

# RTI: AN ANALYSIS

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## INTRODUCTION

Access to information is the key to development and emergence of a vibrant civil society. Everyday almost we all read newspaper; watch different news channels and surf on net with a view to keep ourselves aware of our surrounding, or even in the world to make known what is going on in and around us. Awareness of our surrounding becomes a key issue in our daily lives that helps us to relate the society we are living in and also to the people with whom we share our collective lives and destinies. A number of medium as newspaper agencies, channels and website have come up these days with a view to enhance the people's craving to know and to be updated with the latest available information. Such business is flourishing because they satisfy people's hunger for information. We are in need of information at the time of buying some product from the market as quality, purity, standard and prices of product or service that is necessary for making an informed choice or decisions. The primary role of the information is to equip the consumer to make an informed choice. The Right to Information lays the very foundation to build the good governance, transparency, accountability, participation and to eliminate the concept of the corruption simultaneously it is considered a very basic to any democracy and fifth pillar to ensure the democracy. As such it should be accepted by the high minded reformer. Information is often withheld even when people are engaged in exercising their most basic right of democracy, the votes. In the absence of a continuous flow of information that exactly reveals the functioning of the ministries, the performance of the politicians or even the experience and qualifications of new candidates, election may end up promoting only narrow interest and the voters fall back on their tribal, religion or class affiliation for their choice. Better informed voters mean better informed choices, more responsive legislators, better governances and the degree of success of this process would, in turn depend on the extent of awareness that voters have about the candidate. Their right to gain material information about the candidate is thus intrinsic to the democratic process. In robust democracies, the media acts as a watchdog that scrutinizes the power and exposes mismanagement and corruption. It is also one of the foremost means of distributing information as radio and television have become the vital communication links. But where the media itself is unable to receive any reliable information held by the government, it cannot fulfil its role to the best of its abilities and lack of access to information also leaves a space of allegation that their stories are inaccurate and reliant only on rumour and half-truth instead of true facts. Information is essential for the health of the democracy and in a true democracy the secrecy in governance has no place and one section of the people cannot keep another section of the people ignorant of happenings in the government. A sound access regime provides a framework within which the media can seek, receive and impart essential information accurately and it is in the interest of the government as well as of the people. The purpose of this Act is to ensure that justice extends to all the sections of the society and there is transparency and accountability in the functioning of the public authorities, at the same time ensuring that this law does not become a "tool to obstruct the national development and integration or to destroy the peace, tranquillity and harmony among the citizens.

## NEED OF INFORMATION

In the beginning, people were not civilized; they always tried to have controlling power with themselves. In the primitive days, everyone was against everyone so, the life was solitary, poor, nasty and brutish. In the primitive days, people were not organized and there was no meaning of liberty and freedom. With the transformation from the uncivilized society to the civilized society people tried to understand the relevance of liberty and freedom in their social life. They tried to make themselves informed about the activities happened around the world. Most of the civilized society adopted the democratic culture so as India. In democracy people are sovereign and not the government. In a democratic country like our people have the right to know every act and activities what the government is doing in their name. People also have the right to take part in day to day working of the government.<sup>1</sup>The need to enact a law on right to

<sup>1</sup>Prof. (Dr.) Kailash Thakur, The Right to Information Act, 2005: A Movement from Darkness to Light, Civil and Military Law Journal, July-September 2012, Vol. 48, No. 3, p. 170.

information was recognised unanimously by the chief minister's conference "effective and responsive government" held on 24th May, 1997 at Delhi. In order to make the government more transparent and accountable towards the public, the government of India appointed a working group on Right to Information to promote the open and transparent government.<sup>2</sup> The judiciary has already granted the recognition to the Right to Information as a part of the fundamental right to freedom of speech and expression and this right is considered important for many of the reasons as follows:

**People's Participation, Democratization of Governance, Public Accountability, Rule of Law, Checking of the Discretionary Powers, Administrative Efficiency, Ensures Transparency, Creating a More Democratic and Open Society, Protection of Civil Liberties, Reducing Poverty, Effective and Proper Implementation of Schemes of Government, Ensure the Strengthening of Public Opinion, Right to Information as a Fundamental Right.**

#### **ESSENTIALS INGREDIENTS OF RIGHT TO INFORMATION**

This era is considered as the age of the information affluence where technology is used in different capacity as storing, simplifying and communicating the information with astonishing speed than ever and considered the information as the way of the development. The concept of information is a global resource of unlimited potential for all and any information does not only belong to the state, government or civil servants but belongs to the common public, who are the masters.<sup>3</sup> The information held by the authorities should be disclosed to the public as part of the legitimate and routine discharge of their duties therefore it should not be unreasonably kept from the citizens. The major concern of the RTI is to allow for greater probity in the functioning of the government departments so as to promote transparency and accountability in the working of the public bodies and contain the scourge of corruption, which are critical for ensuring good governance and development.<sup>4</sup>

#### **NATURE OF RIGHT TO INFORMATION**

Right to information is a social legislation enacted for the benefit of the society at large. It is considered a basic human right, the foundation of a well-functioning democracy. Information adds something new to our awareness and removes the vagueness of our ideas.<sup>5</sup> Soli Sorabjee stressing on the need of right to information aim at bringing transparency in administration and public life, says, "Lack of transparency was one of the main causes for all pervading corruption and right to information would lead to openness, accountability and integrity." "We live in an age of information, in which the free flow of information and ideas determines the pace of development and well-being of the people. The implementation of RTI Act is, therefore, an important milestone in our quest for building an enlightened and at the same time, a prosperous society. Therefore, the exercise of the right to information cannot be the privilege of only a few."<sup>6</sup>

Right to information in its narrow sense is only a right to access the information from the public bodies including right to have access to the records of the proceedings, meetings decision, orders, notification entries in government registers and files, account books, notices, rules, maps, data, drawing or work sits etc. and in broader sense it includes the right to access the information from public as well as private entities, who own, possess or control it. It broadly confers this right not only to the citizens but to everyone as human being, legal entities and foreigners as well. This right does not remain confined to the national boundaries but extends to the whole world including multinational and translation corporations. There are some of the dimensions of the Right to Information:

- Information and freedom of press.
- Right of general people to know.
- Information to rivals/interested parties.
- Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption.
- Other information held by public authority.
- Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.<sup>7</sup>

<sup>2</sup>Dr. B.R. Saini, Appraisal of Right to Information in India, M.D.V.law Journal, vol-xi part-1,2006 p.,143.

<sup>3</sup>Dr. M. Sarojanamma, Right to Information and the Voters Right to know: An Analysis, Civil and Military Law Journal, April-June 2012, Vol. 48, No. 2, p. 99.

<sup>4</sup>J.P. Rai, The Right to Information Act, 2005: Retrospect and Prospects, The Banaras Law Journal 2013, July- Dec, 42(2), p. 76.

<sup>5</sup>Dr. Manish Kumar Chaubey, Right to Information Act-An Overview, Civil & Military Law Journal, Vol. 50, No. 2, April- June 2014, p. 121.

<sup>6</sup> Ibid, p. 127.

<sup>7</sup>Rayasam Siva Kumar, Right against Right to Information, Andhra Law Times 2012, Dec 1; 6(23); p.19.

The information revolution however does mean that mankind will progress towards the path of freedom, democracy and brotherhood. It totally depends upon who controls the information, as dominant classes may exploit such information for their own progress and economic development as well as such information greatly affects the International economic order, policies and direction of development of the developed and developing countries. Present scenario comprehends the two competing trends of the day: inclusion of information and exclusion of information. On the one hand we claim that information technology has brought the information at our doorsteps, on the other hand Indian bureaucracy is still very conscious regarding exclusion the information from the people's knowledge to the possible extent. Jurisprudence of the Human Rights integrates the trinity of freedom of the information, communication and expression into the new world over.<sup>8</sup> Atmosphere is being created in the favour of more information and less secrecy curtains have been thrown away as well as ideas of the more information, open society, restructuring of bureaucracy and free discussions have become order of the day.

**For understanding the nature of the Right to Information following questions may be raised:**

- What is the Right to Information?
- Who controls this information?
- Why is it important for the people to have the Right to Information?
- Why should access to information be facilitated?
- What type of information's and communication are needed?
- Does the Right to Information belong to media or to the people as well?
- Whether freedom of information is specially incorporated in the Constitution?
- Should access to administrative process be provided to the people?
- What measure/mechanisms should be established to administer the Right to Information Act, 2005?
- What amendments are required in other legislations and rules to facilitated easy access to information?
- What are the grey areas in the implementation of the State Acts and Right to Information Act, 2005?
- Whether delay in framing the rules has resulted into dampening of the spirit of the people to seek information? If so, what promotional measures are required?
- What worth these rights and legal systems have if they are unknown to the common people of the country?
- What suggestions can be made to improve upon the format, content and quality of the existing legislation on the subject?

**RIGHT TO INFORMATION AND HUMAN RIGHTS**

Human rights are the inalienable birth-rights of all human beings and are to be protected and promoted by the state. In the political parlance of human rights, the idea of good governance and participatory democracy are realized and materialized when the right to access to official information is guaranteed along with other rights, to all the citizens. Correct and reliable social, political and administrative information enable the people to be patriotic, role responsive, civilized and politically self-assumed so that democracy survives and gains strength. The quality of democracy, therefore depends to a large extent on the degree to which information is ascertained is an anti-democratic commission, perpetuating bureaucratic despotism. Knowledge is power is the old saying; the right verbalism as of now is 'Information is Power'. It is an undaunted fact that communication is one of important instruments in all the social intercourse. Information is one pan of the balance and democratic upheaval and human rights are on the other pan. Right to information ensures openness in administration by enabling right to information about issues as varied as deteriorating civic amenity, assets of elected representatives, utilization of public funds, quality and standard of goods and services and basic human rights.<sup>9</sup>

**CONSTITUTIONAL PROVISIONS FOR RIGHT TO INFORMATION**

The preamble of the constitutions describes India as a sovereign democratic republic. The interpretation of the rights conferred by the constitution thus has to take their colour from the democratic republic character of our body politic. The constitution being an instrument designed for securing the country's governance as a democratic republic, our rights under the constitution, have to receive an orientation and meaning which can facilitate and effectuate this fundamental premise. The Indian constitution has an impressive array of basic and inalienable rights termed as fundamental rights contained in part-III. These include the right to equal protection of the laws and the right to equality before the law,

<sup>8</sup>Mac Bride Report, Many voices one world, EBC, 1990 p. 113.

<sup>9</sup> M. Sarojanamma, Right to Information: A Human Right Perspective, The PRP Journal of Human Rights, Oct- Dec, 2006, p,34.

the right to freedom of speech and expression and the right to life and personal liberty. These are backed by the right to constitutional remedies that is, the right to approach the supreme court and high court under article 32 and 226 respectively in case of infringement of any of fundamental rights. The state is not only under an obligation to respect the fundamental rights of the citizens, but also equally under an obligation to ensure conditions under which the right can be exercised. The objective of right to information act is to protect these constitutional rights.<sup>10</sup>

### **PUBLIC INTEREST UNDER THE RTI ACT, 2005**

Public interest is a nebulous concept, not defined in any freedom of information laws, understandably so, as it is a very subjective concept, differing from country to country, on the basis of their governmental framework, socio-economic scenario and development complexities. Balancing these strategic concerns with public interest, therefore, depends on the particular country, the genuine interest of the people accessing that information and the legitimate national interest. However, on a broader perspective the following consideration plays an important role;

- The nature of the information sought.
- The time period of the information sought to measure the sensitivity of the information sought.
- Whether the disclosure would assist the public in understanding the importance of a matter, which has become a national debate.
- The extent of the information already available in the public domain, through the media and other information broadcasting channels.
- The key underlying any disclosure, being, the genuine and legitimate interest in the public's access to information. Public interest does not refer to matters which are merely of interest to the public to know in the sense of gratifying curiosity or providing amusement.

In general, following may constitute public interest favouring disclosure of information:-

- i. Promoting transparency and accountability of public authorities in making decision by them.
- ii. Promoting transparency and accountability in spending the public money.
- iii. Detecting corruption, injustice and negligence.
- iv. Revealing the information affecting public safety.
- v. Allowing disclosing information, permitting public to make an informed decision, promoting a debate and discussion on the issue of public importance.

When openness and transparency are likely to impede the achievement of a major objectives (having constitutional colour)<sup>11</sup> which a government intends to undertake, such as placing a universal health care reform policy framework, or when transparency makes the government appear to be inept in responding to a major national crisis, then in such scenario, the only possible task is to balance the competing and conflicting interest.<sup>12</sup>

### **CONCLUDING OBSERVATION**

The RTI Act, 2005 is considered an effective and definite means of securing disclosable information held by the public authorities. This Act is again considered a landmark Act that has changed the relationship of the citizen with the state. The process of accessing the information is simple, time-bound and inexpensive and restored the democratic principles by ensuring good governance. The right to information (RTI) is a human right that contribute the promotion of transparency, accountability and public participation in good and fair governance. Effective governance requires something less than total transparency, it should be viewed as an essential concession to the realities of governance. It is hoped that this right would be helpful in constructing a better society in the days to come, where a satisfactory balance would be maintained between rights and duties of citizen's vis-à-vis public authorities. Only then this right will be considered as the fifth pillar of the society and bring a real 'swaraj'.

<sup>10</sup> Paras Kuhad, Official Secrecy and Right to Information, Administrative Change, Andhra Law Times, January-December, 1999, p. 46.

<sup>11</sup> For example an agenda of fulfilment of part iv of the Constitution.

<sup>12</sup> Anshu Jain, Good Governance and Right to Information: A Perspective, Journal of Indian Law Institute, 2012, Oct-Dec, 54(4), P. 515.