

# Right to Information an Good Governance: An analytical Study in Indian Perspective

## Abstract

Right to Information is the strongest tool of the democratic citizenry like India. This right is significant for smooth functioning of all the three organs of the democratically elected government. Constitutionally speaking the right to information is an integral part of the fundamental right of freedom of speech and expression enshrined in **Article 19(1)(A)** of the constitution. It occupies forward stream position in the hierarchy of liberties and protection to other fundamental rights. The expression "freedom of speech and expression" under the purview of **Article 19(1)(a)** has been held to include the right to have and disseminate the information of public domain. The Right to Information also includes the right to communicate through any available media whether print, electronic or audio-visual. This fundamental right of freedom includes the freedom to communicate or circulate one's opinion without modification or addition alteration to people of country, as well as abroad, as is possible to reach. Reception and Communication of the information are reciprocal and considered as the two sides of the same coin. A significant aspect of the right to freedom of speech and expression is considered the freedom to receive and disseminate information without any obstacle. Without possession the sufficient information, any individual cannot form and express an informed opinion.

The aim of the author to outline firstly the significance of the right to information, specifically proving an effective tool in the hands of common citizens to combat state corruption as well as to highlight some lacuna in the Right to Information Act . The aim is to focus over the efforts at the national level to legislate this right. The investigator has tried to highlight the implication of RTI Act over the Higher Judiciary in the light of latest judicial pronouncements with specific reference to the CPIO, Supreme Court of India v/s Subhash. The aim of present paper to is analyze, synthesize and generalize the main findings of these recent Indian studies of the Right to information and discover the new dimensions to the deserving limits.

**Keywords:** RTI Act, Constitution, Court, Democratic, Transparency

## Introduction

Right to Information is the strongest tool of the democratic citizenry like India. This right is significant for smooth functioning of all the three organs of the democratically elected government. Constitutionally speaking the right to information is an integral part of the fundamental right of freedom of speech and expression enshrined in **Article 19(1)(A)** of the constitution. It occupies forward stream position in the hierarchy of liberties and protection to other fundamental rights. The expression "freedom of speech and expression" under the purview of **Article 19(1)(a)** has been held to include the right to have and disseminate the information of public domain. The Right to Information also includes the right to communicate through any available media whether print, electronic or audio-visual. This fundamental right of freedom includes the freedom to communicate or circulate one's opinion without modification or addition alteration to people of country, as well as abroad, as is possible to reach.

Reception and Communication of the information are reciprocal and considered as the two sides of the same coin. A significant aspect of the right to freedom of speech and expression is considered the freedom to receive and disseminate information without any obstacle. Without possession the sufficient information, any individual cannot form and express an informed opinion. Lack of information denies people the

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opportunity to develop their potential to the fullest and realise the full range of their human rights. Individual personality, political and social identity and economic capability are all shaped by the information that is available to each person and to society at large. The practice of routinely holding information away from the public creates 'subjects' rather than 'citizens' and is a violation of their rights. This was recognised by the United Nations at its very inception in 1946, when the General Assembly resolved: "*Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated*".

Enshrined in the Universal Declaration of Human Rights, the right's status as a legally binding treaty obligation was affirmed in Article 19 of the International Covenant on Civil and Political Rights which states: "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 and regardless of frontiers*" This has placed the right to access information firmly within the body of universal human rights law.

The right to access information underpins all other human rights. For example, freedom of expression and thought inherently rely on the availability of adequate information to inform opinions. The realisation of the right to personal safety also requires that people have sufficient information to protect themselves. In Canada, a court has recognised that the right to security creates a corollary right to information about threats to personal safety which would be violated if the police force knew of a threat and failed to provide that information to the threatened individual. The right to food is also often reliant on the right to information. In India for example, people have used access laws to find out about their ration entitlements and to expose the fraudulent distribution of food grains. Quite simply, the right to information is at the core of the human rights system because it enables citizens to more meaningfully exercise their rights, assess when their rights are at risk and determine who is responsible for any violations. The only way to secure substantial right to information available to the citizens of India is to implement the Right to Information Act, 2005 strictly according to the provisions of law. It is essential that the Higher Judiciary should realize its responsibility and should be covered within the scope of the RTI Act.

Higher the authority, higher should be the accountability to the people of India. Every citizen has a right to impart and receive information as part of his right to information. The State is not only under an obligation to respect this right of the citizen, but equally under an obligation to ensure conditions under which this right can be meaningfully and effectively enjoyed by one and all. RTI is basic to and indivisible from a democratic polity. This right includes right to acquire information and to disseminate it. Right to information is necessary for self-expression, which is an important means of free conscience and self-fulfillment. It enables people to contribute on social

and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can be circulated. This right can be limited only by reasonable restrictions under a law for the purposes mentioned in Article 19(2) of our constitution. Hence no restriction can be placed on the Right to information on the grounds other than those specified under Article 19(2). The said right cannot be denied by creating a monopoly in favour of the government or any other authority.

#### **Review of Literature**

The concept of good governance exists from king's rule. This is being discussed by Sharma, K. (2015) in his article on "Indian Idea of Good Governance -Revisiting Kautilya's Arthashastra". Kautilya's system of governance was quite modern in concept and contemporary in operational guidelines. Just as the philosophy, tenets, advice and suggestions contained in the two ancient epics, Ramayana and Mahabharata, have substantial relevance even today in terms of basic principles of statecraft and governance. Ethical upwardness and economic affluence – have got prominent place in the thought process and administrative structures postulated by Kautilya in his Arthashastra. The primary objective of the authority has been described as the happiness of the people.

Good governance in present situation is being discussed by Singh, S. (2016) in his paper "The Challenge of Good Governance in India: Need for Innovative Approaches" describes that the citizen T IJSER International Journal of Scientific & Engineering Research, Volume 4, Issue 8, August-2016 107 ISSN 2229-5518 IJSER © 2016 <http://www.ijser.org> will look up for high quality performance from their county. When good governance is guaranteed, citizens go about their personal business and pursuits with enhanced expectations. On the other hand the bad or indifferent governance will not only restrict opportunities of success but it also can degenerate into conflicts and civil wars.

Kumar, M. (2017) in his paper "An Institutional Framework for Good Governance in India" says that information empowerment will lead to good governance in the country. In order to ensure accountability to citizens, one need to be made aware of the standards of services that are available to them. Computerized information systems are good means for disseminating information on government policies, programs and projects. He explains with an example of good governance at Kerala. Like Kerala, other states may consider moving in the direction of starting computerized information centers/e-governance centers in every panchayat. The other means of effective information dissemination include strengthening public information systems at the grassroots, especially field publicity.

#### **Meaning and Concept of Information**

'Information' as a term has been derived from the Latin words 'Formation' and 'Forma' which means giving shape to something and forming a pattern, respectively. Information adds something new

to our awareness and removes the vagueness of our ideas. Information is Power and any government which wants to share power with the humblest; it wants to empower the weakest. It is precisely because of this reason that the RTI has to be ensured for all.

#### **Need and Significance of RTI**

The Right to Information has already received judicial recognition as a part of the fundamental right to free speech and expression. An Act is needed to provide a statutory frame work for this right. This law will lay down the procedure for translating this right into reality. Information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues – political, social and economic. Free exchange of ideas and free debate are essentially desirable for the Government of a free country. In this Age of Information, its value as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is important because every developmental process depends on the availability of information.

Right to know is also closely linked with other basic rights such as freedom of speech and expression and right to education. Its independent existence as an attribute of liberty cannot be disputed. Viewed from this angle, information or knowledge becomes an important resource. An equitable access to this resource must be guaranteed. 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". According to Mr. P.B. Sawant, "the barrier to information is the single most cause responsible for corruption in society. It facilitates clandestine deals, arbitrary decisions, manipulations and embezzlements. Transparency in dealings, with their every detail exposed to the public view, should go a long way in curtailing corruption in public life."

#### **Aim of the Study**

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, Contain corruption, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

#### **Status of RTI Overseas**

In recent years, many Commonwealth countries like Canada, Australia, and New Zealand have passed laws providing for the right of access to administrative information. USA, France and Scandinavian countries have also passed similar laws. US Freedom of Information Act ensures

openness in administration by enabling the public to demand information about issues as varied as deteriorating civic amenities, assets of senators and utilisation of public funds. It is not only the developed countries that have enacted freedom of information legislation; similar trends are seen in the developing countries as well. The new South Africa Constitution specifically provides the Right to Information in its Bill of Rights--thus giving it an explicit constitutional status. Malaysia operates an on-line data base system known as Civil Services Link, through which a person can access information regarding functioning of public administration. There is thus a global sweep of change towards openness and transparency. In USA, the first amendment to the

Constitution provided for the freedom of speech and expression. The country had already passed the Freedom of Information Reform Act 1986, which seeks to amend and extend the provisions of previous legislation on the same subject. But this right is not absolute. Recently, the US Supreme Court struck down two provisions of the Communications Decency Act (CDA), 1996, seeking to protect minors from harmful material on the Internet precisely because they abridge the freedom of speech protected by the first amendment. Moreover, the vagueness in the CDA's language, the ambiguities regarding its scope and difficulties in adult-age verification, make CDA unfeasible in its application to a multifaceted and unlimited form of communications such as Internet. Sweden has been enjoying the right to know since 1810. It was replaced in 1949 by a new Act which enjoyed the sanctity of being a part of the country's Constitution itself. The principle is that every Swedish citizen should have access to virtually all documents kept by the State or municipal agencies.

In Australia, the Freedom of Information Act was enacted in December 1982. It gave citizens more access to the Federal Government's documents. With this, manuals used for making decisions were also made available. But in Australia, the right is curtailed where an agency can establish that non-disclosure is necessary for protection of essential public interest and private and business affairs of a person about whom information is sought. Even the Soviets, under Mikhail Gorbachev, have realised that "the State does not claim monopoly of truth any longer". Glasnost has cast away the cloud of secrecy and stresses the priority of human values. Even as steps are taken to ensure openness in matters affecting the public, there has to be a greater sense of responsibility on the part of users of information in the media and elsewhere. Journalists must ensure that they seek information in public interest and not as agents of interested parties.

RTI Movement in India: India has so far followed the British style of administration. In Great Britain, Official Secrets Act, 1911 and 1989 are intended to defend national security by rendering inaccessible to the public certain categories of official information. However, the government recognises that access to information is an essential part of its accountability. A recent legislation governing access to public information includes Local Government (Access to Information) Act, 1985; the Environment

and Safety Information Act, 1988, and the Access to Health Records Act 1990 are such laws. On the other hand, Data Protection Act, 1984; the Access to Personal File Act; the Access to Medical Reports Act, 1988, and the Consumer Credit Act, 1974, all provide some protection for different aspects of personal information. The demand for Right to Information has taken the form of mass movement at the grassroot level. A mass based organisation called the Mazdoor Kisan Shakti Sangathan (MKSS) took an initiative to lead the people in a very backward region of Rajasthan - Bhim Tehsil- to assert their right to information by asking for copies of bills and vouchers and names of persons who have been paid wages mentioned in muster rolls on the construction of schools, dispensaries, small dams and community centres. On paper such development projects were all completed, but it was common knowledge of the villagers that there was gross misappropriation of funds with roofless school buildings, dispensaries without walls, dams left incomplete and community centres having no doors and windows.

After years of knocking at officials' doors and despite the usual apathy of the State government, MKSS succeeded in getting photocopies of certain relevant documents. Misappropriation of funds was clearly obvious. In some cases, the muster rolls contained names of persons who either did not exist at all or died years before. This incident is more than sufficient to show the importance of the ability of information for eradicating mal-practices. With so many scandals emerging from time to time, it becomes vital for the management of public fund and survival of democracy. MKSS organised a Jan Sunwai (People's hearing), the first ever in the history of Rajasthan. Politicians, administrators, landless labourers, private contractors were all invited to listen, respond and, if willing, to defend themselves. Popular response was phenomenal, but village officials and politicians stayed away and remained silent, and thereby weakened their position and darkened their image.

Between December 1994 and April 1995, several other public hearings were organised. People's anger made one engineer of the State Electricity Board to return in public an amount of Rs.15,000 he had extracted from a poor farmer. This grassroot movement is fast spreading to other areas of Rajasthan and to other States establishing firmly that information is power and people should have the right to official information. In early 1989, the then the Prime Minister Mr. VP Singh declared the attitude of the new Government on the Right to Information and transparent government. He said, "An open system of governance is an essential prerequisite for the fullest flowering of democracy. Free flow of information from the Government to the people will not only create an enlightened and informed public opinion but also render those in authority accountable. In the recent past, we have witnessed many distortions in our information system. The veil of secrecy was lowered many a time not in the interest of national security, but to shield the guilty, vested interests or gross errors of judgments'. In 1996, Justice PB Sawant, the

Chairman of the Press Council of India, drafted the bill keeping in view the dire need of the day and the observations made by eminent persons that in a democracy, it is the people who are the masters and those utilising public resources and exercising public power are their agents.

The draft Bill was submitted to the Government of India on 1996. The Bill says that Right to Information is subject to restrictions on grounds in clause (s) to Article 19(1) (a) such as the security of the State. Clause (r) (1) of the Bill reproduces many of them and also adds 'Investigation of an Offence.' Sub – Clauses (2) and (3) include personal or medical information of a private nature and trade and commercial secrets protected by the law. The Bill also enumerates the procedure for the enforcement of this right. The officer in charge will be held responsible in the event of refusal of information, and information must be furnished within 30 days of application. The officer must provide solid reason for any refusal and appeal against refusal should be made to the principal civil judge of the region. Keeping in view the burning problem, the Govt. of India, Department of Personnel decided to set-up a Working Group on January 2, 1997 under the chairmanship of Mr. HD Shouri.

The Working Group on the 'Right to Information and Promotion of Open and Transparent Government' submitted its comprehensive and detailed report and the draft Bill on Freedom of Information on 24 May 1997. Further the Freedom of Information Bill 2000 introduced in the Lok Sabha on 25th July 2000. The Right to Information Act (RTI) was enacted by the Parliament of India "to provide for setting out the practical regime of right to information for citizens" and replaces the erstwhile Freedom of information Act, 2002. The Act applies to all States and Union Territories of India except Jammu & Kashmir. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerise their records for wide dissemination and to proactively certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 12 October 2005. The first application was given to a Pune police station. Information disclosure in India was restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act relaxes. It codifies a fundamental right of citizens.

Constitution of India and RTI: Article 19(1) (a) of the Constitution guarantees the fundamental rights to free speech and expression. The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matters of public interest will only encourage wild rumours and speculations and avoidable allegations against individuals and institutions. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizens perform

their fundamental duties as set out in Article 51A of the Constitution. A fully informed citizen will certainly be better equipped for the performance of these duties. Thus, access to information would assist citizens in fulfilling these obligations.

#### **Right to Information is not an Absolute Right**

As no right can be absolute, the Right to Information has to have its limitations. There will always be areas of information that should remain protected in public and national interest. Moreover, this unrestricted right can have an adverse effect of an overload of demand on administration. So the information has to be properly, clearly classified by an appropriate authority. The usual exemption permitting Government to withhold access to information is generally in respect of the these matters: (1) International relations and national security; (2) Law enforcement and prevention of crime; (3) Internal deliberations of the government; (4) Information obtained in confidence from some source outside the Government; (5) Information which, if disclosed, would violate the privacy of an individual; (6) Information, particularly of an economic nature, when disclosed, would confer an unfair advantage on some person or subject or government; (7) Information which is covered by legal/professional privilege, like communication between a legal advisor and his client and (8) Information about scientific discoveries and inventions and improvements, essentially in the field of weapons.

These categories are broad and information of every kind in relation to these matters cannot always be treated as secret. There may be occasions when information may have to be disclosed in public interest, without compromising the national interest or public safety. For example, information about deployment and movement of armed forces and information about military operations, qualify for exemption. Information about the extent of defence expenditure and transactions for the purchase of guns and submarines and aircraft cannot be totally withheld at all stages.

#### **Role of Judiciary in promoting RTI**

The need for Right to Information has been widely felt in all sectors of the country and this has also received judicial recognition through some landmark judgments of Indian courts. A Supreme Court judgment delivered by Mr. Justice Mathew is considered a landmark. In his judgment in the state of UP vs. Raj Narain (1975) case, Justice Mathew rules- In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing.

Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security. But the legislative wing of the State did not respond to it by enacting suitable legislation for protecting the right of the

people. According to Attorney General Soli Sorabjee - It was in 1982 that the right to know matured to the status of a constitutional right in the celebrated case of S P Gupta vs. Union of India (AIR) 1982 SC (149), popularly known as Judges case. Here again the claim for privilege was laid before the court by the Government of India in respect of the disclosure of certain documents.

The Supreme Court by a generous interpretation of the guarantee of freedom of speech and expression elevated the right to know and the right to information to the status of a fundamental right, on the principle that certain unarticulated rights are immanent and implicit in the enumerated guarantees. The court declared - The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under article 19 (1) (a). The Apex Court has emphasized in the SP Gupta case (1982) that open Government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. In a country like India which is committed to socialistic pattern of society, right to know becomes a necessity for the poor, ignorant and illiterate masses. In 1986, the Bombay High Court followed the SP Gupta judgment in the well-known case Bombay Environmental Group and others vs. Pune Cantonment Board. The Bombay High Court distinguished between the ordinary citizen looking for information and groups of social activists. This was considered a landmark judgment concerning access to information.

Using RTI, he has managed to reduce political interference in police transfers, and has had other varied achievements. He was also engaged in a long campaign to curb corruption running into thousands of crores in the way public lands in Mumbai are leased or sold. He promoted a major campaign to empower citizens across Maharashtra to strive for a corruption-free Employment Guarantee Scheme by empowering them to use RTI. He spread the RTI message across various places and also wrote extensively on it. He was a working committee member of the apex National Campaign for People's Right to Information (NCPRI).

#### **Conclusions**

Witnessed by the Human Civilization to the fact that all evolution and all human development is the result of the power of thought and that every attempt at thought control is doomed to failure. The process of development is womb to tomb. An idea never dies, suppression can never be a successful instrument for developmental policy. It will erupt on one or another day. The Indian Constitution guarantees freedom of thought and expression and the only restriction being a law in terms of Article 19(2) of the constitution. Thought control is alien to our constitutional scheme. Further, citizens have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Indirectly right to know is a basic human right which people of a free

country aspire in the broaden horizon of the right to life in this age on our land under Article 21 of the Constitution. That right has touched its new horizons and dimensions. That right puts greater responsibility upon those who take upon the responsibility to inform. Thus it is pertinent to conclude that every citizen has a right to information and right to know about public affairs and governance. The legislature, realizing the need and urgency of this need, has shown its sensitivity and positive attitude by conferring upon people of India various constitutional and statutory rights, which put fuel in the promotion of the Right to information and discover the new dimensions to the deserving limits.

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