- Relations with Foreign States
- Law Enforcement and the Judicial Process
- Cabinet and Other Decision-Making Documents
- Trade Secrets and Commercial Confidentiality
- Individual Safety
- Personal Privacy

The positive aspect of this Act is that it also provides for Public Interest Override under Section 8 (2). The above stated phrase

means that even where requested information is covered by an exemption, the information should still be disclosed to the applicant if the public interest in the specific case requires it.

For instance the judgment of ¹S.P. Gupta V. President of India can be referred

The relevant portion of this case concerns the disclosure of certain correspondence between the Law Minister, Chief Justice of Delhi and Chief Justice of India, and the relevant notes made by them in respect to the non-appointment of a judge for a further term and the transfer of a High Court Judge. Petitioners, and one of the judges in question, sought the disclosure of these documents. The government argued that the documents were privileged from disclosure on two grounds:

2. The query whether any, and if so what, advice was provided by Ministers to the President shall not be inquired into in any Court.

3. No one shall be authorized to give any information derived from unpublished official records relating to any affairs of State, except with the approval of the officer at the head of the department concerned, who shall give or refuse such permission as he thinks fit. The Court rejected the government's declaration that the documents were protected from revelation on the

¹ AIR 1982 SC 149

² A per Article 74(2) of the Constitution

³ Section 123 of the Indian Evidence Act, (para 55)

⁴ Sodhi Sukdev Singh v. State of Punjab



grounds that they were advice from the Council of Ministers to the President.

4. The Court indicated that when there is an objection to disclosure, the Court must consider whether the document related to the transaction of state, and whether its disclosure would be injurious to the public interest.

If the answers to those questions are satisfactory, the same can be exercised.

However, Section 8 (3) of the Act does not require the Public authorities to retain records for indefinite period. The records should be maintained as per the record retention programme applicable to the concerned public authority.

This project shall deal with various aspects of the exemptions under RTI, 2005 and the contradictions between various decisions of Central Information Commission regarding additional exemptions and decisions of Hon'ble Courts.

The Central information Commission was set up under the Right to Information Act, 2005 under Government of India to act upon complaints from those individuals who have not been able to submit information pursuant to a Central Public Information Officer or State Public Information Officer due to either the officer not have been appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refused to receive the application for information under the RTI Act,2005.

Talking about exemptions, Section 8(1) and Section 9 provides for various grounds under which the public authorities are privileged to refuse disclosure of information. Though the CIC is entitled to provide information to the complaints but sometimes the queries asked are not of importance rather, just to misuse the provisions of the Act or to derogate the reputation of the concerned Organization. Also, informations are sometimes sought with a malicious intent to harm a person or sometimes such information might bog down the executive efficiency by indulging them in non productive work.

The Act in anyway should not be allowed to be abused and become a tool for obstruction to the National Development & Integration and to destroy the tranquility & harmony among citizens.

Generally the CIC abides by the provisions given under the Act, but in some instances the CIC may use it's own discretionary powers to decide whether information shall be diclosed or not according to the case as it may concern.

Several matters and decisions could be referred as an example to show how Right to Information Act is often misused :

1. The Appellant sought information related to his service records which was provided except the details of ACR (Annual Confidential Report). The CIC held that the denial of information relating to ACRs is justified under Section 8 (1) (j), as it contained remarks of the superior officers about the competence and the attitude



towards work of the concerned staff.⁵ As the information had been asked for promotion of personal interest such denial was justified.

2. In the matter of Amarpal Singh V. Registrar of Newspapers for India⁶ the applicant had sought for information relating to the Sales promotion schemes of the impugned Newspaper Company. The said Company was exempted by the CIC under Section 8(1)(d) as the information sought for was commercially sensitive and confidential in nature which could be misused and further adversely affect the competitive position.

3. In the matter of M. Sushil Kumar V. IOCL⁷ information regarding 63 LPG trucks was sought along with their mileage details and the month wise payments which was denied for being such a voluminous information under Section 7(9) because it would divert the resources of the organization towards a non productive work and lead to inefficiency in management.

4. The decision of Subhash Chandra Agarwal V. The Registrar, Supreme Court of India & Ors⁸ states that the information regarding a person's medical facilities availed is a completely private information and hence shall not serve any public interest. The Hon'ble Court opined that providing such information would only amount to invasion of a person's privacy and nothing more under Section 8 (1)(j). However, information regarding the total expenditure incurred for the medical facilities can be provided by the Central Public Information Officer.

5. The matter of Bihar State Public Service Commission V. Syed Hussain Abbas Rizvi relates to the Appellant seeking for information relating to whether details of Identity of the Interview Committee. Providing of such information by the CIC under Section 8(1)(g) exempted as it could endanger the safety and confidentiality of the persons so concerned.

Also, in the matter of Girish Ramchandra Deshpande V. Central Information Commission the applicant's sought information regarding copies of all memos, show cause notices and censure/punishment awarded to the third respondent from his employer, movable and immovable properties, investments, income tax returns, lending and borrowing from banks and other financial institutions was denied by the Hon'ble Court in agreement with the CIC stating that seeking such information by the applicant does not serve any larger public interest and all the above information is private and disclosure of which would only lead to invading a person's personal space and nothing more under Section 8(1)(j). Also, the Hon'ble Court stated that the petitioner could not provide proper explanation as to how it would favour a large public interest.

6. But, in the matter of Canara Bank V. Central Information Commissioner & Anr. the Applicant sought for information about appointment, transfer and posting of clerical staff employed by Canara Bank in the

⁵ Decision No. 2141/IC(A)/2008 dated 31.03.2008

⁶ CIC/AD/A/2010/00173 Dated 25/01/2011

⁷ CIC/SS/A/2013/002695/SH.

⁸ LPA 34/2015 & C.M.No.1287/2015.

⁹ Civil Appeal No. 9052 of 2013

¹⁰ Special Leave Petition (Civil) No. 27734 of 2012

¹¹ WP.(Civil) 9988 of 2007 dated 11.07.2007



Ernakulam district of Kerala. The bank denied access on various grounds. The applicant being aggrieved escalated the matter to Central Information Commission, which ordered the information to be disclosed. The bank challenged the order before High Court of Kerala and sought for protection under Section 8 (1) (j). The Hon'ble court held the opinion that the information mentioned in the section relates to private information and in the present matter the information sought was not one that the employees should keep just to themselves. Also, the Hon'ble Court held the opinion that the proviso to the impugned section states that any information that cannot be denied to the parliament cannot as well be denied to the citizens of the country, and the information impugned in this case was not in anyway of the above mentioned nature.

Though the immediate above mentioned matter does not relate to the exemption but, the same might be referred as to how the matters are dealt by the Central Information Commission and the Hon'ble Courts harmoniously and for the greater public interest.

Matters Relating To Third Party Information:

Section 11 of the Right to Information Act, 2005 states that when the information sought pertains to the details of a third party and which is confidential to such third party, the CPIO shall request such third party to disclose such information if deemed fit within 5 days of the request made. The decision completely depends on the such

aforementioned third party whether to disclose the information or not.

Let us take a view of certain matters pertaining to the same.

1. In the matter of ¹²Ms. Harpreet Kaur V. Delhi Subordinate Services Selection Board, Delhi the appellant had sought for disclosure of her own answer sheets along with the answer sheets of a third party. The CIC opined that a candidate with regard to his/her own answer sheet can surely obtain a copy as a matter of right. But, when it is concerned with that of a third party, unless the candidate is able to show that larger public interest is involved or permission is sought from such third party, the same information cannot be furnished.

2. ¹³An article of the Economic Times reads that a Chennai based RTI activist Mr. V. Gopalakrishnan had sought details of Congress chief Sonia Gandhi's income tax returns from 2000 to 2011. The Public Information Officer (PIO), Income tax, New Delhi wrote to Sonia Gandhi asking her to respond to the request made by Mr Gopalakrishnan. She flatly refused the information stating it is an intrusion into personal freedom and does not involve public interest. She also stated that it involves a security risk. The PIO in turn declined information to Mr Gopalakrishnan.

3. In the matter of ¹⁴H.K. Chaturvedi V. Deputy Commissioner of Police the appellant sought for investigation report

¹² . CIC/SA/A/2014/000135

¹³<https://economictimes.indiatimes.com/news/politics-and-nation/12027658.cms>

¹⁴ CIC/WB/A/2008/00170 Dated 08.07.2009.



disclosed to a third party. The CIC opined that the information seeker is neither a complainant nor the witness not accused in the matter. Hence the disclosure of such information of investigation report of third party would cause improper invasion to privacy of the individual under Section 8(1)(j).

4. In the matter of ¹⁵ Shri K.L. Sharma V. BPCL A part of information sought pertained to the details of an application submitted by an aspirant of BPCL distributorship. The commission opined that since such documents are submitted by a third party, the details of information sought had no relationship with any public activity. Therefore, under the exemption of Section 8(1)(j) CPIO denied disclosure of such information.

Analysis of Additional Exemptions by CIC under right to Information Act, 2005

Till so far we have looked upon the exemptions applied by the Central Information Commission under the Right to information Act, 2005. But sometimes the Commissions face situations where applicants seek information asking for vague and voluminous informations, and non specific informations which tends to slow down the efficiency and working of the public authorities by indulging them in useless chores.

Also, applicants often tend to confuse the motive of Right to Information Act, 2005.

¹⁵ Decision No. 608/IC/(A)/2007 Dated 27.12.2007

The main job of the Act is to answer query related issues and not provide opinions or deal with personal grievances of citizens. For instance, a company is responsible to answer matters and queries related to its working or if the query is related to policy decisions then it is liable to answer only till the limits of its own discretion, but is not liable to give opinions or explanations as to what policy decisions are going to be taken and the necessary reasons behind the same.

Few matters are discussed herein further for better understanding of the same.

¹⁶ According to an article, by Mr. G.D. Binani from Bikaner wrote against the frequent increase in charges of Internet Banking OTP which he claims that it should not be chargeable rather it should be a part of mandatory SMS. He claims that Internet Banking is given free of cost in most of the banks, but in certain banks, it is chargeable which should not be the case. Further he feels disturbed at the unfair treatment that bank customers face due to sudden decisions regarding bank charges and chargeable SMS category.

The above form of complaint is not a query to be specific but a form of grievance. The job of the Act, as mentioned above is not to deal with grievance redressal. Similarly the matter of ¹⁷ Shri Ashok Kumar Verma V. (GAIL) India Ltd pertains to the issue of grievance redressal which is not again a part of the Act. In this particular matter the appellant sought information regarding delays in promotions, seniority

¹⁶ "RTI Trends", available online at www.rtifoundationofindia.com/, last accessed on 24.07.2018.

¹⁷ Decision No. 1814/IC(A)/2007 dated 09.01.2008



lists and denial of his transfer to Delhi along with whether the approval of competent authority was sought in certain matters. It is alleged that even after getting the reply by the CPIO the appellant was not satisfied. CPIO argued that using the RTI Act as a veil the appellant was seeking redressal for his grievances which does not fall anyway under the purview of the Act.

2. In the matter of ¹⁸Shri Ashok Kumar V. BPCL the appellant had sought information relating to the details of collecting and manufacturing of crude oil, Petrol, Diesel and Kerosene, etc. The information sought by him related to the activities of Oil PSUs. The complete information is not available with any one CPIO of PSUs. While the CPIO of the respondent had duly responded and advised the appellant to seek specific information, the appellant had not acted upon the advice of the CPIO. Instead, he had complained to the Commission. The Commission opined that the information sought was not specific in nature as to what quantities, sources and year. It was also not clear as to whether the information was available with the CPIO or not. Hence, the appellant was directed not to go on a fishing spree rather should specifically seek clear information as it would save both the CPIO and of the appellants time and efficiency.

3. A very important matter of ¹⁹Central Board of Secondary Education and Anr. V. Aditya Bandopadhyay & Ors. the appellant sought for indiscriminate and voluminous

information which was not related to transparency and accountability in the functioning of public authorities. The main purpose of the Act is to provide and furnish information to the citizens. The nation in anyway does not want a situation where 75% of the public authorities leave their daily chores and at the cost of it provide information to the applicants. And moreover, such voluminous information would not serve any larger public interest to be specific.

Also, this particular case could be explained from another dimension of fiduciary relationship.²⁰ This relationship refers to one in which one party places special trust, confidence, and reliance in and is influenced by another who has a fiduciary duty to act for the benefit of the party. An employee who comes into ownership of business or trade secrets or confidential information relating to the employer in the course of his employment, is expected to act as a fiduciary and not disclose any information to others. Similarly, if on request of the employer an employee furnishes his personal details and information to be retained in confidence the same is expected to be held by the employer as a fiduciary.

4. In the matter of ²¹Subrata Guha Ray V. CPIO the appellant re-iterated his submissions made during the last hearing and alleged that vide a letter issued in April, 2012, the CBEC had taken a decision to close the file but the Commissioner of Customs, Kolkata in its reply had submitted that the case is under process hence the

¹⁸ Decision No. 733/MA/A/2007/00131 dated 25.05.2007

¹⁹ Civil Appeal No. 6454 of 2011, Supreme Court.

²⁰ SLP [C] No. 7526/2009, dated 09.08.2011

²¹ CIC/SB/A/2016/001025/CBECE-BJ



information sought was exempt from disclosure as per section 8 (1) (h) of the RTI Act, 2005. Commission observed that under the provisions of the RTI Act, 2005, only such information as is available and existing and held by the public authority or is under control of the public authority can be provided. The PIO is not supposed to create information that is not a matter of the record.

5. In the matter of ²²Shekhar Vaishnav V. CPIO, SEBI Mumbai the appellant had sought by a question to SEBI as to what would be the future plans or steps thereto to be taken to initiate an inquiry. His appeal was dismissed on the ground that the CPIO under RTI Act is not liable to provide information regarding the future course of action as it is not a matter of record and could be confidential to the organization. They also referred to the judgement of Shri Ravi Kumar V. Coffee Board, Bangalore where it was opined or stated that information relating to future course of action which is not in any material form is not any “information” within the definition of “information” as per Section 2(f)

Contradictions To CIC Decisions :

In the preceding Chapter, it was studied that the Central Information Commission works in accordance with the Hon’ble Courts. But, there have been instances where contradictions arise between their decisions. Contradictions also take place within the different officials of the Information Commissions. On such occasions certain

²²https://www.sebi.gov.in/sebi_data/attachdocs/1288590944541.pdf

matters shall be studied as an example as to how such situations are dealt.

In the matter of, ²³The Registrar Vs. R S Misra a writ petition was filed challenging the decision of Central Information Commission. The CIC vide the impugned order allowed the appeal of the respondent and directed the Central Public Information Officer, Supreme Court of India to answer queries raised by the applicant. The CIC also directed the CPIO to provide information pertaining to a judicial matter in which the respondent himself was a party, i.e. in Special Leave Petition. The Commission with all respect concurs with the decision of the then Chief Information Commissioner that the PIO, Supreme Court may choose to repudiate the information sought under the RTI Act. The bench further ruled that all citizens have right to information under the Act and the PIOs should provide with the sought information. The Court’s reasoning upon the analysis of the facts was that the CIC should not have directed the petitioner to supply information, without considering whether the queries raised were maintainable under the RTI Act. The court was of the view that where there was no information to be given or applicant is seeking non-existent information or where the query is inherently absurd or bordering on contempt, like in the present case, the cic should not have directed the petitioner to supply information.²⁴ Another matter of the Central Information Commission where the appellant Mr. Yogesh Singh Pawar was seeking information/documents regarding

²³ W.P.(C) 3530/2011

²⁴http://ciconline.nic.in/cic_decisions/Decision_18032008_10.pdf



the Attendance record of the Engineering Staff and for Duty Charts for a particular period. The Commission heard both the sides. The commission decided to club this case with another one as the informations sought were almost identical. On both the occasions the Respondents held that the documents were not traceable. But, in one of the response they stated that according to the AIR manual they required to keep such documents only for 1 year and not more than that. But the appellant contended by holding that they had sought information before the expiry of the said 1 year. Appellant stated that he had wanted these records as there were cases of irregularity and inherent corruption in matter of attendance and allotment of duties, etc. the Commission feels it necessary that these records are supplied to the Appellant. The Commission ordered accordingly. The Court set aside the order of the of the Commission and remanded the matter back to the Commission for fresh hearing.

Another matter of Shri ²⁵Premlal Panhak V. Food Corporation of India the appellant sought for certified copies of tender acceptance letters, details of rake loaded by FCI, copy of railway receipt, etc. The appellant on receipt of information stated that part information was received by them and that some of the copies provided by the CPIO was incomplete. The CPIO on the other hand stated that the information was not available as the files were shadow files and were seized for investigation by CBI. After hearing the both the parties the Commission held the opinion that the case was dealt in the most lackadaisical manner

and the CPIO & FAA were directed to file written submissions on their behalf. After submissions by them it was noticed that they were contradictory to each other. The Commission therefore finds it fit to remand back the appeal to FAA and cautioned it to strictly abide by the RTI regime.

²⁶ Another matter, C.Chamudeeshwari V. BSNL, Chennai the appellant sought information regarding action taken on complaints lodged by Group-A woman officers working in Chennai Telephones. The Public Information Officer (PIO) denied the request under Section 8(1)(j) of the RTI Act. The First Appellate Authority (FAA) on the other hand claimed that no complaint was made on behalf of the Group-A woman officers. The appellant filed a second appeal before the Hon'ble CIC stating that the statements of the PIO & FAA are contradictory.

The Commission observed that the allegations on the appellant's part were true. If no such complaint was filed then the PIO would have replied with "NIL" and not invoke Section 8(1)(j).

Analysis of Decisions of Supreme Court & High Court overruling CIC Decisions

This Chapter shall deal with the Hon'ble Supreme Court and High Court deviating from the decisions of Central information Commission and overruling its mandate or decision. The Supreme Court & High Court are the supreme authorities to decide and give final judgement on a matter, therefore in some instances if the Ld. Hon'ble Courts feel matters might be remanded or disposed off and the decisions given by the

²⁵ F.No. CIC/YA/A/2014/902315

²⁶ RTIFI/2012/CIC



Information Commissions might be overruled.

Matters related to the same are :

1. In the matter of ²⁷All India Institute of Medical Sciences V. Vikrant Bhunia the appellant had sought for certified copies of original question papers of all Super speciality Exams. The Information Officer had rejected it and refused to supply such information claiming that question papers were a part of the Question bank and were supposed to be repeated again. So, disclosure of such question papers might lead to larger public harm. Also, they held that question papers were an intellectual property to them, and that it was a part of their confidential document and it would compromise their selection process. It was thus argued that the question papers of the entrance examination for super-speciality courses could not be made public. CIC vide its order directed the appellant to provide such information and that question papers could not be termed as “intellectual property.”

The appellant filed a Writ petition before the Learned Delhi High Court seeking justice. The Ld. Court after several submissions and studies cancelled the writ petition and set aside the order of CIC by holding the opinion that unless the institution discloses the question paper openly in market, the company cannot be forced to share the past question papers as they indeed are an intellectual property.

2. In the matter of ²⁸Shri Ashwani Kumar V. Northern Railways the appellant had filed a number of RTI applications asking for

Information on the status of North Zone Railway Employees Association, Action taken on his complaints against Shri Anil Kumar Rajpal, Chairman of NZRE, etc. The applicant did not receive any reply from the CPIO. The matter moved to the Hon'ble Central Information Commission who declared the NZRE (Northern Zonal Railways Employees) as a public authority under Section 2(h) of the RTI Act and directed it to provide all the information sought by the applicants. The Hon'ble Court quashed the order of the CIC and held that the mere fact that the petitioner comes within the purview of MSCS Act also makes no difference to the status of the petitioner in relation to the RTI Act. If the submission of learned counsel for the respondents/querists were to be accepted, it would mean that every cooperative society to which the MSCS Act applies would, ipso facto, qualify as a public authority. This position cannot be accepted. Hence the matter was disposed off.

3. In the matter of ²⁹Ms. Bindu Khanna V. Directorate of Education, GNCT of Delhi the appellant alleged that the PIO has not complied with the order dated April 23, 2008 passed by the Appellate Authority of the respondent. The PIO stated that the School which is the custodian of information has not been cooperative in the matter and, therefore, it would not be possible to obtain the information from the School. He also stated that the School has stated that the school being a private entity, is not covered under the provisions of the Act. In view of that, the Court opined that all the Schools are performing public function, they

27. LPA No. 487/2011.

²⁸ W.P No. 12210/2009

²⁹ Decision No.3278/IC(A)/2008



are covered under the definition of the public authority, under Section 2(h) of the Act. Therefore, no ground for seeking exemption from the applicability of various provisions of the Act.

Conclusion:

While wrapping up the article, I would like to quote Honourable Justice Mathew, “In Governance of social control like ours where all the agents of the state must be responsible for their behaviour, there can be but a few secrets. The people of this country have a right to know every public act, whatever is done by the officials out in the public. The responsibility of officials is to explain or to justify their acts as a chief measure against subjugation and corruptness.”

The enactment of Right to Information Act, 2005 has ushered a new era leading us towards the development of democracy. It has led to a series of debates among the rationals and has also affected common people. But, the Act sadly is not totally used the way it should be. There are numerous instances of Right to Information Act, 2005, being misused. As seen above on many occassions applicants have been turned down for requesting unuseful and confidential informations. The Government has surely implemented the Act but the citizens are not fully aware of the main provisions and functions of the same. Citizens should be made aware of the main usage of the Act so that it does not become a tool to obstruct the National Development of the country, the tranquility and peace among it’s citizens.

Above all, the RTI, Act is a useful piece of

legislation apart from the aforementioned loopholes which if removed can further improve the Act. Also, the citizens need to become more vigilant and responsible and use this right in order to make oneself aware about the allocation of public funds, the election candidates, political parties, private institutions, schools, colleges etc. This would eradicate corrupt practices within different stratas of the society. Because, if people become well informed they will be able to make better choices with regards to politics, elections and the future of the nation will improve.


