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## RIGHT TO INFORMATION: A WAY FORWARD

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### ABSTRACT

A free flow of knowledge is a basic human right. Knowledge cannot be constructed without information. Acquiring new knowledge equips individuals with the understanding and abilities they need to thrive in today's environment. Considering this, it is the government's responsibility to keep the people informed. The shift from governance to good governance is possible if there is a method to expand people's involvement in government and provide them with unrestricted access to information. In 2005, Indian legislators passed the Right to Information Act in response to the need to improve government openness, responsibility, accountability, and efficiency. This article seeks to illuminate the RTI Act's guiding principles, the Act's relationship to good governance, and the Act's accompanying challenges. This paper also discusses corruption in public life and the preservation of personal privacy. The report concludes with several generalized recommendations for improving the implementation of the RTI law.

**KEYWORDS**– RTI ACT, GOOD GOVERNANCE, CORRUPTION, AND PRIVACY

### INTRODUCTION

The right to access information is an inherent and fundamental right in a democratic state, guaranteeing the freedom to express one's views publicly and interact with government institutions for the purpose of gathering and sharing information and ideas. Good governance and the right to information are inextricably linked, and the public's right to know is seen as a powerful tool for fostering government accountability, transparency, and openness.<sup>252</sup> India is the largest democracy in the world, yet it is struggling to win the trust of its citizens. Access to information is the key to the development and emergence of a vibrant civil society.<sup>253</sup> The right to information is widely supported and included in international human

rights documents, such as the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights. The right to access information is recognized as a fundamental human right in international texts such as the American Convention on Human Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Four countries in South Asia have enacted right-to-information or freedom-of-information legislation, including Bangladesh, India, Nepal, and Pakistan. The Right to Information Act of 2005 provides citizens with the right to request any publicly available document from any government agency, increasing transparency and accountability in the country's leadership. The RTI Act of 2005 is an important instrument for combating corruption and bolstering democratic rule of law in India. Over two million requests for information have been filed under

252 J.P. Rai, "The Right to Information Act, 2005: Retrospect and Prospects", *The Banaras Law Journal*, 76, July Dec, (2013).

253 Kailash Thakur, "The Right to Information Act, 2005: A Movement from Darkness to Light", *Civil and Military Law Journal*, July-September 2012, Vol. 48, No. 3, P. 166, (2012).

the act in its first two and a half years, demonstrating the massive interest in the legislation and the potential to boost the political influence of marginalized people.<sup>254</sup> Demands for information on development programs, anti-poverty policies, and public projects have been at the heart of the RTI Act's usage during the past five years, together with the desire to expose corrupt practices and assert rights. Corruption is at an all-time high and secrecy is the principal source of corruption, so we need to crack down on corruption and remove barriers of secrecy to achieve government transparency.

### 1) MEANING OF INFORMATION

The term "information" comes from the Latin term "informare," meaning to shape or create; to give form to. Information is a means of representing an image or thought so that it can be transmitted from one mind to another. Instead of fretting about all the information in the world, we should ask ourselves what matters pertain to us and what we wish to know, as this is preferable to accumulating enormous quantities of data.<sup>255</sup> Since we live in an information-based society, both individuals and institutions are required to have access to information. Those who are well-informed are in a better position to exercise their legal and other rights than those who lack access to information or are poorly informed. It can also be defined as a "human right" to secure access to information held by a public authority and the public body's corresponding obligation to make that information available.<sup>256</sup>

#### 1.1) MEANING OF INFORMATION UNDER THE RTI ACT

Information is defined in Section 2(f) of the Right to Information Act, 2005 as any material, in any form, including records, documents, memos, e-mails, advice, press releases, circulars, orders,

log books, contracts, reports, papers samples, models, data material held in any electronic form, and information relating to any private body to which a public authority may have access under any law currently in effect.

### 2) HISTORY OF THE RTI IN INDIA<sup>257</sup>

**1975:** Supreme Court of India rules that the people of India have a right to know. **1982:** Supreme Court rules that the right to information is a fundamental right.

**1985:** Intervention application in the Supreme Court by environmental NGOs following the Bhopal gas tragedy, asking for access to information relating to environmental hazards.

**1989:** Election promise by the new coalition government to bring in a transparency law. **1990:** Government falls before the transparency law can be introduced.

**1990:** Formation of the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan and the launching of a movement demanding village-level information.

**1996:** Formation of the National Campaign for People's Right to Information (NCPRI).

**1996:** Draft RTI bill prepared and sent to the government by NCPRI and other groups and movements, with the support of the Press Council of India.

**1997:** Government refers the draft bill to a committee set up under the Chairmanship of HD Shourie. 1997: The Shourie Committee submits its report to the government.

**1999:** A cabinet minister allows access to information in his ministry. Order reversed by PM.

**2000:** Case filed in the Supreme Court demanding the institutionalization of the RTI. Shourie Committee report referred to a Parliamentary Committee.

<sup>254</sup>

<https://www.ohchr.org/sites/default/files/Documents/Issues/Minorities/UNDPMarginalisedMinorities.pdf>

<sup>255</sup> Theodore Roszak, *Combat law-The Human Right Magazine*, Bombay, Vol.1, issue 6, Feb, 2003, P.2.

<sup>256</sup> M. Sarojamma, "Right to Information for a Transparent and Democratic Government", *Andhra Law Times*: June 2013 (11), p. 20.

<sup>257</sup> Sri Keshabananda Borah, "Right to Information Act: a key to good governance", 2(2) *International Journal of Humanities and Social Science Invention*, 11-22, (2013).

**2001:** Parliamentary Committee gives its recommendations

**2002:** The Supreme Court issues the government a directive regarding the right to information.

**2002:** Freedom of Information Act passed in both houses of Parliament.

**2003:** Gets Presidential assent, but is not notified.

**May 2004:** The UPA party formed a coalition government and as part of the election promise R.T.I. Bill was introduced in the Parliament.

**June 2004:** Government sets up a National Advisory Council (NAC) under Mrs. Sonia Gandhi.

**August 2004:** NCPRI sends a draft bill to the NAC and NAC discusses and forwards a slightly modified version, with its Recommendations to the government.

**December 2004:** RTI Bill was introduced in Parliament and immediately referred to a Parliamentary Committee. However, Bill is only applicable to the central government.

**Jan-April 2005:** Bill considered by the Parliamentary Committee and the Group of Ministers and a revised Bill, covering the central governments and the state introduced in Parliament.

**May 2005:** The RTI Bill was passed by both houses of Parliament.

**June 2005:** RTI Bill gets the assent of the President of India

**October 2005:** The RTI Act comes into force.

### 3) RTI ACT, 2005

Responses to citizen requests for government information must be made promptly under the Right to Information Act of 2005. A RTI Portal Gateway is being made available to the public by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions. This will allow users to quickly search for information on first Appellate Authorities, PIOs, and other topics, as well as access to RTI-

related information/disclosures posted online by various public authorities within the Union of India and State Governments. It goes without saying that an informed citizen is better able to maintain the essential watchfulness of the tools of governance and increase the accountability of the government to the governed. The Right to Information Act is a significant step in the direction of educating the public about the government. It encourages accountability and openness in governmental operations, prevents corruption, and truly puts the people at the centre of our democracy.<sup>258</sup>

#### 3.1) AMBIT OF THE RTI ACT

According to the Right to Information Act of 2005, the right to information includes the ability for any public entity to obtain information by capturing information through notes, extracts, certified copies of records or documents, or certified samples of material. It also includes obtaining information from printouts where the information is stored in a computer or another device as described in Section 2(j), as well as information on diskettes, floppy, tapes, video cassettes, or any other electronic medium. It also involves the right to look and scrutinize closely the documents, works, and records.<sup>259</sup>

#### 3.2) IMPORTANT TERMS UNDER THE RTI ACT

##### • Public Authority

Any authority, body, or institution of self-government established or constituted by the Constitution, any other law passed by the parliament or state legislature, or even by notification issued or order made by the appropriate government as per Section 2(h) of the Act is considered a public authority under the Right to Information Act, 2005.

##### • Obligations of Public Authorities

Every Public Authority is required by the RTI Act, 2005 to keep records and publish any manuals, rules, instructions, or regulations that are in their

<sup>258</sup> <https://rti.gov.in/>

<sup>259</sup> <https://cic.gov.in/node/3410>

possession, as stated in Section 4(1)(a) of the Act. Every public authority is required to publish information about their organisation, such as functions and tasks, powers of officials, decision-making processes, rules and regulations for staff, etc., within 120 days of the law's enactment, in accordance with Section 4(1)(b) of the RTI Act.

#### • Third Party

It refers to anyone who requests information other than the citizen making the request; this could include a government agency in accordance with Section 2(n) of the RTI Act.

### 3.3) COMPOSITION UNDER RTI ACT

The Right to information in India is governed by two major bodies:

- **Central Information Commission** - The PIOs for each of the central departments and ministries report to the Chief Information Commissioner (CIC). The Indian President is directly responsible for CICs, ie. CICs are under him. A maximum of ten Information Commissioners are present to help the CIC, which is led by the Chief Information Commissioner. For five years, the Chief Information Commissioner is in office.
- **State Information Commissions** - State Public Information Officers or SPIOs head over all the state departments and ministries. The State Governors are directly responsible for overseeing the SPIO office.

The Central Information Commission has no authority or jurisdiction over the State Information Commission because they are both separate organisations.

### 3.4) EVIDENTIARY VALUE OF RTI DOCUMENTS

A certified copy of documents obtained via the RTI Act is regarded as secondary evidence under section 63 of the Indian Evidence Act, of 1872. Any data gathered in accordance with the RTI Act is retained in the public authority's (often referred to as the Gazette Officers') files or

records. It was held in **Ashish Kumar Saxena vs the State of Uttar Pradesh**.<sup>260</sup>

### 3.5) SCOPE OF THE RTI ACT

The Act applies to all of India. It includes all branches of government, including the executive, legislative, and judicial branches, as well as any organization or entity created by an act of the Parliament or a state legislature. The Act also includes non-government organizations that get major funding from funds, either directly or indirectly, that are owned, controlled, or substantially supported by the government, as well as bodies or authority constituted by order or notification of the appropriate government.

Private organizations are exempt from the act. The Central Information Commission also reiterated in Sarbajit Roy's judgment<sup>261</sup> that privatized public utility corporations are covered under RTI. Act now applies to non-profit organizations and commercial institutions that receive above 95% of their infrastructure funding from the government.

Political parties are considered public bodies under the RTI Act, according to the Central Information Commission (CIC). According to the CIC, eight national parties (Congress, BJP, NCP, CPI(M), CPI, BSP, NPP, and AITC) have received significant indirect funding from the Central Government and, because they carry out public duties, have the status of public authority under the RTI Act. But in August 2013, the government unveiled the Right To Information (Amendment) Bill, which exempted political parties from the scope of the statute. A lawsuit has been launched to bring all political parties within the RTI Act, which is currently not the case for any party. The six political parties that the CIC considered to be "public authorities" rejected RTI applications when they were submitted to them. The CIC was then contacted with a complaint of non-compliance

260 Ashish Kumar Saxena vs The State Of Uttar Pradesh, SLA. No(s). 11330, (2020).

261 Sarbajit Roy V Delhi Development Authority, CIC, Complaint No.CIC/LS/C/2009, (2009).

alleging that none of the six political parties were following and implementing the CIC's judgement. This lawsuit is still pending, and questions about the electoral bond are being addressed from time to time.

#### 4) RIGHT TO INFORMATION AND GOOD GOVERNANCE

The term "governance" refers to a concept that is as old as human civilization itself; it encompasses both the act of making decisions and the act of putting those decisions into action. Some of the elements of effective governance are openness, accountability, the rule of law, and citizen participation.<sup>262</sup>

Good governance requires the participation of all civil society groups in the formulation of development policies that directly impact communities, as well as in the design and implementation of programs and projects. The state and its agencies enjoy a significant impact on the everyday lives of the people, which is primarily for their advantage. Good governance, the foundation of every democracy, encompasses a vast array of issues, including the economic, political, social, judicial, and administrative spheres.<sup>263</sup>

The term "good governance" refers to a set of principles that includes openness, responsibility, adherence to the law, and citizen input. Good governance is widely recognized as essential to a functional democracy. There is a new degree of corruption in our country that has never been seen before. One major contributor to this type of corruption is the practice of secrecy, which was once seen as an important way to demonstrate loyalty to the government. The only way to ensure accountability in government is to treat information as power. At the same time, several countries have implemented the Right to Knowledge Act because they recognize the importance of

knowledge to their own development.<sup>264</sup>

Awareness and respect for the people's constitutional rights are necessary to improve the interaction between the government and the citizen. Communication between a self-governing population and its representatives is crucial. To realize the Constitution's goal of a just, caring, and equitable society, rapid socioeconomic development and widespread engagement in self

help groups, voluntary organizations, etc. are essential. The transition should be from centralized authority to local control. As a fellow democratic nation, India also requires an open and honest government.

#### 5) RIGHT TO INFORMATION AND CORRUPTION

Officials in India are motivated, in part by the colonial tradition of secrecy, to keep the public in the dark about government operations. The need for government transparency and accountability in reducing corruption was immediately recognized. The deliberate denial of transparency, accessibility, and accountability, the complexity and confusion of procedures, the proliferation of senseless controls, and an insufficient commitment at all levels to achieving accurate results in the interest of the public good are all important causes of corruption. At every level, the executive branch attempts to suppress information in order to expand its control, patronage, and arbitrary, corrupt, and unaccountable power. Thus, making rules clearer, keeping everything transparent, and proactively sharing information with the public could all work together to prevent corruption. The best way to prevent corruption systemically is to give people the power to seek knowledge about government operations on their own initiative. Having access to relevant information and fighting systemic corruption are both keys to achieving this goal. As a result, it is crucial

262 S.L. Goel, "Right to Information and Good Governance", Deep and Deep Publication Pvt. Ltd., New Delhi 2007, P. xvi.

263 Shilpa, "Right to Information: A Tool to Strengthen Good Governance and Tackling Corruption", International Journal of Humanities and Social Science Invention, Vol. 2, Feb. 2013, p. 46-51.

264 Roy Jaytilak Guha, "Right to Information: Some emerging issues of Public Concern", Indian Journal of Public Administration 2009, 55(3), P. 406.

that people be able to easily obtain relevant information. Following this first push, members of the court, civic society, and the media all took action to combat corruption in government.<sup>265</sup> These organizations took the lead in lobbying for the passage of the landmark Right to Information Act of 2005. Since then, the Act has received widespread praise and approval. India ranked 85th<sup>266</sup> out of 175 nations. Therefore, corruption is the primary cause of India's underdevelopment. The RTI Act has provided a once in-a-generation chance to eradicate corruption and a culture of opacity from Indian government activities, paving the way for governance reform, greater accountability, and greater transparency. An increasing number of citizens are utilizing RTI applications to combat corruption and assert their rights. The RTI enables individuals to refuse bribery. It is a comprehensive act with consequences that have led some to call it the most important piece of legislation since independence.

### 6) RIGHT TO INFORMATION AND THE SECRECY ACT

The Official Secrets Act of 1923 (O.S.A.) is an adaptation of the former British Official Secrets Act and regulates espionage.<sup>267</sup> It is well-known that India is one of the most populous democracies on Earth. Transparency and responsible leadership are essential. The only way to achieve government openness is to eliminate corruption and lift the veil of secrecy.

The RTI was established in India to bring transparency and accountability in the workings of the authorities and the Government of India, in stark contrast to the Official Secrets Act, of 1923, which was brought in India to foster a culture of secrecy and the express denial of any claim against the government's operations.

Thus, the true distinction lies in the inner

workings and cultural shifts of the two regimes. There are safeguards in the RTI Act, however, that prevent the Official Secrets Act from superseding it in terms of public benefit and lessening the misuse of authority. Since material must be held by a "public authority" in order to fall under the ambit of the RTI Act, not all government records and files are covered by RTI.

If there is a conflict between the two laws, the Right to Information Act of 2005 states that the public interest will take precedence. Notwithstanding anything contained in the provisions of the Official Secrets Act, 1923, or any exemption allowed in the provisions of the Act<sup>268</sup>, a public authority has the right and is allowed to access the information and documents if done for the public interest in large, or if the disclosure outweighs the harm to the protected interests, as set forth in Section 8(2) of the RTI Act, 2005. One major flaw of OSA is that it does not define the word "secret" and gives the government broad authority to classify any document or piece of data as secret, making corruption more likely.

For the sake of transparency, accountability, and good government, the RTI Act of 2005 mandates that all pertinent records and information must be made available to the public. Article 19(1) of the Indian Constitution protects the right to access information. Therefore, the people of the country have a right to know how their government works.

### 7) RTI AND ITS COHERENCE WITH FUNDAMENTAL RIGHTS

Since the passage of the Right to Information Act in June 2005, which aims to make disclosure of government information the norm and secrecy the exception, it has been acclaimed as a pillar of democracy. According to experts, as the Act strives to increase government accountability and transparency, its successful application would eventually

265 Sanyukta Moitra, "Containing Corruption in India through Right to Information: An Analysis", 9 Indian J.L. & Just. 127.

266 Transparency International's Corruption Perceptions Index 2014.

267 Mitra S.C. & Kataria R.P., Law relating to Right to Information, p.28, 2010.

268 Section 8(1)(j) of the RTI Act, 2005.

reduce corruption.<sup>269</sup>

Although a "right" to information as such is not expressly stated in the Indian Constitution, the Supreme Court has given it one of the most persuasive judicial interpretations.<sup>270</sup>

The Right to Freedom of Expression [Article 19(1)] and the Right to Life (Article 21) serve as the context for this viewpoint

### 7.1) THE CORRELATION OF RTI WITH ARTICLE 19 OF THE CONSTITUTION

At this point, it is crucial to remember that the Supreme Court recognized the "right to know" as a right inherent in the Fundamental Right to freedom of speech and expression provided under article 19(1)(a) of the Constitution in the State of **U.P v. Raj Narain**<sup>271</sup> which was decided in 1974.

Following this, the right to information was acknowledged in numerous decisions as a right that was implied in both Article 19(1)(a) and Article 21. The Supreme Court noted in **People's Union for Civil Liberties v. Union of India**<sup>272</sup> that the right to information is a component of the freedom of "speech and expression" guaranteed by Article 19(1)(a) of the Indian Constitution.

While the Right to Information is recognised as a fundamental right, if its inclusion had any impact on our constitutional system's core principles<sup>273</sup> it would be to improve democracy and advance it, as intended by the Constitution framers.

RTI is an implied fundamental right because it is included in the Right to Freedom of Expression under Article 19 of the Indian Constitution.

In the **S.P. Gupta** case<sup>274</sup>, Justice V.R. Krishna Iyer noted that the right to express one's opinions is

meaningless if it is not coupled with a related right to obtain all information on matters of public concern from pertinent public authorities; people have a right to be informed of every public act and the specifics of every public transaction carried out by public functionaries.

The court, in **Bennett Coleman and Company v. Union of India**<sup>275</sup>, court stated that there was no question that everyone has the right to speak, publish, and express their opinions. The right of all citizens to read and be informed was also included by the freedom of speech.

Again, the court noted in **Express Newspaper v. Union of India**<sup>276</sup>, that the fundamental goal of freedom of speech and expression is that participants should be able to form their opinions and freely express them to others. The basic idea at play here is the public's right to information. As a result, access to information is a part of the right to information acquisition.

### 7.2) THE CORRELATION OF RTI WITH ARTICLE 21 OF THE CONSTITUTION

In **R.P. Limited v. Indian Express Newspaper**<sup>277</sup>, the Supreme Court stated that people have a right to "know" in order to participate in democratic development initiatives.

Participatory governance was underlined in **People's Union for Civil Liberties v. Union of India**. The right to information was further recognized as a human right, which is essential for honest and responsible government.

The Supreme Court ruled in **K. Ravi Kumar v. Bangalore University**<sup>278</sup> that the government cannot entirely withhold any material out of "confidentiality" concerns. A core right that all people of a democratic nation should have is the right to information, which is protected by Article 21 of the Indian Constitution in a manner that broadly encapsulates the Right to Life.

269 Varsha Khanwalker, "Information Act In India: Its Connotations And Implementation", The Indian Journal of Political Science, Vol. 72, No. 2 (April - June, 2011), pp. 387-393.

270 M.M. Semwal, Sunil Khosla, "Right To Information and The Judiciary", The Indian Journal of Political Science Vol. 69, No. 4, Oct. - Dec., 2008.

271 State Of U.P. V Raj Narain & Ors., AIR 865, (1975).

272 People's Union Of Civil Liberties V. Union Of India and Anr., AIR, SC 568, (1997).

273 Kesavananda Bharati V State Of Kerala And Anr., Writ Petition (Civil), 135, (1970).

274 S.P. Gupta V President Of India And Ors., AIR, SC 149, (1982).

275 Bennett Coleman & Co. & Ors. V Union Of India & Ors., AIR 106, (1973).

276 Indian Express Newspapers V Union Of India & Ors., AIR 515, (1985).

277 Reliance Petrochemicals Ltd V Proprietors Of Indian Express, AIR 190, (1988).

278 K. Ravikumar V Bangalore University And Anr., AIR Kant 21, (2005).

In **Secretary General, Supreme Court of India, vs. Subhash Chandra Agarwal**<sup>279</sup> High Court of Delhi ruled that the Chief Justice of India is a public authority under the RTI Act and that any information provided by the CJI regarding assets is public information. The contents of the asset declaration are to be treated as personal information and can be obtained in accordance with the method outlined in section 8(1)(j) of the RTI Act.

In **Ozair Husain v. Union of India**<sup>280</sup>, according to the Delhi High Court, customers have a fundamental right to know the ingredients in food, cosmetics, and medications; otherwise, their rights under Articles 19(1)(a) and 21 will be violated.

According to Article 19 (2) of the constitution, the government may place restrictions if the disclosed information compromises the integrity or security of the nation. In other words, a citizen can obtain information to the extent that it does not compromise the nation's dignity and secrecy. The exemption from disclosure of the information is addressed under Section 8 of the Right to Information Act.

Thus, it is undeniably true that the Right to information is a fundamental right. The RTI Act of 2005 just codified the right to information, which is in fact a Fundamental Right protected by the Indian Constitution.

### 8) RIGHT TO PRIVACY VERSUS RTI

While the right to privacy gives individuals the ability to keep their personal matters and issues private, the latter enables citizens to hold various government agencies responsible for significant public affairs. These two rights frequently work in concert to hold the government responsible to the people. But when a request is made for access to private data kept by governmental entities, there is a clash between these rights.

In *Nihal Chand v. Bhawan Deit*<sup>281</sup>, the Allahabad High Court recognized for the first time that the right to privacy existed independently and emerged from societal conventions and traditions in addition to being protected by law.

In the contemporary information age, both the right to privacy and the right to information are fundamental human rights. In most cases, these two rights work together to hold governments accountable to people. However, when a request is made for access to private data maintained by governmental entities, there may be a conflict between these rights. States must create methods for identifying key topics to prevent disputes and balance the rights when the two rights intersect. RTI and privacy are frequently referred to as "two sides of the same coin" since they primarily serve as complimentary rights that advance people's right to privacy and rights to government accountability.

It is commonly known that the government is the keeper of a wide variety of non-public records of different citizens. A person's personal belongings include things like his tax returns, medical data, biometric information, and other things to which the government may have access. If these records are subject to RTI, it would be a serious infringement of the privacy of the individual. On the other hand, it also tries to make sure that nobody puts on a front of security or privacy in an effort to shield oneself from the disclosure of information that may be required by RTI. The applicant must persuade the Public Information Officer that the data is for the public interest and that its disclosure will benefit the public at large in cases where there may be a disagreement over whether the data needs to be protected under Section 8(1)(j) or not.

Amita Pandove, an Information Commissioner, has clarified the conflict between the two rights in the case **S. Muthumalai v. Central Public**

<sup>279</sup> Secretary General, Supreme Court of India V Subhash Chandra Agarwal, LPA No.501, (2009).  
<sup>280</sup> Ozair Husain V Union Of India, AIR, Delhi 103, (2003).

<sup>281</sup> B. Nihal Chand And Anr. vs Mt. Bhagwan Dei on 31 August, 1935, AIR 1935 All 1002, (1935).

**Information Officer.**<sup>282</sup> In this instance, the applicant had filed a request for information, asking for certified copies of the delivery sheet of an item, as well as the date, time, and identity of the postman who had handed it off to the authorities. The Central PIO has denied the request, citing RTI Act, 2005, Section 8(1)(j). Due to the PIO's poor response, the appellant had filed a second appeal under Section 19 of the Act. He asserted that the PIO had malafide intentions and had incorrectly invoked Section 8(1)(j).

The applicant was given the benefit of the doubt by the Commission. It was stated that the exemption under Section 8(1)(j) of the RTI can only be used when the information sought relates to third parties' personal information, the disclosure of which has no connection to any public interest whatsoever and, if disclosed, would result in an unjustified invasion of the concerned person's privacy. The exception was not available in this instance since the information did not meet the aforementioned requirements.

The link between the right to privacy and the right to information is the subject of extensive legal analysis. Several cases, including **Union of India v. Association for Democratic Reforms and Anr.**<sup>283</sup> and **Girish Ramchandra Deshpande v. Central Information Commissioner**<sup>284</sup>, have established guidelines for determining which of the rights, information or privacy, prevails over the other in particular circumstances. Thus, it may be claimed that the rights to information and to privacy are not incompatible with one another but can coexist peacefully.

## 9) CONTROVERSIES AROUND RTI IN INDIA

### • Exclusion of 'File Notings' from the Purview of the RTI Act

The Central Government originally proposed the notion of amending the Act in order to

exempt "file notings" from the Act's application in December 2005. An important public document called file notings contains information about the decision-making process in any given public subject, including who said what and who rejected whom and why before a decision was made by the government. The formal correspondence between officers in support of a government program or project is also included.

As a result of the exclusion, activists believed that the government's responsibility would only exist on paper. After the Prime Minister, Mr. Manmohan Singh spoke out against the exclusion, the situation was finally resolved. However, the subject is back in the news today. As of today, the Act after the amendment excludes file notings from the category of information that may be legally requested.

### • Indian Army's Refusal to Grant Information

Once more in December 2005, the Indian Army rejected a request for information on the grounds that it touched on matters of national security. Even though Section 24 of the Act exempts only 18 entities from its application, the Army was not one of them. However, the army changed its position when the PM intervened and stated that the Army cannot deny until a government notification to that effect comes.

### • Assaults on RTI activists

According to data from the Commonwealth Human Rights Initiative (CHRI), there have been over 310 instances of people being attacked, subjected to physical or mental harassment, or having their property damaged as a result of information requests made through the RTI. More than 50 alleged murders and two suicides that were connected to RTI applications are revealed by the data. There is general agreement that the RTI Act has to be amended in order to protect persons who request information under the Act. The Asian Centre for

282 S. Muthumalai v. Central Public Information Officer, CIC/CICOM/A/2020/138965, (2020).

283 Association For Democratic V Union Of India And Anr., AIR 2001, Delhi 126, (2001).

284 Girish Ramchandra Deshpande vs Cen. Information Commr. & Ors, SLP (Civil) No. 27734, (2012).

Human Rights suggests adding a unique chapter to the Act.

#### • Intellectual property rights

Many members of civil society have recently accused government entities of occasionally invoking intellectual property rights to undermine the Right to Information Act.

Most notable are:

- The right to information regarding the demonetization was refused by the RBI, who cited intellectual property laws<sup>285</sup>
- After more than 8 months of waiting, the Uttar Pradesh Irrigation Department denied the right to information regarding the ongoing Gomti Riverfront Development Project

#### • Banned people from filing RTI

Ten people were prohibited from submitting RTI requests by the Gujarat State Information Commission because they were "harassing government officials" by submitting many requests, according to the commission. There are no laws that allow commissions to prohibit RTI submission. The ban was called "wholly unconstitutional" because of this.

#### • PM CARES Fund

According to the Centre, the PM CARES Fund does not qualify as a public entity for purposes of RTI and only accepts voluntary contributions from individuals and organisations.<sup>286</sup>

#### • Govt refusal to share 'secret' Agnipath file under RTI

Activist Durve lodged an RTI request seeking information on inter-ministerial deliberations regarding the pay packages... and allowances offered to Agniveers under the scheme.

However, Durve's request, however, was turned down by the Department of Military Affairs' information officer.<sup>287</sup>

#### 10) PROBLEMS AROUND RTI ACT

The Right to Information Act's intended goal of making government transparent and accountable, according to academics, is failing as a result of RTI requests being denied and bureaucratic systems being overwhelmed by millions of requests.

Due to the burdensome and legalistic bureaucratic filing requirements (including the use of technocratic terminology), many RTIs are turned down by the government. Sixty percent of RTI appeals submitted to Delhi's information commissioners are denied for a variety of reasons, such as the absence of a list of dates or an index of the documents attached. The right to information is inaccessible due to this administrative barrier, which is worse for people without access to higher education or information. To file their RTIs, many citizens are forced to contact NGOs, RTI activists, or attorneys.

#### 11) RECOMMENDATIONS FOR EFFECTIVE RTI ACT IMPLEMENTATION

- Government should allocate funds for the publicity of the RTI Act.
- NGOs and CSC groups should make awareness campaigns, and RTI ACT should be included in the school syllabus to arouse curiosity among children.
- Government offices should be in charge of monitoring and enforcing RTI laws, setting up training programs, modernizing and digitizing record keeping, and making it easier for people to apply.
- For the safety of RTI activists and users, a strong monitoring and evaluation system, coordination among state information commissioners, and a

<sup>285</sup> The Hindu, <https://www.thehindu.com/business/Economy/RBI-refuses-to-give-reasons-behind-demonetisation/article16958525.ece>

<sup>286</sup> Economic Times, <https://economictimes.indiatimes.com/news/india/pm-cares-fund-not-of-govt-third-party-info-cant-be-revealed-under-rti-delhi-hc-told/articleshow/97492245.cms>

<sup>287</sup> <https://www.deccanherald.com/national/govt-refusal-to-share-secret-agnipath-file-under-rti-may-rest-on-flimsy-grounds-1144152.html>

strengthening of technical and IT skills must be maintained.

- Integration of various websites of all information commissions through a common IT gateway or national portal on RTI, and Chief Information Commissioners should interact frequently with all information commissioners.
- The RTI Act should be amended to eliminate exemptions for security and intelligence agencies.

## 12) CONCLUSION

The RTI Act of 2005 was enacted by the Indian government to bring transparency to a corrupt, secretive, and intrigue-ridden environment. Indian citizens have utilized it effectively to bring about both major and minor enhancements. It has offered a once-in-a-generation opportunity to eradicate corruption and the culture of transparency from Indian government activities, paving the way for governance reform, greater accountability, and greater openness. However, much work remains before the RTI's maximum potential can be realized. In order to motivate the demand side, i.e., civil society, the Indian government should improve infrastructure and guarantee rapid processing of RTI cases.

To ensure the correct execution of the Act, both the information provider and the information seeker must develop their capacities. The present need is to ensure the correct execution of the Act by removing the obstacles, thereby ensuring social, political, and economic equity.

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