

Impact of the Right to Information Act by Regulating Transparency in Corruption of India

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Abstract: *Transparency in administration is the sine qua non of participatory democracy. Free flow of information of every sector for every citizen to avoid malpractice or to tackle corruption is essential for the health of a democratic society. The Right to Information Act became a pioneer tool to the citizens of India for promoting, protecting and defending their Right to know and to avoid corruption. It came as a march which broke the unrevealed silence. India being a huge democracy needs participation from every front to implement the objective of good governance and The Right to Information Act acts as an index to measure the growth, development and governance of a country which helped the citizens to participate in any social, political or economical debate concerning the issues or interest or corruption of the country. For a society to develop into a developed democracy, freedom of information is must and curiosity should be instilled in the minds of citizen and this type of informed citizenry is only possible by broad access of information about government operations.*

Keywords: Right to Information, Transparency, Corruption, Lack of Transparency, Grand Transparency, Petty Transparency, Political Transparency

Why RTI Act?

“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 Sarabji, Former Attorney General of India (1998 - 2004)

1. Introduction

The Right to Information Act, 2005

“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

India is considered as the largest democracy in the world. The basic feature of every democratic setup is transparency, openness and accountability. In India, public authorities or administrative authorities have a wide discretionary power, so feeling has been arisen in the mind of legislators as well public that this may lead to misuse of power which will ultimately result in maladministration and corruption.

For this purpose there should be a right vested in the common people of the country to access the information regarding the conduct or act discharged by public officials, so the system of check and balance can be maintained. Therefore, Right to Information has emerged. Right to Information implies that the public can participate in governance by accessing the information held by administrative or public authorities regarding the function discharged by them for the public welfare.

It is not only a statutory right but also a fundamental right of a citizen to know the information related to the public act performed by public authorities. It is fundamental for good governance and makes governmental authorities more transparent and accountable towards the common people of a country. There is a proximate relation between Right to

information and Administrative law as Administrative law can be defined as “branch of public law deals with the operation performed by administrative authorities”, and Right to Information empowers the public to access information held by public authorities.¹

There is a famous saying that ‘power corrupts and absolute power corrupts absolutely’. So, no right can be absolute in nature. Every right is subject to certain reasonable restrictions. Hence Right to information is also subject to reasonable restrictions given under Article 19 (2) of the Indian Constitution. Certain exemptions from disclosure also given Under Right To Information Act, 2005 which are as follows:

- The information which tends to prejudice the international relations, integrity and national security of the country;
- The information which is expressly forbidden from disclosure by tribunals and court.
- The information which related personal details and not in the interest of the public, and if there is access to information it may violate the right to privacy.
- Information related to trade secrets, commercially confidential information and intellectual property.
- Confidential information received from foreign government etc.²

2. Historical Background

Right to Information Act in India took around 80 years to transform a grimy system of authority, valid by the “colonial officials secrets act”, where people can demand the “right to information”. India having a feeling of self - esteem in being the largest democracy, but with the passing of the recent enactment of the “Right to Information Act, 2005”. India has also become a strong democracy.

¹ Right to Information Act, 2005 Bare Act.

²Section 8 of RTI, Act 2005 Bare Act.

The remarkable shift for Indian democracy, for the more access to the information by the citizen. Its *“main focus on transparency and accountability in relation to the public authorities has been basically financed by the government”*.

Definition

According to Sec.2 (j) of the RTI Act, Right to Information is defined as a right to information accessible under the Act which is held by or under the control of any public authority and includes a right to

- 1) inspection of work, documents, records,
- 2) taking notes, extracts or certified copies of documents or records,
- 3) taking separate samples of material,
- 4) 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.³

Information Means:

Records, Documents, Memos, Opinion, Advices, Press Releases, Circulars, orders, Logbooks, Contracts, Reports, Papers, Samples & Models.⁴

Transparency Means:

There is a presumption that everything that is done by the government is done for the public good - which means, it is done to further the objective of public well - being, is done honestly with optimum benefits from the funds used. However, as we all know, in recent times, this presumption has been eroded to a great extent by misuse, misappropriation and also careless use of public funds. To counter this, it is essential that there should be complete transparency in all public dealings. This is bound to bring about a more careful utilization and application of funds. Transparency will also help people to hold the officials accountable for their mishandling of public time and money. Transparency would go a long way in helping to expose the corrupt and allowing the honest to do their jobs without fear or favor.

Transparency is the milestone of good governance. Transparency means that decisions taken and their enforcement are done in a manner that follows rules and regulations. It also means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. Transparency and accountability is possible only when the public have access to information. The enactment of Right to Information act 2005, people are now able to seek information from any government department with a definite time frame. The Right to Information act is intended to promote accountability and transparency in government by making the process of government decision making more open. Though some departments of the Union government are exempted from this act but the information can be sought if it is concerned with violation of human rights. Even the information from the private authority can be sought only through the controlling authority and controlling authority will send the notice to the institution concerned under

³ Right to Information Act, 2005 Bare Act.

⁴ Right to Information Act, 2005 Bare Act.

section 11 of the act. In addition to this, the citizens are taxpayers, so they have every right to ask the government.⁵

Corruption Means:

Corruption is a tree, whose branches are of an immeasurable length; they spread everywhere. The word corruption is derived from the Latin word “*corruptus*,” which means “*corrupted*” and, in legal terms, the abuse of a trusted position in one of the branches of power (executive, legislative and judicial) or in political or other organizations with the intention of obtaining material benefit which is not legally justified for itself or for others.

Corruption was already mentioned as a great sin in the Holy Book Bible: “*Do not accept a bribe, for a bribe blinds those who see and twist the words of the innocent.*”

Corruption is not accident by product of the system because of the venality of a few but a defining element on which the edifice rests. “*It is not likely to be fully eliminated, but the objective is to minimize it so that it becomes an exception and not the rule.* Since 1968 many attempts were made in parliament to pass anti - corruption act in India but it failed to include the civil society representatives and there after its implementation and enforcement will present further challenges in a country as vast and diverse as India. RTI act is fast emerging as an effective anti - corruption tool. RTI laws as they are commonly called grant citizens legal rights to access information held by their governments, bringing much needed transparency or opaque functioning of government.⁶

Key Factor Encouraging and Promoting Corruption

Lack of Transparency: Secrecy and confidentiality is the aspect which is used in Public offices. It has become a tradition to keep the files confidential. This is the main reason for corruption which is lack of transparency as files are not publicised and people are kept in dark, which leads to rising scams in the country.⁷

Need for RTI act

- It helps to promote openness, transparency in the working of every public authority.
- Reduces Corruption
- Prevent Administrative Arbitrariness.
- Bridge the gap between providers and recipient of public service.
- Make citizens part of decision making.
- Make administrative responsive.
- Strengthen the foundations of democracy.

In our country governance depends on three basic pillars of the constitution namely the Legislative which makes the laws, Judiciary which interprets the laws and the Executive

⁵ <https://www.transparency.org/what-is-corruption#define>, (June-09-2019, 12:30PM).

⁶ Stephen Sumah, *Corruption, Causes and Consequences*, INTECHOPEN.COM (June-06-2019, 02:00PM) <https://www.intechopen.com/books/trade-and-global-market/corruption-causes-and-consequences>.

⁷ <https://www.transparency.org/what-is-corruption#define>, (June-09-2019, 12:30PM).

which include both the political as well as bureaucracy to implement the laws. Corruption is the use of Public office for private gains. Public servants, who include both the political executive and bureaucracy, are in a special position to practice corruption because of the public office they occupy. India inherited its legacy of corruption from its ancient ruler, who always expected some gifts in the form *Nazarana* from their subjects. There is hardly any area of activity that has remained wholly free from the impact of corruption. In fact, corruption has now been institutionalized has become a commonly accepted way of life. Eg. – High donations for admission in schools and colleges, selling state secrets, pay - offs, bribes, under the table transaction.⁸

Kinds of Corruption

Anti - corruption campaigners generally fit the multiplicity of types and forms of corruption into a couple of descriptive boxes– grand corruption, petty or everyday corruption, political corruption, depending on the amounts of money lost and the sector where it occurs.

- Grand corruption - consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good.
- Petty corruption - refers to everyday abuse of entrusted power by low - and mid - level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.
- Political corruption - is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.⁹

All the above forms of corruption relate to the misuse of public office for private gain. These forms do not refer to an important dimension of corruption, the abuse of private office for private gain and here too the public sector is implicated in the sense that it has been lax in the regulations that were supposed to restrain the activities of private sectors.¹⁰

3. Literature Review

Though the Constitution of India empowered citizens of this country with a power in seeking any relevant information from any institution or agency of the state, the movement for the right to information was started in early 90s by Mazdoor Kisan Shakti Sangathan, an organization for the empowerment of workers and peasants hailing from a remote village Devadungri (Rajsamand District, Rajasthan). It was a movement to expose corruption in the famine relief work by demanding information related to copies of bills, vouchers and muster rolls for workers recorded in government files. Following a period of struggle, this

particular organization succeeded in acquiring photocopies of the relevant documents in which the siphoning of funds was clearly evident. When villagers experienced the exposure to corruption while seeking information finally led to the demand of enactment of RTI law in Rajasthan. Government of Rajasthan yielded to pressure of movement and enacted the law in 2000. The recent enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs.

The MazdoorKisan Shakti Sangathan (MKKS) was founded by social activists Aruna Roy and Nikhil Day in the year 1990 in the state of Rajasthan. This organization plays a very important role in the struggle of right to information. With the efforts of activists and international agencies, a large number of states enforced RTI Acts. They were Tamil Nadu (1996), Goa (1997), Madhya Pradesh (1998), Maharashtra (2000), Rajasthan (2000), Karnataka (2000), Delhi (2001), Assam (2002), and Jammu Kashmir (2003).¹¹

A study conducted by Commonwealth Human Rights Initiative (CHRI), exclusively accessed by Economic Times, reveals that 27.2% (47.66 lakh) of the total RTIs filed between 2005 and 2015 were to the different ministries and departments under the Centre. Aruna Roy, a social activist and founder of the MazdoorKisan Shakti Sangathan was the main architect behind the RTI Act 2005 regarded, India's RTI Act as the most fundamental law this country has ever seen as it can be used to access information from the local panchayat to parliament from a small village to Delhi, from a ration shop to the 2G Scam¹². Clearly, the Act has laid emphasis on good governance, of which the major elements that have been identified are: informed citizenry for encouraging people's participation in development process, transparency, accountability and reduction in corruption. Thus, the major objectives of the Act are:

- 1) Greater Transparency in functioning of public authorities;
- 2) Informed citizenry for promotion of partnership between citizens and the Government in decision making process;
- 3) Improvement in accountability and performance of the Government;
- 4) Reduction in corruption in the Government departments.

All these parameters are critical elements of good governance, which entails full accountability to stakeholders, who are partners in development process. And, have the powers to enforce accepted policies, common norms and recognized bench marks. It is expected, therefore, that the citizens, armed with information obtained through their exercise of right to know, would be able to protect life and liberty as well as secure equity and justice before the law. An attempt is therefore made below to examine the extent to which the RTI has been successful in influencing the above factors in the desirable direction.

⁸Gopika Nambiar, *Right To Information As An Anti-Corruption Tool*, NUJS Journal of Regulatory Studies, January 2018, at 76.

⁹ <https://www.transparency.org/what-is-corruption#define>, (June-09-2019, 12:30PM).

¹⁰Gopika Nambiar, *Right To Information As An Anti-Corruption Tool*, NUJS Journal of Regulatory Studies, January 2018, at 76.

¹¹Nidhi Sharma, *1.75 crore RTI applications filed since 2005: Study*, ECONOMIC TIMES

<https://economictimes.indiatimes.com/news/politics-and-nation/1-75-crore-rti-applications-filed-since-2005study/articleshow/54705694.cms> (June-10-2019, 3:00PM).

Access to information appears to empower the poor to the point where they receive almost the same treatment as middle - class –individuals at the hands of civil servant. This is that payment of a bribe can't do. It is a potent weapon to fight against corruption arbitrariness and misuse of power. It is a vital tool for good governance and this law has been used to tackle a high profile of corruption. RTI spilt all over the parts of the country and reduced the corruption.¹²

- 1) In *RP Ltd. vs. Indian Express Newspaper*, the court held that "Right to information is a basic right and falls within the purview of Article 21 i. e. right to life and personal liberty".
- 2) In the case of *People Union for Civil Liberties vs. Union of India*, the Apex Court analyzed right to information in the light of human rights which is requisite for making administration and governance accountable and more transparent. Therefore from the above observation of the Supreme Court, we can say that Right to Information is our fundamental right.
- 3) In *Indira Gandhi v. Raj Narain*, the Court explicitly stated that 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.'
- 4) In *SP Gupta v. Union of India*, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described. In *People's Union for Civil Liberties v. Union Of India* 8 the court held that exposure to public scrutiny is one of the known means for getting clean and less polluted persons to govern the country.

RTI as a tool to tackle corruption

The political mobilization against corruption started with the RTI. The culture of secrecy, as known, encourages the government officials to indulge in corrupt practices, which result in lower investments due to misuse of power and diversion of funds for private purposes. As a result, the government's social spending yields no worthwhile benefits, because, for instance, the teachers do not teach, doctors and nurses do not attend health centres, ration card holders do not receive subsidized food grains and, thus, livelihood support is denied, and the promised jobs are not provided to the poor, who are assured of income support. In the process, it perpetuates poverty and harms the poor. It creates an environment of distrust between the people and the government, which impinge upon the development and jeopardize democratic governance. The legislation on RTI can act like an antidote to vested interests which try to conceal or misinterpret information or which try to manipulate the media directly or indirectly to plant misinformation.¹³

The Right to Information Act 2005 has provided us the right to get information from the government. Through this we

¹² M.M Ansari, *Right to Information and its Relationship to Good Governance and Development*, SEMANTICSCHOLAR.ORG, (June-11-2019, 11:30AM)

¹³ Aprajita Bhargava, *RTI –A Tool To Fight Against Corruption*, INTERNATIONAL JOURNAL OF LEGAL DEVELOPMENTS AND ALLIED ISSUES, January 2018, at 7.

can now expose corruption and also bring to light those duties that are not being performed by the officials. Also, in some countries RTI has been seen as part of the anti - corruption or state modernization agendas (for instance Mexico and Chile), in South Asia, particularly in India. Through all this we can also seek solutions to our problems. We can ask information about projects and plans. We can inspect files and check for any misappropriations. The government spends a huge amount of money for development work. We can ask for information about the work being done in our area. Information relating to tenders, agreements, payments and estimates of engineering work etc can be obtained with the help of the Right to information Act. Besides these, information can be sought on the following -¹⁴

- 1) You can demand samples of materials used for the construction of roads, drains and buildings etc.
- 2) You can demand an inspection of any social development work, work in progress or information related to any completed work.
- 3) You can demand an inspection of government documents, maps for the construction, registers and records.
- 4) You can demand information related to the progress made on any complaint filed by you in the recent past.

Experiences suggest that in the states where the Right to Information Act has been implemented, it has become an important tool of social development and governance. Tackling pendency at the Information Commission and stringent punishment to guilty officials as well as massive awareness campaigns among the masses for proper use of RTI constitutes the key to the success of RTI regime.

Under the RTI regime, there is unprecedented transparency in the working of public departments. There is thus better understanding of the decision making process and greater accountability of government. This has led to reduction in corruption in the country as evident from the following:

- 1) The Transparency International (TI) had reported that perceived corruption in India has declined, due mainly to the implementation of the RTI Act. This is evident from corruption reduction score of 3.4 (out of 10) in 2008, after an initial rise of 3.5 in 2007, compared to 2.99 in 2006, which indicate a decline in corruption to the extent of 15%.¹⁵ India has marginally improved its ranking in the graft watchdog Transparency International's corruption perception index for 2016 got a score of 40 out of 100 and has improved by two points as in 2015 the country had scored 38.¹⁶
- 2) The TI - CMS has recently accomplished an all India survey study of the poor below the poverty line. The views of the poor have been elicited in respect of all the flagship programmes that have been implemented for

¹⁴ Ibid.

¹⁵ M.M Ansari, *Right to Information and its Relationship to Good Governance and Development*, SEMANTICSCHOLAR.ORG, (June-12-2019, 3:30PM)
<https://pdfs.semanticscholar.org/1a50/bf12f0bf13c121419599c9092308757e926d.pdf>.

¹⁶ <https://www.ndtv.com/india-news/india-improves-on-transparency-corruption-index-1652768>, (June-122019,3:40PM).

alleviation of poverty. At least 40 per cent of the respondents have reported that corruption has declined.

- 3) It has also been observed that wherever NGOs are actively involved in the development activities, the perceived corruption is abysmally low.¹⁷

RTI Success Story

- Attendance of village school teacher (Banda, UP)
- Transparency in public distribution system for BPL families (Bahraich, PU)
- School uniform distributed. (Allahabad)
- Exposing corruption in medicine procurement at PSU (Koria, Chhatishgarh)
- Payment of pension dues from railways (Bhavnagar Division)
- Attendance of staff in the school has helped in checking teacher's absenteeism and student's drop out.
- Attendance of doctors and nurses at primary health centres has led to improvement in health care facilities in rural area.
- The details of supplies and food grains through rations shops has assured the reach of entitlements to the beneficiaries.
- Muster of roll and beneficiaries of employment guarantee schemes has exposed corruption and ensured effective delivery of service to the poor.
- For delay in RTI - IIT Kharagpur staff made to pay (Indian express, June 14, 2010)

Prof Kumar of the IIT Kharagpur sought information on Adjunct, visiting faculty and honorarium they received on 04/10/2009.

He filed a complaint to Central Information Commission (CIC), New Delhi on 25/12/2012 as he did not get the information from PIO. The CIC has penalised two officials of IIT - Kharagpur for allegedly delaying information sought under the RTI Act. While ordering that Rs.15000/- each to be deducted from the salaries of PIO.

Prof also given Rs.5000/- as compensation.¹⁸

- Student employ RTI to bring changes: - (The Times of India, Lucknow, May 29, 2011)
9 RTI application filed by school children in UP government's health department demanding information why tobacco retail shops are allowed to operate within the 100yards of educational institution of ban, who is responsible to enforce tobacco law in Lucknow, what action should be taken against the official for not taking any action. These students were part of the recently held summer training camp in which they were taught by Magsaysay award winner social activist Sandeep Pandey and social activist Bobby Ramakant as how to draft an RTI application government and use it as a tool to curb corruption and make state government agencies do their

job. Most of the children who have filed applications are students of class 9 to 12.¹⁹

- Adarsh Society Scam: The applications filed by RTI activists like Yogacharya Anandji and Simpreet Singh in 2008 were instrumental in bringing to light links between politicians and military officials, among others. The 31 - storey building, which had permission for six floors only, was originally meant to house war widows and veterans. Instead, the flats went to several politicians, bureaucrats and their relatives. The scandal has already led to the resignation of Ashok Chavan, the former chief minister of Maharashtra. Other state officials are also under the scanner.
- Public Distribution Scam in Assam: In 2007, members of an anti - corruption nongovernmental organization based in Assam, the Krishak Mukti Sangram Samiti, filed an RTI request that revealed irregularities in the distribution of food meant for people below the poverty line. The allegations of corruption were probed and several government officials arrested.
- Appropriation of Relief Funds: Information obtained through an RTI application by an NGO based in Punjab, in 2008 revealed that bureaucrats heading local branches of the Indian Red Cross Society used money intended for victims of the Kargil war and natural disasters to buy cars, air - conditioners and pay for hotel bills - among other things. Local courts charged the officials found responsible with fraud and the funds were transferred to the Prime Minister's Relief Fund.
- IIM's Admission Criteria: Vaishnavi Kasturi a visually - impaired student, in 2007 was denied a seat in the Indian Institute of Management in Bangalore, one of the country's premier management institutes - despite her impressive score at the entrance examination. Ms. Kasturi wanted to know why, and wondered whether it was because of her physical disability. She filed an RTI application to request the institute to disclose their selection process. Although she failed to gain admission to the institute, her RTI application meant that IIM had to make its admission criteria public.²⁰

4. Conclusion

Right to information is a weapon in the hands of citizens of the country to know the functions performed by public authorities, the purpose of the public transaction said to done in the name of the public act and the source of finance to discharge such functions. Right to information exists before the enactment of Right to Information Act, 2005 because it is considered as one of the fundamental rights within the purview of Article 19 (1) (a). This right promotes transparency, accountability in function discharge by public authorities. Although Right to information is considered as advancement in India it suffers from several drawbacks which need to be revised and improved.

17 M.M Ansari, Right to Information and its Relationship to Good Governance and Development, SEMANTIC SCHOLAR.ORG, (June-12-2019, 3:50PM)
<https://pdfs.semanticscholar.org/1a50/bf12f0bf13c121419599c9092308757e926d.pdf>.

18 Indian express , June 14,2010)

19 The Times of India , Lucknow, May 29,2011

20 Vibhuti Agarwal, A look at some RTI Success Stories, WALL STREET JOURNAL (June-14-2019)
<<https://blogs.wsj.com/indiarealtime/2011/10/14/a-look-at-some-rti-success-stories/>>.

Supreme Court on the Right to Information - The right to information is a fundamental right flowing from Art.19 (1) (a) of the Constitution is now a well - settled proposition. Over the years, the Supreme Court has consistently ruled in favor of the citizen's right to know. The nature of this right and the relevant restrictions thereto, has been discussed by the Supreme Court in a number of cases: The development of the right to information as a part of the Constitutional Law of the country started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging governmental orders for control of newsprint, bans on distribution of papers, etc. It was through these cases that the concept of the public's right to know developed. The significance of the RTI Act (2005) in the journey to curb the cancerous growth of corruption cannot be undermined. Without it, legislation such as the Prevention of Corruption Act, 1988 and even the Lokpal and Lokayukta Acts, 2013 are nothing but toothless tigers. However, there is a need for changes in both the legislation and the mindsets of the governing class, who need to realise that transparency and accountability are inseparable parts of a democracy; the fact that they are not doing a favour to the citizenry by providing information. All the three wings of the state, including the judiciary has to embrace this ideal. At the same time, the people ought to realise that this particular piece of legislation is meant for each one of us to be active participants in ridding the system of this taint and contributing to the country's development; it is not a task to be just left to NGOs or certain whistleblowers or journalists. Effective and full use of the Act by vigilant citizens alone can root out the menace of corruption from the system.

References

- [1] 1973 SCR (2) 757
- [2] On 8 January 1958
- [3] 1982 2 SCR 365
- [4] 1988 SCR Supl. (3) 212
- [5] 13 March 2003