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Right To Information And Its Relationship With Good Governance: A Critical Analysis In India

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Abstract

In Government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries...the responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.

- Justice K.K. Mathew

The object of the Right to Information Act, 2005 is to promote transparency and accountability in the working of every Public Authority and democracy requires an informed citizenry and transparency of information have been considered vital to the functioning of democracy and also to contain corruption. Which is play a very important role in the modern government system for good governance. Basically, the concept of Good-Governance is based on Indian philosophy "Sarve Bhavantu Sukhinah" and the Right to Information is an essential ingredient of Good Governance. The Right to Information is a fundamental right under the Constitution of India. It is therefore a part of Article 19(1)(a). The access to information is a human right proclaimed in December 1948, everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. This paper gives an overview about the Right to Information Act, 2005 and critically analysis Right to Information and its relationship with Good Governance in India.

Keywords: Good Governance, Right to Information, Public Authority, Transparency

Introduction:

Section 3 of the RTI Act states that, all citizens shall have the right to information. The citizens are the participants in the democratic process and therefore they have a right to know everything about the functioning of the Government machinery and it is restricted to citizens only. For the transparent functioning of the democratic political system, Dr. Bhimrao Ambedkar 'father of the Indian Constitution' included the provisions of the right to expression in part III of the Constitution in the fundamental rights. In India before enactment of the Right to Information Act, judiciary had played very important role in protection and promotion of right to information. **State of U.P. v. Raj Narain**¹, regarding disclosure of information J. Mathew, has been said that people of this country have a right to know every public authority and everything that is done in a public way, by their public functionaries. They are entitled to know... on public security. Further the Apex Court in a landmark case of **S.P. Gupta v. Union of India**², went one step further and held that the Open Government is the new democratic culture of an open society toward which every democratic society is moving and our country should not be an exception. In a country like India which is committed to socialistic pattern of society, right to know became necessity for the poor, ignorant and illiterate masses.

Relationship between Right to Information and Good Governance-

Good Governance and Right to Information are complimentary and the success of one depends upon the other. There is large number of problems in the Indian Administration which goes un-noticed and the administration rather than changing continues in its grooves. In India the movement of RTI started in early 1990s by Majdoor Kisaan Shakti Sanghathan in Devdungri, Rajasthan led by Smt. Aruna Roy. Tamil Nadu was the first state to introduce the Right to Information legislation in 1997. The legislation aimed at ensuring access to information about government administration. RTI received assent 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 with effect from 12th October 2005 and known as Right to Information Act, 2005. Right to Information Act, 2005 is making the civil servants alert to provide the information to public challenges and as a by-product is making administration responsive and transparent which mean good governance.³ In India, Governance has existed since ancient times. Kautilya in the Arthashastra emphasises that in the pursuit of Good Governance, the king was to govern for the welfare of the people. Kautilya mentions the following ten imperatives of good governance for a king⁴: -

- i. Avoid extremes without missing the goal
- ii. Carry out preventive/punitive measures against corrupt officials
- iii. Emulate administrative qualities
- iv. Guide Administration
- v. Lead a disciplined life with a code of conduct

¹ AIR 1975 SC 865

² (1981) Supp SCC 87

³ Prof. Anand Paliwal and Dr. Krishna Kishor Trivedi, *Right to Information Act and Good Governance* 260 (The Aryas Book Centre, Udaipur, Edition: 2017)

⁴ Dolly Mathew and E. Vayunandan ed., *Good Governance Initiatives in India* 17 (Prentice Hall of India Private Limited, New Delhi, 2003)

- vi. Merge his individuality with his duties
- vii. Maintain law and order
- viii. Pay fixed salaries and allowances
- ix. Replace bad ministers by good ones
- x. Stress on lekhaks (writers)

Definition:

Sec. 2(f) Information⁵- Information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Shekhar Chandra Verma v. State Information Commissioner, Bihar⁶

Information means the information, which is available on records at relevant time.

Celsa Pinto v. Goa State Information Commission⁷, the High Court of Bombay at Goa ruled that the definition of ‘information’ cannot include within its fold answers to the question “why” which would be same thing as asking the reason for a justification for a particular thing. The public information authorities cannot expect to communicate to the citizen the reason why a certain thing was done or not done in the sense of justification because the citizen makes a requisition about information. Justifications are matter within the domain of adjudicating authorities and cannot properly be classified as information.

Sec. 2(j) Right to Information⁸- Right to Information means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-

- (i) Inspection of work, documents, records
- (ii) Taking notes, extracts or certified copies of documents or records
- (iii) Taking certified samples of material
- (iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device

Sec. 2(h) Public Authority⁹- Public Authority means any authority or body or institution of self-Government established or constituted-

- a) By or under the Constitution
- b) By any other law made by Parliament
- c) By any other law made by State Legislature
- d) By notification issued or order made by the appropriate Government and includes any-
 - (i) Body owned, controlled or substantially financed

⁵ The Right to Information Act, 2005, Section 2(f)

⁶ AIR 2012 Patna 60

⁷ Writ Petition No. 419 of 2007 decided on 3 April 2008

⁸ The Right to Information Act, 2005, Section 2(j)

⁹ The Right to Information Act, 2005, Section 2(h)

(ii) Non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

M.P. Varghese v. Mahatma Gandhi University¹⁰ ,Definition of “Public Authority” has a much wider meaning than that of the “State” under Article 12 of the Constitution. Meaning of Public Authority cannot be restricted to ‘State’ as defined in the Article 12 of the Constitution.

According to J. Sabarwal- Good Governance entails effective participation in public policy-making, prevalence of the rule of law and an independent judiciary, besides a system of institutional checks and balances through horizontal and vertical separation of powers and effective oversight agencies.

According to Kofi Annan- Good Governance is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.

According to Organisation for Economic Cooperation and Development (OECD)- The concept of governance denotes the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development.

The key components of governance identified by OECD are as follows:

- 1- Legitimacy of Government.
- 2- Accountability of political and official elements of government.
- 3- Competence of governments to make policy and deliver services.
- 4- Respect for human rights and the rule of law.

United Nations Development Programme (UNDP)- Governance is viewed as the exercise of economic, political and administrative authority to manage a country’s affairs at all levels. It comprises mechanisms, processes and institutions, through which citizens and groups can articulate their interests, exercise their legal rights, meet their obligations and mediate their differences¹¹.

The characteristics of Good Governance, laid down by UNDP, are as follows: -



¹⁰ AIR 2007 Ker 230.

¹¹ Dolly Mathew and E. Vayunandan ed., *Good Governance Initiatives in India* 19 (Prentice Hall of India Private Limited, New Delhi, 2003)

1. Participation-

Participation in Government by the people is regarded as an important aspect of democracy and people cannot participate unless they have information as to what is going on in the country.¹²

Union of India v. Association for Democratic Reforms¹³

True democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the Country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create an uninformed citizenry, which makes either by a partisan central authority or by private individuals or oligarchic organisations. In this case Supreme Court also observed that “A successful democracy posits an aware citizenry”.

2. Rule of Law-

‘Rule of Law’ means that no man is above law and also that every person is subject to the jurisdiction of ordinary courts of law irrespective of their position and rank.

Keshvananda Bharti v. State of Kerela¹⁴, In this case Supreme Court has been said that, the concept of ‘Rule of Law’ as one of the most important aspects of doctrine of basic structure.

State of Punjab v. Khanchand¹⁵, Rule of Law requires that any abuse of power by public officer should be subject to control of courts.

Haryana Finance Corporation v. Jagdama Oil Mills,¹⁶ Obligation to act fairly on the part of administrative authorities was evolved to ensure Rule of Law and to prevent failure of justice. This is a doctrine which the quasi-judicial, authorities are also bound to observe.

3. Transparency-

Lack of Transparency was one of the main causes for all pervading corruption and Right to Information would lead to openness, accountability and integrity.

-Soli Sorabji, Former Attorney General of India (1998-2004)

Transparency is associated with the right of the public to know about governmental processes and actions, thereby increasing the probability that corruption may be deducted and that human rights may be promoted and protected. Transparency is possible only when the common man has the access to information relating to the functioning of the Government Departments and Agencies. So, transparency is a principle of access to or disclosure of, appropriate information.

In **Dinesh Trivedi v. Union of India**¹⁷, the Supreme Court dealt with a petition for disclosure of a report (Vohra Committee) submitted by a committee chaired by erstwhile Home Secretary N.N. Vohra. In

¹² M.P. Jain & S.N. Jain, *Principles of Administrative Law* 909 (LexisNexis Butterworths Wadhwa, Nagpur, Sixth Edition 2010)

¹³ AIR 2002 SC 2112: 2002 (5) SCC 294

¹⁴ (1973) 4 SCC 225

¹⁵ AIR 1974 SC 543

¹⁶ AIR 2002 SC 834

this case, the Court dealt with citizen's right to freedom of information and observed, 'in modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seek to formulate sound policies of governance aimed at their welfare'. The Supreme Court further made the following concise comments regarding transparency 'Democracy, therefore, expects openness and openness is a concomitant of a free society and the Sunlight is the best disinfectant'.

Jitendra Singh v. State of U.P.¹⁸, Object of Right to Information Act is to maintain transparency and accountability in the functions of the public offices.

4. Responsiveness-

"A responsive administration is tested most at the point of interface between the administration and the people".

-Shri Rajiv Gandhi

It is true 'With great power comes great responsibility'. Responsiveness is the degree to which government listens to what people want and acts on it and to which public policies and institutions respond to the needs of citizens and uphold their rights. Its aim is for transparency that results in accountability and has outcomes that empower citizens¹⁹.

People's Union for Civil Liberties v. Union of India²⁰

In this case Supreme Court held that right to information is a facet of the freedom of "speech and expression" as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions.

5. Consensus orientation-

Good Governance requires consultation to understand the different interests of stakeholders in order to reach a broad consensus to ensure that the existing systems serve the best interests of society and the entire stakeholder group and how this can be achieved in a sustainable and prudent manner. It mediates differing interests to meet the broad consensus on the best interests of a community²¹.

6. Equity-

The term 'equity' has four different meanings, according to the context in which it is used. Usually it means 'an equitable interest in property'. Sometimes, it means 'a mere equity', which is, procedural right ancillary to some right of property, for example an equitable right to have a conveyance rectified. Thirdly it may mean 'floating equity', a term which may be used to describe the interest of a beneficiary under a will. Fourthly, 'the right to obtain an injunction or other equitable remedy'.²² Equity depends on ensuring that all the members of a community feel included and empowered to improve or maintain their well-being, especially those who are the most vulnerable.

¹⁷ (1997) 4 SCC 306

¹⁸ 2008(4) ADJ 550

¹⁹ <https://www.slideshare.net/DrShamsulArefin/responsive-governance-bpatc-ssc-on>

²⁰ (2004) 2 SCC 476

²¹ <https://www.drishtias.com>

²² M.P. Mathur v. D.T.C. AIR 2007SC 414.

7. Effectiveness and efficiency-

Good Governance ensures that the processes and institution should be able to produce results that meet the needs of their community. Every decision-making process and its institution must be able to produce decisions and community resources must be utilised optimally by the government²³. Resources of the community should be used effectively for the maximum output²⁴.

8. Accountability-

Accountability is the cornerstone of democracy. With higher levels of participation and transparency, citizens are able to more effectively monitor power-holders and public policies and to hold them accountable and reduce corruption²⁵. The RTI Act prohibits the disclosure of the identity of the whistleblower and provides penalties for any harm caused to them. This provision promotes the integrity and accountability within public institutions.²⁶

In **S.P. Gupta v. Union of India**²⁷, a seven Judge Bench of the Supreme Court held that we have adopted a democratic form of Government, 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. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of government. It is only if people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy.

9. Strategic vision-

Strategic vision shows uniqueness of organization. It is a long term, comprehensive picture of an organization's goals and the methods for achieving those goals²⁸.

Attorney General v. Times Newspapers Ltd.²⁹

Lord Simon's observations are: -

The freedom of expression has four broad social purposes to serve-

1. It helps an individual to attain self-fulfilment
2. It assists in the discovery of truth
3. It strengthens the capacity of an individual in participating in decision making
4. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

Reserve Bank of India v. Jayantilal N. Mistry³⁰

²³ <https://uclg-aspac.org/good-governance-definition-and-characteristics>

²⁴ https://www.taxmanagementindia.com/visitor/detail_article.asp

²⁵ <https://grace.unodc.org>module 7 corruption and human rights>

²⁶ <https://thelegalinfo.com/2023/06/21/salient-features-of-rti-act-2005>

²⁷ AIR 1982 SC 149

²⁸ <https://www.questionpro.com/blog/strategic-vision>

²⁹ (1973) 3 All ER 54

³⁰ AIR 2016 SC 1

The Right to Information regarding the functioning of public institutions is a fundamental right as enshrined in Article 19 of the Constitution of India. The Supreme Court has declared in a plethora of cases that the most important value for the functioning of a healthy and well-informed democracy is transparency. But neither the fundamental rights nor the Right to Information have been provided in absolute terms. The fundamental rights guaranteed under Article 19(1)(a) are restricted under Article 19(2) on the grounds of national and societal interest.

M. Narayan Reddy v. Government of India³¹

The right to freedom of speech and expression is wider in its scope and it is not susceptible to any precise definition. It is a phenomenon through which one conveys his idea to others. Viewed from this angle, right to information is only a step that helps an individual to get himself well-informed, so that he can exercise right to freedom of speech and expression, effectively.

Salient features of RTI Act:

- All citizens possess the right to information. *Dhara Singh Girls High School, Ghaziabad v. State of Uttar Pradesh*³², In this case Court has been said that Section 3 of The Right to Information Act, 2005 provides for right to information to all citizens subject to the provisions of this Act.
- If the applicant belongs to below poverty line (BPL) category, he is not required to pay any fee. However, he should submit a proof in support of his claim to belong to the below poverty line according to sec 7 (5) of RTI Act, 2005. In *Shama Parveen v. National Human Rights Commission (NHRC)*³³, the appellant asked for some information from NHRC whose PIO asked her to deposit Rs. 444/- for obtaining 222 pages of relevant records/material. The appellant appealed to the first Appellate Authority that as she belonged to BPL category, the photocopies should be given to her free of cost. The Commission in its decision stated that when under the Act, a BPL citizen is not required to pay Rs. 10/- as the RTI application fee, it only stands to reason that one cannot expect her to pay Rs. 444/-. The Commission directed the respondents to call the appellant to the office to go through the records and see if the number of pages could be reduced. The Commission also instructed that during the appellant's visit the NHRC should make sure that the appellant is a genuine seeker and that she is not working as a proxy for someone who merely wants to save money by utilizing the name of a BPL member.
- Every public authority coming under the purview of all the three organs of the Government, i.e., Executive, Legislature and Judiciary are covered under the RTI Act. The non-Governmental organizations being substantially financed by the State are also covered under the provisions of this Act. *Dhara Singh Girls High School, Ghaziabad v. State of Uttar Pradesh*³⁴, Private educational

³¹ 2011(4) RCR (Civil) 418.

³² AIR 2008 All 92.

³³ Appeal No. CIC/OK/A/2006/00717 dated 18 April 2007

³⁴ AIR 2008 All 92; 2008 (2) ALJ 477; (2008) 2 ID 179.

institution is public authority if it is substantially financed directly or indirectly by the State Government such as by grant-in-aid for payment of salary of the teachers. *S.S. Angadi v. State Chief Information Commissioner, Bangalore*³⁵, Society is not public authority if it is not created by any law made by the State Legislature and is not a body owned or controlled or substantially financed directly or indirectly by funds provided by the Government.

- Information can be obtained within 30 days from the date of request in a normal case. *Surupsingh Hrya Naik v. State of Maharashtra*³⁶, In this case the Court has been said that under Section 7 of The Right to Information Act, 2005 the concerned Public Information Officer as expeditiously as possible and in any case within 30 days of the receipt of the request either provide the information or reject the request for the reasons specified in Section 8 and 9 of the Act.
- If information is a matter of life or liberty of a person, it can be obtained within 48 hours from time of request. *Sunita Devi v. Executive Engineer*³⁷, In an appeal it was held by the CIC that information sought for concerns the life and liberty of a person same should be provided within stipulated time of 48 hours under the Act.
- Strict adherence of time limit is provided in this Act. *Mahavir Singhvi v. Ministry of External Affairs*³⁸, Public Authorities must ensure strict compliance of the provisions of the Act relating to time frame within which replies are to be given and the onus for timely dispatch of replies to the applicant lies on the public authorities alone.
- 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/-.³⁹ *Debmalya Roy v. Executive Officer & Appellate Authority, Bidhannagar Municipality, Poura Bhawan*⁴⁰, in this Case it was clearly held that if an application seeking information is not disposed of within 30 days either by furnishing information or rejecting the application, it would be a case of deemed refusal, punishable under section 20(1) of the Act.

Constitutional Provisions:

The Constitution of India does not clearly provide right to information. However, the Apex Court of the country held in several cases that Right to information is concerned with Article 19 (1)(a) and Article 21 of the Indian Constitution which states freedom of speech and expression and right to life and personal liberty. The right to freedom of speech and expression includes the right to receive and impart information. The fundamental right of freedom of speech and expression has its limitations as imposed in Article 19(2), which empowers the State to put reasonable restrictions on the following grounds e.g. security of State, friendly relation with foreign States, public orders, decency and morality, contempt of Court, defamation, incitement to offence and integrity and sovereignty of India. The Fundamental Rights embodied in part III of The Constitution of India and guaranteed all Indian citizens to enjoy their civil liberties and basic rights.

³⁵ AIR 2008 Kart., 149.

³⁶ AIR 2007 Bom 121.

³⁷ Appeal No. CIC/WB/A/2008/00499, decided on 25-11-2008(CIC).

³⁸ 2006

³⁹ The Right to Information Act, 2005, Section 20.

⁴⁰ WBIC/RTI/531/09, Decided on 14-07-2009(WBIC).

L.K. Koolwal v. State of Rajasthan⁴¹, Article 19 of the Constitution of India talks about rights and in Article 19(1)(a) we have the freedom of speech. This freedom not only extends to the right of expressing the views freely but also the right to know. This right to know also has some limitations to it, for say, information of national security or any other matter which would affect the nations integrity. But if contains information for example related to sanitation then it is not a matter of national security and the public has the right to know why such information is withheld from them.

Tamil Nadu Road Development Co. Ltd. v. Tamil Nadu Information Commission⁴², Citizen's right to know emanates from citizen's right to freedom of speech and expression, which is a fundamental right, held that RTI Act which has been enacted to give effect to right to know, which is one of the basic human rights in today's world, must receive a purposive and broad interpretation.

Vijay Prakash v. Union of India and Others⁴³, Personal Information about a public servant cannot be disclosed under the Right to Information Act because it has got the status of fundamental right. **Bennett Coleman v. Union of India**⁴⁴, the Supreme Court has held that Right to freedom of speech and expression guaranteed by Article 19(1) a of the Indian Constitution includes Right to Information.

Conclusion:

Right to information provides an easy access of people to know all information relating to government activities and the Right to Information Act, 2005 itself makes it clear that democracy requires an informed citizenry and transparency of information which are vital to its functioning. Right to Information has a vast power to make government accountable and transparent in its functioning. RTI Act helps to promote openness, transparency and accountability in the working of every Public Authority, reduce the corruption and also prevent the administrative arbitrariness. So, we can say Good Governance will be achieved only when the public authority is corruption free, accountable, transparent, responsive, equitable and inclusive, effective and efficient, govern by the rule of law, participatory and consensus oriented. In India Right to Information Act, is the only legislation which allows citizens to question the public authority directly without the intervention of their elected representative, the court or the media. The Right to Information is a powerful tool, it Helps to established Good Governance, through the access procedure of information, by getting Information citizen aware their self and aware others also. After the enactment of Right to Information Act, 2005 most awareness arises in the field of education and environment sector.

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⁴¹ AIR 1988 Raj 2

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⁴³ AIR 2010 Del 7

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