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Legal Aspect of Right to Information Act 2005: A Study

**Dr. Manisha Jaydatt Gajre*

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Abstract

Transparency and accountability in administration is the sine qua non of participatory democracy. Information is the oxygen that any citizen needs to live in the social structure of the society and maintain its democratic balance. Right to Information (RTI) in India was developed through Judicial pronouncements thereby distinguishing itself as a Fundamental Right under Article 19 (1) (a). After a gradual period of time, realizing the importance of this right to know, this right was established in 2005 as a full-fledged statute in the name of "The Right to Information Act, 2005". This RTI Act became a pioneer tool to the citizens of India for promoting, protecting and defending their Right to know. To understand the basic concept of fundamental right to information act is the main objective of this research.

Result : *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*

Introduction

"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing." -

Justice P N Bhagwati

Right to Information is usually used as a synonym for democracy. This is a tool to strengthen citizen's sovereignty. Sweden is the first country to enact the first RTI law in the world in 1766. This is also one of the main components of human rights. Developed countries, particularly the European countries were the first ones to champion the RTI. While Asian countries have also practised RTI laws pretty well, Latin American countries are well ahead in its implementation.

India always took pride in being the largest democracy, but with the passing of the Right to Information Act 2005, it has also become an accountable, interactive and participatory democracy. This Act is applicable to the whole nation except the state of Jammu and Kashmir. The United Progressive Alliance (UPA) Government headed by Dr. M ManamohanSingh got the approval by the Parliament after speedy andmarathon discussion. The earlier freedom of information act 2002, has got the assent of the President of India, but did not notify and finally replaced with the RTI act, it came in to force on October 12, 2005 and on the same day Mr.ShahidRazaBurney filed the very first RTI application in Pune Police station.⁴ The RTI act successfully completed ten years in 2015. Popularity of this act and users of this law is rapidly increasing year by year.

Concept of Right to Information started taking shape in1970's by liberal interpretation by the judiciary in various Fundamental Rights specially the right to freedom of speech and expression. In the case of Bennete Coleman and co versus Union of India in 1973, the majority opinion of the Supreme Court then put it "Freedom of speech and expression includeswithin it compass the right of all citizens to read and be informed" In 1975 during National Emergency, Supreme Court of India dictate in a case judgement, Information gathering is aright to every person. The 1981 court judgement in ManubhaiShah versus Life Insurance Corporation of India (LIC) reaffirmed the point.

Basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum the fundamental principle involved here is the people right to know. There have been numerous cases favouring discloser of Government information and transparency. As a result of a lack of clear legislation on this, people had to knock at the doors of courts every time they wanted to enforce this right. Courts have almost and always responded positively. But this course at best restricted enforcement to the aware and the literate for their own limits concerns. The common citizen had neitherthe means nor the time and inclination to get into convoluted legal process and even PIL was a tool which could reach only few elite people. The

movement for the RTI received a fresh impetus from the courageous and powerful grass roots struggle of the rural poor to combat rampant corruption in famine relief works.

Research Objectives

RTI is inherent in democratic functioning and a precondition to good governance and realization of all other human rights. The main objectives of this paper are, To understand the basic concept of fundamental right to information act.

Research Method

In pursuing this study, the traditional doctrinal approach has been followed. However, as the legal research may not be done within the straight jacket formula of any particular recognized scientific method, a multi-pronged approach would be resorted to depending on the necessity. The method of writing adopted is both descriptive and analytical. As regards the analysis of judicial approach to Right to Information act, the methodology adopted would be analytical.

Review of Related Literature

There are basically four types of writings that are significant to study on the RTI act. The first is the getting the annual, half yearly and monthly reports and RTI request related information from public authority and also by KIC. The second are the collecting the intellectuals writings and publications and articles including RTI workers and its related NGO's. These were several studies on RTI earlier few of them are:

- Sudhir Naib in his book "Right to Information in India" (2013) gives a short introduction analysis. The evolution of this landmark Act, the procedures in valued in seeking the information, the duties of information suppliers as also the kinds of information exempted from disclosure.
- Though in depth comparative analysis of the law in various part of the world. The book captures the strength and drawback of the RTI Act narrates success stories and suggest policy measure to improve its implementation.
- K M Srivatsava in his book "the Right to Information: A Global perspective" (2009) tried to show the global view of right to know the information. The book provides a good comprehensive which takes over RTI in India and same developed countries like United States and United Kingdom. He shows an overview of the concept of RTI and freedom of information.
- Mandakini Devasha Suries "RTI in India- An effective tool to tackle corruption" (2011) describes the RTI Act as the most fundamental law this country has seen as it can be used from the local Panchayats to Parliament, from non descript village to posh Delhi

and from ration shop to 2 G scam. P.K Saini and R K Guptain these papers titled RTI ACT 2005 objectives, challenges and suggestion have discussed about mas or obstracles in the effective implementation of the RTI ACT.

Right to Information Act

The Rights to Information Act passed in 2005 extends to all states and union territories of India excepting the state of Jammu and Kashmir. This act gives Indian citizens the right to access information about any public authority or institution, including non-government organizations substantially funded by the government. The main aims of the RTI act are to provide clarity to information to the citizens of India, to contain corruption and to promote accountability in the working of every public authority.

Important Features of the right to Information Act, 2005

- i. Every citizen possesses the right to information
- ii. The term information includes any mode of information in any form of record, document, email, circular, press release, contract sample or election data etc.
- iii. Right to information covers inspection of work, document, record and its certified copy and information in any other electronic mode.
- iv. Applicant can obtain information within 30 days from the date of request in a normal case
- v. Information can be obtained within 48 hours from time of filling the request if it is a matter of life or liberty of a person
- vi. Every public authority is under obligation to provide information on written request or request by electronic means.
- vii. Certain information is prohibited for security reasons
- viii. Central Information commission and State Information Commission are to be constituted by the Central Government and the respective State Governments.
- ix. No Court can entertain any suit, application or other proceedings in respect of any order made under the Act.

Objective of Right to Information Act

RTI is inherent in democratic functioning and a precondition to good governance and realization of all other human rights. The main objectives of the law on RTI are:

- i. To operationalize the fundamental right to information;
- ii. To set up systems and mechanisms that facilitate people's easy access to information; to promote transparency, and

- iii. Accountability in governance; to minimize corruption and inefficiency in public offices and to ensure people's participation in governance and decision making.

Need for Right to Information Act:

Corruption was increasing in our country rapidly. People were not aware of the ways in which the public funds were being utilized. Thus, it was necessary to pass the right to Information from the central or state government. The act is also applicable to corporate organizations wherein the employees have the right to know of information related to them.

Importance of Right to Information:

The Right to Information Act is considered to be one of the strongest pieces of legislation at the disposal of the common man. It gives citizens the power to question public authorities and their activities, thereby not only promoting transparency, but demanding accountability as well. The Act is considered landmark legislation in the fight against corruption.

Legal Aspect of Right to Information Act 2005

The Indian RTI Act does not specifically address the issue of protection, however the NCPRI-RaaG22 study recommends that Information Commissions (ICs) should receive complaints of 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)²³ read along with Section 18(3) which grants IC the powers of civil court and Section 18 (4)²⁴. 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.

It is not that the Government is not concerned with the growing attack on the RTI Activists. The Public Interest Disclosure (Protection of Informers) Bill 2010 was introduced in the Lok Sabha on August 26, 2010. The Bill seeks to establish a mechanism to register complaints on any allegations of corruption, wilful misuse of power or discretion against any public servant. The Bill also provides safeguards against the victimisation of the person who makes the complaint. However, the Bill has not been passed yet. Much water has flown down the rivers across the country because of no prominent legislative measure to protect the RTI activists.

The process of fighting the atrocities, attack or torture without any strong legislative back up indicates that the victims or their families often do not get justice. With public memory being

proverbially short, it is difficult to ascertain the outcome of the criminal cases launched in such matters, especially when the media does not follow up with the incident.

Important Judicial Pronouncements Relating to RTI

In order to understand the effectiveness of a Fundamental Right it is important to analyse the various aspects in which the right has been given effect by the Judiciary. A few landmark cases have been taken to highlight the various facets relating to Right to Information:

- i. In *Bennett Coleman v. Union of India*¹², for the first time, right to know as a Fundamental right was realized and consequently the Supreme Court ruled that the right to freedom of speech and expression guaranteed by Art. 19(1) (a) included the right to information.
- ii. In *State of UP v. Raj Narain*¹³, Justice Mathew thoroughly stated, "It is not in the interest of the public to cover with a veil of secrecy the common routine business ... the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."
- iii. In *Secretary, Ministry of I&B, Government of India v Cricket Association of Bengal*¹⁴, the Supreme Court held that the right to impart and receive information from electronic media was included in the freedom of speech.
- iv. In *S.P. Gupta v. Union of India*¹⁵, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was illustrated by the Apex Court of India.
- v. In *People's Union for Civil Liberties v. Union of India*¹⁶, the right to information was further elevated to the status of a human right, necessary for making governance transparent and accountable.

Final Outcome

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.

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