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RIGHT TO INFORMATION AND ADMINISTRATIVE TRANSPARENCY

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INTRODUCTION

The general theme of this research revolves around transparency, the right to information in governance; it deals with a shifting concept of the role of citizens as not just occasional voters but participants in governance, more particularly in local and decentralized levels. The research focuses on accountability and transparency as central components of good governance, whose recognition exists in a variety of international frameworks; one example is the 1992 World Bank report on Governance and Development¹⁵⁵.

The right to information is framed in terms of its being an important tool that would help establish openness and accountability in public administration. It insists on the right of citizens, stakeholders, and civil society organizations to access information about the operation and decisions from public authorities. This should be necessary to ensure accountability and transparency within the administration for informed decisions to be made by citizens and for the effective exercise of their rights.

The research aims to examine the relationship between transparency and a right to information, looks at the situation overseas, and review recent developments in India concerning these rights, especially with the Right to Information Act, 2005¹⁵⁶.

GRASP - EDUCATE - EVOLVE

¹⁵⁵ World Bank Report on Governance and Development, 1992.

¹⁵⁶ Right to Information Act, 2005.

IMPACTS OF RIGHT TO INFORMATION ON ADMINISTRATION:

The Right to Information is one of the kindest laws. So many have benefited from it.

However, still more than ten years after the Indian government passed the act in 2005, it is still quite challenging to receive information under this system and people have been affected on both the concrete and abstract levels by this very act. This statute is being enforced by people for getting income tax returns, birth and death certificates, pensions, ration cards, passports.

Many of the elderly, disabled, and young persons who find themselves in poverty are benefiting from this program as it issues them aid. The RTI Act is more potent in impact on transparency in Indian administration and in people's lives.

Act Facilitate the right to information, and the citizen shall have:

Inspection of works, documents, records.

Taking extracts, copies, or certified copies of the documents or records.

Sampling of the certified sample of material.

Information is also available in electronic form.

Improvement in the accountability and performance of the Government:

The RTI provides people with the mechanism to access information. Further, every public authority is mandated to furnish reasons for its administrative or quasi-judicial decisions to the affected persons. Till the date of enactment of the RTI Act, it was not possible to a common person to seek the details of a decision-making process, which were found to be most often ineffective in terms of their outcome. It was, therefore, not possible to hold free and frank discussions on issues of common concern of people.

Promotion of partnership between citizens and the Government in the decision making process: The RTI Act introduces a framework

that fosters citizen government partnership in the execution of activities for the people's welfare. From the fact that people are not only the final beneficiaries of development but also the agents of development, a stakeholder's participation leads to more viable projects and dynamic development. Citizen participation-the RTI act has guaranteed access to information as well as the involvement of concerned groups in designing and implementing the project. Empowerment of local government bodies at the village level through involvement and cooperation with NGO and self-help groups. Information obtained under the right to information pertaining to utilization of funds allocated under the rural employment guarantee scheme.

Reduces in corruption in the Government departments:

Due to the lack of transparency and accountability, the government officials get tempted to adopt corruption practices. Which turns low investment in terms of misuse of power and authority or funds diversion for personal purposes. It creates a sense of distrust between the people and the government so that it affects the democratic governance.

The RTI promotes efficiency in making policies, delivering the service and administrative decisions. It involves the selection of appropriate programmes to achieve Government objectives¹⁵⁷. Service efficiency is manifested in the effective provision of services to the public, responsive to public opinion and so on. Thus, the efficiency in Government must be measured in terms of all three facets of efficiency.

The most important of the three is administrative efficiency, which includes conducting the administration without unnecessary delays or ulterior or corrupt motives and giving reasons while passing various orders. Effective management of the political system is called effective

¹⁵⁷ Shapiro, Ian. The Real World of Democratic Theory. Princeton University Press, 2011.

administration. It forms part of not only good organization but also efficient productivity. Where necessary or implied, principles of natural justice have to be observed.

RIGHT TO INFORMATION IN INDIA: A TRANSFORMATIONAL JOURNEY INTO TRANSPARENCY

The right to information in India has been a crucial aspect of the country's efforts to promote transparency and accountability in governance. The passage of the Right to Information Act in 2005 was a significant milestone, as it established a legal framework for citizens to access information from public authorities. This Act has been instrumental in empowering citizens to hold the government accountable and to make informed decisions about public affairs.

The recognition of the right to information as a fundamental human right in international law has also contributed to its prominence in India. The right to freedom of expression, which is enshrined in the Indian Constitution, has been interpreted to include the right to access information held by the state. This has led to the courts playing a crucial role in expanding the scope of the right to information and ensuring its effective implementation.

The Right to Information in India is one of the hallmark events in its democratic growth. It displays transparency, accountability, and gives the citizens a significant boost. The RTI Act came into force in 2005 and changed the contours of the relationship between the government and the governed by providing a statutory right of access to information held by public authorities. It presents an analysis of the historical background, important elements, relevance, and challenges of RTI in India for ensuring an open and participatory government regime.

Historical Perspective

The RTI movement in India has its genesis in the increasingly collapsing discontent of the people with secrecy in and lack of accountability of the

government, especially during the Emergency from 1975 to 1977. The Janata Party that assumed power in 1977 declared in its election manifesto bringing an "open government." However, the first efforts to change the Official Secrets Act of 1923 reflected a great deal of bureaucratic resistance, with no meaningful reforms having taken place.

The true force behind the RTI movement came through grassroots movements in the 1990s, especially in states like Rajasthan. People were mobilized by activists, notably one Aruna Roy, to demand information about the way in which the government was spending money and making decisions. These movements reached their climax with the enactment of the RTI Act in 2005, thereby ushering in a new era in governance in India¹⁵⁸.

Role of RTI in Bringing About Transparency

The Right to Information Act has brought a sea change in the governance of India by:

Right to Information as Empowerment of Citizens: RTI has allowed extracting information from the facilitation of government functions. It thus instills ownership and a sense of responsibility among the citizens. This is highly important in functioning effectively for a democracy.

Less Corruption: As corrupt practices and maladministration are coming out one after another through the use of the RTI Act, it acts as a deterrent factor in government offices against corruption. It has brought additional scrutiny into the ways in which funds are spent by the government and the ways in which decisions are taken¹⁵⁹.

Participatory: Access to information encourages and motivates citizens to participate in governance processes. This leads to a better-informed and more active citizenry essential to democratic health.

¹⁵⁸ Aruna Roy et al., *The Right to Information Act: A People's Act for Democratic Empowerment*, 2010.

¹⁵⁹ Transparency International. "Promoting Transparency Through Right to Information." *Global Corruption Report*, 2008.

Obstacles to RTI Implementation

Despite the successes, several challenges face the implementation of the RTI Act:

Bureaucratic Resistance: Most of the public officials are very unwilling to give out information, citing either bureaucratic norms or misinterpreting exemptions. This resistance tends to go against the spirit of the Act.

Lack of Awareness: A large portion of the populace is unaware of the rights available to them through this Act. If that is the case, then awareness needs to be provided through public awareness campaigns in regard to what citizens are entitled to under the RTI Act.

Threat to Activists: Threats and intimidation continue to be issued against RTI activists, too. This discourages applications or bringing out corruption in the open. Protection of activists will go a long way in sustaining the RTI movement.

Weak Enforcement: In many cases, the poor enforcement of RTI provisions leads to delays and avoidance of compliance by public authorities. In this case, enforcement needs to be considerably strengthened for accountability to take hold.

RECENT AMENDMENTS OF RTI:

The recent amendments to the Right to Information Act have generated quite enough debate, particularly the 2013 Amendment that excludes political parties from being defined as public authorities. Such exclusion practically frees political parties from oversight and accountability mechanisms created by the RTI Act, highly questionable in terms of transparency of political funding and internal decision-making processes. Critics argue that this defeats the very purpose of accountability for which RTI was created and may further politicize such institutions.

Another point of controversy in the proposed amendments is the 2017 draft clause that said cases would be deemed to have been closed upon the death of the applicant. This has given rise to protests among advocates of

whistleblower protection because, by implication, it could lead to the murder of persons who report corruption and other misconduct for fear that some potential perpetrators may take advantage of the situation, whereby, if the applicant died, censure and accountability would be ended with the litigation.

The Amendment Act proposed to be introduced, namely, RTI Amendment Act 2018, has further complicated the matter by giving Centre the right to decide tenures and salaries of not only central information commissioners but also state information commissioners. Such a purported paradigmatic shift away from the statutory protection so established earlier, would spur the Central Information Commission toward a loss of independence and autonomy. The deletion of fixed tenure for five years and bringing in a tenure to be determined by the government has created apprehensions that commissioners may be put under pressure, which could affect their impartiality and also the underlying principles of openness and accountability embedded in the RTI regime.

IMPLEMENTATION OF RIGHT TO INFORMATION: TASKS AHEAD

It has been proved that mere passage of Freedom of Information legislation itself cannot guarantee open and transparent public administration; rather, it is the beginning of a long, cumbersome, and expensive process. Given below are some of the key tasks ahead while implementing RTI:

Review and Revise Existing Legislations:

Official Secrets Act, 1923¹⁶⁰: This Act calls for a revisit so that inhospitable or adverse provisions get substituted with such provisions which enable dissemination of information. For instance, Section 5 is claimed as "catch-all provision" as it covers all types of secret official information notwithstanding the consequences of disclosure.

¹⁶⁰ Official Secrets Act, 1923.

Indian Evidence Act, 1872: Sec.123¹⁶¹ of the said Act prohibits any person from giving any evidence derived from unpublished official records, relating to affairs of State, except with the permission of the Head of the Department. The said section is to be revised in tune with the spirit of transparency and accountability.

Establishing Information Commissions:

The Act has thus provided establishment of Information Commissions at central and state levels comprising one Chief Information Commissioner and ten Information Commissioners. These commissions have been vested with powers of enforcement against non-compliance of the law in respect of providing access to documents as well as the designation of PIOs .

Penalties for Non-compliance:

PIOs can be penalized Rs. 250 per day up and about to a max of Rs. 25,000 for failing to accept any application, delaying the release of the information without sufficient reasonable cause, or malafide denial of information or incomplete, incorrect, or misleading information¹⁶².

Proactive Disclosure and Public Awareness:

Public authorities shall proactively publish a wide range of information including budget allocations, plans, subsidy programs, and beneficiaries of concessions. This proactive publication is intended to ensure maximum disclosure and transparency.

Appointment and Training of PIOs:

The Act calls for the appointment of PIOs in all administrative units/ offices so that the requests for access to information are facilitated. The appointment of Assistant PIOs is to be done at sub-divisional levels so that applicants can have easier access in their local areas to know the status of their requests.

Time Limits for Information Requests:

The Act prescribes timelines for responding to requests for information: 30 days in cases of applications regarding normal applications, 40 days in cases involving third-party submissions, and 48 hours in cases involving the life and liberty of a person.

Fee Structure:

There shall be application fees that are reasonable and no fees for persons below the poverty line.

Implementing the RTI Act is a complex but essential task for promoting transparency and accountability in public administration. It involves revising existing laws, establishing robust administrative structures, and ensuring proactive disclosure of information. Addressing these tasks will pave the way for a more open and participatory governance system.

DIFFERENCE BETWEEN RIGHT TO INFORMATION AND RIGHT TO PRIVACY

Current time requirements keep the right to privacy and the right to information as specific human rights, especially in the situation where information can easily be provided or accessed without permission or consent. It is clear that these two rights are complementary and serve the purpose of defending the people from being considered as objects of the government and promoting responsibility from the government. They are justified and are key areas if justice is to be achieved for all in society and there are no excesses or abuse of power either by society or the government.

Information as a Right is an aspect of democracy where the people have the authority to request and obtain information, which is generally in the custody of a government entity. This right is also helpful in the improvement of management of activities and even governance to the people. In this respect, privacy right, makes it possible for an individual to retain some control over delicate information about them, and allows determination of who may receive that

¹⁶¹ The Indian Evidence Act, 1872, Section 123.

¹⁶² Central Information Commission. Annual Report on RTI Implementation in India, 2015

information, for what purpose, and under what conditions – governmental or private institutions. Collectively, such rights and opportunities will accelerate self-directed development of every citizen and nurture active democratic participation which no one will risk refraining from.

RIGHT TO INFORMATION ACT VS LEGISLATION FOR NON DISCLOSURE OF INFORMATION

The Right to Information Act (RTI) is opposite in nature to certain legislations, which are prone to curtailing the freedom of information, in India. Certain provisions under the Indian Evidence Act, for instance, Sections 123, 124 and 162, allow officials to suppress any documents. Such provisions enable a department head to make information relating to state matters classified with a provision that if the information is termed as a state secret, it will not be released. This situation creates in essence legal order for obstructing the state mechanisms of intervening into the protection of some sphere of classified information from being transparent and accessible to the public.

Also, the scope of non-disclosure obligations extends to public officers as well, for whose many communications made to them in their official dealings is privileged. This type of secrecy is essential due to the nature of government activity itself: particularly sensitive discussions cannot come under the public eye. The Atomic Energy Act of 1912 is another legislation which embodies this principle as it provides penalties for the unauthorized release of information as restricted by the Central Government in order to protect national interest and other sensitive technology.

An equally appropriate Central Civil Services Act makes sure that there is regulation of access to the information of an official nature.

CONCLUSION:

To summarize, principles of access to information and administrative transparency are some of the critical components of a strong democracy. Equipping citizens with the power to

hold their government accountable means that processes in arriving at decision-making have to be fair and just. Better-informed citizens will then engage with the government better, hence enhancing accountability and responsibility practice by public officials.

Information access to the public will be an important part in building trust between government and its people. Transparency is a sort of best way to flourish governance because it entails citizen involvement in decision-making and scrutiny of the actions of government. This citizen engagement in governance not only enhances legitimacy of governmental authority but also strengthens the idea that the officials are accountable to the people they govern.

Access to information empowers individuals with the knowledge to make informed decisions about themselves and their communities. Citizens have more of an opportunity to better understand what government programs, policies, and services are implemented and made available for them, which then enables them to pursue whatever is inclusive of themselves in their future. In essence, it is within the right to information and administrative transparency that a full-fledged democracy flourishes. By protecting these rights, trust will be promoted, good governance will be improved, and equity in the decision-making process will be ensured-the better to promote an engaged and participatory society.

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