

## RTI: A POWERFUL TOOL TO STRENGTHEN GOOD GOVERNANCE

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**ABSTRACT:** Right to information (RTI) Act 2005 have been implemented for subtle change in the administration of the governmental process. Across the world, there are many initiatives are implemented for realizing the need of Good Governance. Right to information (RTI) is being recognised as potential tool of empowerment. Right to information Act 2005 has been enacted with a view to promote openness, transparency and accountability in public administration. To achieve these objectives it is very important that the RTI Act should provide right to citizens to ask for matters pertaining to governmental functioning through on line. Hence, this paper highlights the importance of right to information as a tool to achieve good governance. It also discusses that a government which operates in greater secrecy is more prone to corruption as compared to a government which operates in greater openness.

**Key Words:** : RTI, Good Governance, Transparency, Accountability, Public Information Offices

### **Introduction**

The Right to Information Act which gives the citizens of India right to access to records of the Government was thought to be one of the most radical pieces of legislation in modern India which can make India one of the most advanced democracies. This Act has given people the right to actually participate in governance, which is the basis of what we call inclusive growth. With Right To Information, common citizens were empowered to know whatever they deemed worth knowing.<sup>1</sup>

Right to Information and Good Governance are very closely related to each other. Right to Information is the means to achieve the goals of good governance. The essentials of good governance are transparency, accountability, responsiveness and consequently these all are promoted or facilitated by the right to information.<sup>2</sup> Thus the citizen's right to information is being increasingly recognised as an important instrument to promote openness, transparency and accountability in public administration. In fact, imperceptible government has become ting of past in this age of liberalization and globalization. It has been observed that a government which operates in greater secrecy is more prone to corruption as compared to a government which operates in greater openness<sup>3</sup>.

### **Good Governance**

Good governance is associated with efficient and effective administration in a democracy. It is equivalent to development oriented administration which aimed at improvement in quality of life of the people. It implies high level of organisational effectiveness. It also associated to the capacity of the centre of power of political and administrative system to deal with the new challenges of the society. It refers to adoption of new values of governance to establish greater efficiency, legitimacy and credibility of the system<sup>4</sup>. It is a term used with great flexibility.<sup>5</sup> Good governance has many characteristics. It is participatory, oriented, accountable, responsive, transparent, effective and inclusive which follows the rule of law. It ensures that corruption

<sup>1</sup> Shalini Singh, "Right to information: A Case Study of India", *International Journal of Scientific & Engineering Research*, Vol. 1, No. 2, 2010, p.1.

<sup>2</sup> Satyam Kumar Pandey and Abhinav Mishra, "International Journal of Law and Legal Jurisprudence Studies", Vol. 3 Issue 2, 2016, p. 362.

<sup>3</sup> Jaytilak Guha Roy, "Transparency and Right to Information Governance Perspective", Bihar Journal of Public Administration, Vol. 10, No. 1, 2013, p. 36.

<sup>4</sup> Meetika Srivastava , Good Governance - Concept, Meaning and Features: A Detailed Study (December 26, 2009). Available at SSRN: <https://ssrn.com/abstract=1528449> or <http://dx.doi.org/10.2139/ssrn.1528449>

<sup>5</sup> Swati Kedia, "International Journal of Commerce and Management Research", Vol. 2, Issue 3, 2016, p. 158-162

would be minimised, the views of minorities are appreciated and that the voices of the most vulnerable in society are heard in decision-making. It is also receptive to the present and future needs of society.<sup>6</sup>

### **Legislative Developments in Implementing RTI ACT**

The most debatable issue in the implementation of the Right to Information Act relates to official secrets. In a healthy system of democracy, people are sovereign and the elected government and its functionaries are public servants. Hence, by the very nature of things, transparency should be the norm in all government matters. However it is well documented that public interest is best served if certain sensitive matters disturbing national security are kept out of public watch. The Official Secrets Act, 1923, enacted during the British era, governs all matters of secrecy and confidentiality in governance. The law mainly deals with matters of security and provides a framework for dealing with espionage, sedition and other assaults on the unity and integrity of the nation. However, in view of the colonial climate of mistrust of people and the primacy of public servants in dealing with the citizens, Official Secrets Act created a culture of secrecy. Confidentiality became the norm and disclosure of information exception.<sup>7</sup>

This Act laid down that "if any person being in possession or control of any secret official code or password or any sketch, plan, model, article, note, document or information about a prohibited place, or such information the disclosure of which is likely to affect the sovereignty and integrity of India or which may help an enemy state, or which has been handed over to him in confidence to him by any person holding office under the office under the government , or which he has obtained owing to his official position, commits an offence if he communicates it to an unauthorised person, uses it in a manner prejudicial to the interests of the State, retains it when he has no right to do so, or fails to take reasonable care of such information he shall be guilty of an offence under the Act".<sup>8</sup> Government agencies have used these provisions of the Official Secret Act to declare documents and even areas as secret and therefore, inaccessible.<sup>9</sup> Any kind of information which is categorised as secret is covered by this Section. The word secret or the expression official secrets has not been defined in the Act. Therefore, public servants enjoy the authority to classify anything as secret information.<sup>10</sup>

To strengthen the process of paradigm shift from state centric to citizen centric model of development, the Right to Information moment in India came into existence in 1990s. This is with a view to resolve a major contradiction between the Colonial Acts, which prevents access to information and the post-independent Indian Constitution, which recognizes the seeking information as a fundamental right to promote accountable, transparent, responsible, participatory and decentralized democracy.<sup>11</sup> With these objectives, the Central Government made a working group under the chairmanship of H.D. Shourie for drafting this legislation. This draft was the basis for the Freedom of Information Bill, 2000 which ultimately became the law under the Freedom of Information Act, 2002. This Act was strictly criticized for permitting too many exemptions, not only under the standard grounds of national security and sovereignty but also for requests that would involve disproportionate diversion of the resources of a public authority. There was no upper limit on the charges that could be imposed. Moreover, there were no penalties for not complying with a request for information. The Freedom of Information Act, as a result, never came into effective force<sup>12</sup>.

### **Right to Information Act 2005**

The Indian Parliament had enacted the Freedom of Information Act 2002 in order to promote accountability and transparency in government administration. But due to some insufficiency and severe criticism the Central Government has made National Common Minimum Program of the Government which provided

<sup>6</sup> <https://www.unescap.org/sites/default/files/good-governance.pdf>

<sup>7</sup> First Report of Second Administrative Reform Commission on Right to Information: Master key to Good Governance, Government of India, 2006, p. 4.

<sup>8</sup> Section 5 of Official Secret Act 1923

<sup>9</sup> Sairam Bhat, *Natural Resources Conservation Law*, Sage Publication Ltd., New Delhi, 2010, pp. 425, 426

<sup>10</sup> First Report of Second Administrative Reform Commission on Right to Information: Master key to Good Governance, Government of India, 2006, p. 4

<sup>11</sup> E. Venkatesu, "Right to Information Movement in India", Paper was presented in national seminar on 'Human Rights in the era of Globalization' held on 3<sup>rd</sup> & 4<sup>th</sup> November 2006 in the department of Political Science, University of Hyderabad, Hyderabad, p. 1

<sup>12</sup> Yasir Hussain, *Corruption Free India: Fight to Finish*, Epitome book's Publication, New Delhi, 2012, pp. 184, 185.

that Freedom of Information Act will be made more participatory, progressive, and meaningful, hence, decision was made to repeal the Freedom of Information Act, 2002 and enact a new legislation in its place. Accordingly, Right to Information Bill 2004 was passed by the parliament on May 2005 which received the assent of the president on 15<sup>th</sup> June, 2005. The Right to Information Act was notified in the Official Gazette of India on 21<sup>st</sup> June, 2005. It became fully operational from 12<sup>th</sup> October, 2005.<sup>13</sup> Right to Information Act, 2005, enacted to bring transparency and open government. It has been enacted after analysis and comparison with other freedom of information laws across the globe and it clearly reveals certain unique features which are provided to ensure the effective implementation of this right in the Indian context. Access to information has been granted to citizens as a right as opposed to being guaranteed as a freedom.<sup>14</sup>

Though our constitution does not expressly mention right to information as fundamental right, However, the Supreme Court through various judgements interpreted this right to be flowing from Art 19 (1) (a) which states that " all citizens shall have the right to freedom of speech and expression". This means that people have the right to speak about things freely and to express an opinion on anything. This would have included the right to know, because unless we know about something, we could not express anything about it or protest against it.<sup>15</sup> In *S.P. Gupta v. President of India and others*<sup>16</sup> the Supreme Court ruled that "no democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only possible if people know how the government is functioning and they can fulfil the role which democracy assigns to them and make traditional democracy a really effective participatory democracy. Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy of information is an exception."

In *Prabhu Dutt v. Union of India*<sup>17</sup>, the Supreme Court held that the right to know news and information regarding the affairs of administration of the government is included in the freedom of press which is integral part of freedom of speech and expression under Article 19(1) (a) of the Indian Constitution. In *Union of India V. Association for Democratic Reforms*<sup>18</sup> it was held that all the electorates have the fundamental right under Article 19(1) (a) to know about the education, assets, liabilities and criminal antecedents of the candidate contesting any election. Again in *L.K. Koolwal v. State of Rajasthan and others*<sup>19</sup> Supreme Court held that "Citizens have a right to know about the activities of the State, the instrumentalities, the departments and the agencies of the State. The privilege of secrecy which existed in the earlier time that the State is not bound to disclose the facts to the citizens or the State cannot be forced by the citizens to disclose the facts, does not survive now to a great extent. Article 19 (1) (a) of the Constitution confirms existence of the right of freedom of speech. The basis of Freedom of speech is the freedom of right to know. The State is empowered to impose reasonable restrictions in the matter like other fundamental rights where it affects the national security and any other related matter affecting the nation's integrity". Under this judicial guidance and with the object to promote openness, transparency and accountability in administration The Right to Information Act has been enacted and passed in 2005.<sup>20</sup>

### **Need of RTI for Good Governance:**

The new RTI Law confers on all citizens the right of access to the information. Its objective is to promoting transparency and accountability in the working of every public institution. It has the widest scope covering Central Government, State Government, Panchayati Raj Institutions, Local Bodies and other authorities receiving government grants.<sup>21</sup> Its main provisions are mentioned below:

<sup>13</sup> Anjali Kaushik, "e-Governance and Freedom of Information Act: The Indian Experience", In Mila Gasco (ed.), Proceeding of the 12<sup>th</sup> European Conference on e-Government, Academic Conference Limited, UK, 2012, p. 362

<sup>14</sup> Anshu Jain, "Good Governance and Right to Information: A Perspective", Journal of the Indian Law Review, Vol. 54, No. 4, October-December 2012, pp. 512, 513.

<sup>15</sup> Kuldeep Singh, Mohit Verma, *E-Governance and Right to Information*, in R.K. Gupta et. al. (eds), "Right to Information Act 2005: Implementations and Challenges", Deep and Deep Publication, New Delhi, 2009, p. 353.

<sup>16</sup> AIR 1982 SC 149

<sup>17</sup> AIR 1982 SC 6.

<sup>18</sup> AIR 2002 SC 2112.

<sup>19</sup> AIR 1988 Raj 2

<sup>20</sup> J.N. Pandey, Constitutional Law of India, Central Law Agency, Allahabad, 2015, p. 188.

<sup>21</sup> M. Laxminath, *Public Administration*, Tata McGraw-Hill Education Pvt. Ltd., New Delhi, 2011, p. 234.

1. All public authorities are under obligation to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated.<sup>22</sup>
2. The Act by adopting an unconventional approach asks for proactive disclosure of information from public authorities. The Act provides that, it shall be a regular effort of every public authority to take steps to provide as much information by itself to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.<sup>23</sup>
3. It imposes duty on every public authority to designate, within 100 days of the enactment of this Act, as many officers as the Central Public Information Officers or State Public Information Officers, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.<sup>24</sup>
4. It fixes a 30 day deadline for giving information and 48 hours deadline for information concerning life and liberty of a person.
5. There shall be reasonable fees for providing information to the citizens and no fees shall be charged from the people who are living below poverty line.<sup>25</sup>
6. If the public authority fails to provide information within time limit to the person, then it shall provide information free of charge.<sup>26</sup>
7. It lays strict penalties for failing to provide information. The Information Commission shall fine an official Rs. 250 per day (subject to maximum of Rs. 25000) if information is delayed without reasonable cause beyond the fixed 30 days.<sup>27</sup>
8. This Act shall not apply to intelligence and security organisation<sup>28</sup> like Intelligence Bureau, Research and Analysis Wing, Border Security Force, Central Reserve Police Force, Central Industrial Reserve Force, Central Economic Intelligence Bureau, Indo-Tibetan Border Police, National Security Guards, Assam Rifles and so on.<sup>29</sup> However, information pertaining to allegations of corruption or violation of human rights will be included.<sup>30</sup>
9. This Act overrides Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.<sup>31</sup>
10. It repealed Freedom of Information Act, 2002.<sup>32</sup>

### **Conclusion:**

The Right to Information Act, 2005 is major step towards ensuring participatory development process in the country. However, the success of the Act could only be achieved if the government authorities take the Act in right spirit and implement the Act efficiently. People should use it as a tool for promoting transparency and accountability on part of the public authorities. Government should take steps to publicize this Act to aware illiterate unaware population living in the village. The state should increasingly use the means of Information Technology and public records in the government offices need to be digitized for easy retrieval.<sup>33</sup> This type of arrangement will definitely help in establishing a better state-citizen relationship. It

<sup>22</sup> Section 4 (1) (a) of *The Right to Information Act, 2005*

<sup>23</sup> Section 4 (2) of *The Right to Information Act, 2005*

<sup>24</sup> Section 5 (1) of *The Right to Information Act, 2005*

<sup>25</sup> Proviso to section 7 (5) of *The Right to Information Act, 2005*

<sup>26</sup> Section 7 (6) of *The Right to Information Act, 2005*

<sup>27</sup> Section 20 (1) of *The Right to Information Act, 2005*

<sup>28</sup> Section 24 (1) of *The Right to Information Act, 2005*

<sup>29</sup> Second Schedule of *The Right to Information Act, 2005*

<sup>30</sup> Proviso to section 24 (1) *The Right to Information Act, 2005*

<sup>31</sup> Section 22 of *The Right to Information Act, 2005*

<sup>32</sup> Section 33 of *The Right to Information Act, 2005*

<sup>33</sup> Rajbir Singh, *Right to Information and Good Governance*, Concept Publishing Company, New Delhi, 2010, p.

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will further, result in bringing transparency in government functioning as the RTI Act is providing right to the citizens to ask for matters pertaining to governmental functioning.<sup>34</sup>

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<sup>34</sup>Pankaj Shreyasker, *RTI Act in India: Future and Implication*, Tata McGraw-Hill Education, New Delhi, 2013, p. 241.