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“THE RIGHT TO INFORMATION ACT, 2005 AS A TOOL FOR THE PROTECTION AND PROMOTION OF HUMAN RIGHTS IN INDIA.”

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Abstract

It is undeniable that the RTI Act of 2005 was established with the clear aim of granting citizens in India a legal right to access information controlled by the government. This includes the ability to request information from Central and State Governments, local bodies, and other relevant authorities as a fundamental right. The intention behind this legislation is to Foster transparency and accountability within Government and Public institutions, which in turn can Constitutional Institutions and, with certain exemption, applies universally to all Public authorities.

However, unreasonable and impractical requests for the disclosure of all types of information especially those not related to transparency and accountability in public authority operations or the fight against corruption can be counterproductive. Such demands may hinder administrative efficiency, causing the executive to become overwhelmed with the unproductive task of gathering and providing information. It is crucial that the Act is not misused or exploited, transforming into a means to obstruct national development and integration, or to disrupt the peace, tranquillity, and harmony among citizens. Furthermore, it should not saved as a weapon of oppression or intimidation against honest officials who are committed to fulfilling their responsibilities. The nation must avoid a situation where 75% of public authority staff dedicates 75% of their time to collecting and provisions information to applicants, rather than performing their essential duties. The potential penalties under the RTI Act and the pressures from authorities should not compel employees of public authorities to prioritize ‘information provisions’ overwhelmed their regular responsibilities.

The right to information is a fundamental and widely recognized right, yet it is not without its constraints. This right comes with certain limitations. It is governed by a dual framework of checks. Firstly, the right is bound by the restrictions outlined in the Act, and secondly, it is also subject to the constitutional limitations derived from Article 21 of the Constitution. Therefore,

when a public authority invokes provisos related to exemptions, non-accountability, or violation of Article 21 in response to a request for information, the information Commission must carefully consider and objectively assess whether the claimed exemption is justified based on the specifics of the case.

Introduction-

The primary aim of the Right to Information Act, 2005 is to Foster an informed citizenry, which is essential for the effective operation of a democratic society¹. This is crucial for combating corruption and ensuring that governments are accountable to the people they serve.

In essence, the RTI Act is designed to fulfil two key objectives

- To implement the right to know that is already guaranteed under Article 19(1)(a) of the Indian Constitution²
- To enhance access to information, promoting maximum transparency while minimizing exemptions.

The Right to Information Act establishes a practical framework for citizens to obtain information that is under the Control of public authorities.

The recognition of the Right to Information as a fundamental right under Article 19(1) of the Indian Constitution has been affirmed by various courts, particularly following landmark rulings in cases such as Raj Narain's and S.P. Gupta's.³ The goal of the RTI Act, 2005 is to empower citizens to hold all governments entities accountable.

The definition of information under the RTI Act, 2005 is void and inclusive. It encompasses "any material in any form", which refers to any information related to government affairs, including decisions, actions, plans, or schedules. Additionally, the Act provides a detailed definition that outlined the various types and formats of information accessible under the Right to Information Act. Specifically, Section 2(f) of the Act offers a comprehensive definition of 'information'⁴ that can be requested, which may extend beyond the original intent, objectives and spirit of the Act.

¹ Right to Information Act, No. 22 of 2005, pmbL., India Code (2005)

² State of U.P. v. Raj Narain, AIR 1975 SC 865 (India) (holding that the right to know is derived from the freedom of speech and expression under Article 19(1)(a) of the Constitution).

³ S.P. Gupta v. Union of India, 1981 Supp SCC 87 (India)

⁴ Right to Information Act No. 22 of 2005, India Code (2005)

The fundamental purpose of this beneficial legislation is to ensure that information is accessible to citizens regarding organizations that benefits from significant public funding. This guarantees that citizens can request and receive information about how public funds are utilized, promoting transparency and accountability in governance.

Although private organizations or institutions that reviewed significant funding, either directly or indirectly, from the government are classified as public authorities under the RTI Act, it is essential to recognize the nuances involved.

In contemporary constitutional democracies, it is a fundamental principle that citizens possess the right to be informed about governmental affairs. These governments, elected by the populace, are tasked with creating effective governance policies that prioritize the welfare of the citizens. However, like all rights, this right to information is not without its limitations. It is not an absolute right. In situations where public security is at stake, the need for secrecy can be justifiably asserted, as it serves the public interest to keep certain matters confidential and not widely shared.

The Delhi High Court, in the case of *Secretary General, Supreme Court of India v. Subhash Chandra Agrawal*⁵, notes that the right to information is a crucial component of the right to freedom of speech, yet it is subject to restrictions as outlined in Article 19(2). The actual disclosure of information cannot often clash with other Public interests, such as the efficient functioning of the government, the optimal allocation of limited fiscal resources, and the need to maintain the confidentiality of sensitive information. To balance these competing interests while upholding the democratic ideal, Section 8 was introduced to provide specific exemptions from the obligation to disclose information. Under Section 8 of the Right to Information Act, 2005, certain categories of information are exempted, meaning the Government is not required to provide information to any citizen those cases. Generally, all information should be accessible to citizens, but there are specific types of information that are safeguarded from disclosure. This approach aims to reconcile the public interest with the individual's Right to know.

While the Act aims to provide citizens with a progressive and participatory Right in a

⁵ Secretary General, Supreme Court of India v. Subhash Chandra Agrawal, (2010) 5 SCC 481

significant way, it is essential to align it with the broader national interest. The phrase 'Notwithstanding anything contained in this Act' indicates that this section serves as an exception to the general principles outlined in the Act, establishing that it is the duty of the PIO to furnish information to citizens unless directed otherwise by the Central or state information commission.

Objective of RTI Act,2005-

- Empowering citizens: the main goal of the RTI Act is to empower individuals by providing them with the right to access information maintained by public authorities. It strives to close the information gap between the government and its citizens, allowing individuals to make informed choices and engage actively in the democratic process.
- Ensuring transparency: The Act aims to promote transparency in government operations by making information accessible to the public⁶. It fosters openness and accountability, which in turn boosts public confidence in the governance system.
- Combating corruption: The RTI Act is an essential instrument for uncovering corruption and irregularities in public administration⁷. By empowering citizens to obtain information about government decisions, policies, and actions, it serves as a significant deterrent against corruption activities.

Provisions of the RTI Act,2005 –

- Right to Information: The RTI Act grants every citizen the authority to request information from public authorities. Citizens can submit written requests, Referred to as applications, to the designated Public Information Officer(PIO) of the relevant public authority. The Act guarantees that citizens can access documents, records, and other information maintained by public authorities.
- Process for filing requests: The Act details the process for submitting information requests. Citizens may present their applications on writing, either in English or the official language of their region, to the PIO. Additionally, the Act permits electronic submission of applications in specific situations.
- Designation of public information officers: Public authorities must appoint PIOs who are tasked with receiving and addressing information requests. These officers Act as

⁶ M.P. Jain v. S.N. Jain Principles of Administrative law.

⁷ B.P Singh Sehgal v. Transparency and right to information in India

the main point of contact for citizens seeking information.

- **Time frame for response:** The RTI Act stipulates a time frame within which the PIO is obligated to respond to the information request. Typically, the response should be given within 30 days from the date the application is received. On instances involving a third party, the PIO may extend the time frame to 45 days.
- **Exemptions:** While fostering transparency, the Act also acknowledges certain exemptions to the right to information. These exemptions are outlined in Section 8 and Section 9 of the Act and encompass issues related to national Security, sovereignty, commercial confidentiality, personal privacy, and specific privileged information.
- **Appellate mechanism:** The Act establishes an appellate mechanism to resolve grievance and ensure accountability. If the requested information is denied or the response is Inadequate, the applicant has the right to appeal to the designated appellate authority. Further appeals can be directed to the Information Commission at both central and state levels.

These provisions and objectives work together to support the primary aim of the RTI Act, which is to create a system of transparency, accountability and citizen engagement in governance. By empowering citizens with the right to access information and ensuring public authorities are held accountable, the Act seeks to cultivate a more transparent and responsible democratic framework.

Implementation and Challenges of RTI Act, 2005-

The execution of the Right to Information (RTI) Act has been a crucial initiative in India. Although the Act has significantly advanced transparency and accountability, its implementation has faced various challenges. This Section delves into the execution of the RTI Act and the challenges it faces:

- **Bureaucratic resistance:** A significant obstacle in the implementation of the RTI Act is the resistance from bureaucratic sectors. Certain government officials may view the Act as a threat to their authority and may try to obstruct the flow of information or delay responses to information requests. Such resistance can disrupt the effective operation of the Act and postpone the delivery of information to citizens.
- **Lack of awareness:** A critical challenge is the insufficient awareness among citizens regarding their rights under the RTI Act. Many individuals might not know how to give information requests or the extent of information they can access. This lack of

awareness diminishes the Act's potential impact and limits citizens involvement in holding public authorities accountable.

- **Delays in response:** The Act specifies a timeline within which the Public information officers (PIO) is required to respond to information requests. Nonetheless, there have been occasions where Delays in providing the requested information have caused frustration and hindered the effectiveness of the Act. These Delays can arise from several factors, such as bureaucratic inefficiencies or a high volume of information requests.
- **Non- compliance and insufficient proactive disclosure:** Although the RTI Act requires information to be provided upon request, instances of non- compliance by public authorities have been reported. Some authorities fail to follow the Act's guidelines, resulting in denied information or Inadequate responses. Furthermore, while the Act promotes proactive information disclosure by public authorities, the execution of this requirement has been inconsistent, restricting access to information without specific requests.
- **Overreacting exemptions:** The Act allows for certain exemptions regarding the right to information, including issues related to national Security, commercial confidentiality, and personal privacy. However, there are concerns that some public authorities may excessively apply or misuse these exemptions, which restricts access to information. Finding the right balance between transparency and protecting legitimate interests continues to be a challenge.
- **Capacity and resources:** To effectively implement the RTI Act, public authorities must have sufficient capacity and resources. This entails having trained Public Information Officers(PIOs), setting up proper information management systems, and ensuring timely responses to information requests. In some instances, limited resources and capacity issues within public authorities have created obstacles to the efficient implementation of the Act.

Measures like awareness campaigns aimed at educating citizens about their rights, capacity building for Public Information Officers(PIOs), streamlining processes to speed up information requests, and conducting regular monitoring and evaluation of implementation can effectively address these challenges and improve the efficiency of the RTI Act.

Impacts and outcomes of the RTI Act:

- **Uncovering corruption and irregularities:** A major impact of the RTI Act is its effectiveness in revealing corruption and irregularities within public administration. The Act has been pivotal in exposing cases of graft, abuse of power, and misappropriation of public funds. Citizens have leveraged the Act to obtain vital information that has triggered investigations, disciplinary measures, and the prosecution of corruption officials.
- **Strengthening government accountability:** The RTI Act has been essential in bolstered government accountability. It enables citizens to access information regarding government decisions, policies, and actions, thus promoting oversight and scrutiny. Public authorities are more vigilant in their decision-making, aware that their actions can be examined and challenged by informed citizens.
- **Encouraging citizen engagement:** The Act has empowered citizens to take an active role in governance and decision-making processes⁸. By granting access to information, citizens are better positioned to engage in policy discussions, interact with public authorities, and demand accountability. The Act has fostered public involvement in various areas, including environmental concerns, urban planning, and development initiatives.
- **Enhancing service delivery:** The RTI Act has positively influenced the improvement of service delivery by public authorities. Citizens have the ability to utilize the Act to obtain information regarding government services, entitlements, and benefits, thus holding authorities responsible for delivering effective and efficient services. The Act has proven successful in addressing complaints and ensuring that public services are provided in timely and transparent manner.
- **Enhancing transparency and openness:** The Act has played a crucial role in improving transparency and openness within government operations. It has fostered a culture of proactive information disclosure by public authorities, guaranteeing that pertinent information is accessible to the public without the need for specific requests. Additionally, the Act has bolstered transparency in decision-making processes, which in turn cultivate public trust in the government.
- **Empowering marginalized communities:** The RTI Act has played a vital role in reinforcing democratic processes and governance in India. By encouraging transparency, accountability, and citizen engagement, the Act uphold democratic

⁸ Dr. J.N. Barowalia, Right to Information: Concept, Law and Practice (Regal Publication, 2010)

principles and values. It nurtures a more informed and active citizenry, resulting in improved decision-making, policy development, and governance outcomes.

Despite the significant impacts of the RTI Act, challenged persists in implementation and the realization of its full potential. These challenges encompass bureaucratic resistance, delays in responses, non-compliance, and the ongoing need for awareness and capacity-building initiatives.

Right to Information in cases of Police FIR's-

Life and personal freedom are the most valuable assets of an individual. The inherent desire for freedom is a fundamental aspect of every human being. Valuing life, liberty, and property is not just about guidelines or a policy of the State; it is a crucial necessity for any civilized society.

The BNSS framework does not allow for the accused to receive a copy of the FIR until all Magistrate begins proceedings under Section 230 of the BNSS. However, Section 173 of BNSS mandates that the officer in charge of the police station must send a report to the Magistrate detailing the information specified in Section 173(2). Additionally, Section 173(6) grants the police officer the authority to request the magistrate to withhold part of the statement from the accused, provided they give valid reasons for doing so. When an FIR is filed against an individual, the police are required to commence and investigation under Section 157 of the BNSS. If any officer in charge of a police station has reason to believe that an offence has been committed, which they are authorized to investigate under Section 175, they must promptly report this to magistrate who can take cognizance of the offence based on the police report. The Code also gives the police officer the power to arrest the accused. Section 482 of the BNSS stated that if a person believes they may be arrested for a non-bailable offence, they can petition the High Court or the Court of Session for a Directive.

To effectively exercise the rights granted to the accused under Section 482 of BNSS, obtaining a copy of FIR is both relevant and essential. An individual accused of a cognizable offence, as indicated by the registration of the FIR at the police station, cannot be denied the right to access the contents of the FIR. This access is vital for them to mount a defence and take appropriate legal actions as permitted by law.

Approximately a hundred years ago, the Patna high court in the case of Dhanpat v.

Emperor(AIR 1917 Pat 625)⁹ established the following principle:

“It is crucial that an accused individual receives a copy of the FIR as soon as possible so that he can benefit from legal counsel”. A division Bench of the Allahabad High Court in Shyam Lal v. State of U.P. and others thoroughly examined whether an accused has the right to obtain authoritative copy of the FIR, which can be acquired from the police station, the office of the Superintendent of Police, of the magistrate. In paraphrase 1 and 2, it was stated:

“1. The Court determined that the accused has the right to understand what is stated in the first information report to connect it with the alleged crime, enabling him to safeguard his interests. Therefore, he is entitled to a copy of it. He can obtain it from (i). The police station, (ii) the office of the Superintendent of Police, or (iii) the C.J.M./Magistrate, In charge/ Special judge, depending on his preference. Our nation is welfare democratic state. It is a government by the people, for the people, as Abraham Lincoln famously said. It is widely recognized that the offices of the Superintendent of Police and the Courts are typically located at a considerable distance from the Police Stations. Consider the situation of an individual who must travel a long way to obtain a certified copy of the FIR to understand its content and prepare his defence.

2. Therefore, it is unequivocal that an accused person, or anyone who believed their name appears in a direct information report, can submit an application or have an application submitted through their representative for a certified copy of the first information report, either to the S.O./S.H.O of the police station, the officer of the Superintendent of Police, or the C.J.M or the Special Judge where the first information report is maintained or forwarded by the relevant Police station.”

When the Section 482 of BNSS is recognized as a means to protect an individual’s freedom, it follows that all methods to ensure that freedom must be accessible to the accused, thereby emphasizing their right to obtain a copy of the FIR. Consequently, the court affirms that the accused is entitled to receive a copy of the FIR. The accused may submit a request to the relevant Police station, the office of the Superintendent of Police, or the appropriate Magistrate’s Court, which must be provided to them promptly within forty-eight (48) hours.

The RTI Act of 2005 has legally acknowledged the right to information for all citizens. Any individual can also request a copy of the FIR under the RTI Act, 2005. If the Police authorities

⁹ Dhanpat v. Emperor, AIR 1917 Pat 625 (India)

assert an exemption under Section 8(1) of the RTI Act of 2005, it is a matter that must be resolved by the Police authorities through a decision made by the competent authority. Of no such decision is made to invoke the exemption under Section 8 of the 2005 Act, the police are required to furnish a copy of the FIR upon receiving an application under the RTI Act of 2005.

Conclusion-

In summary, the Right to Information (RTI) Act has profoundly transformed the landscape of transparency, accountability, and citizen empowerment in India. By granting individuals the right to access information from public authorities, the Act has effectively bridged the information divide between the government and its citizens. Its objectives and provisions are designed to promote transparency, combat corruption, and encourage active citizen participation in the democratic process. Although the implementation of the RTI Act has encountered obstacles such as bureaucratic resistance, lack of awareness, delays in responses, non-compliance, and capacity issues it has nonetheless achieved remarkable results. The Act has unveiled corruption and irregularities, bolstered government accountability, facilitated citizen engagement, improved service delivery, enhanced transparency openness, and empowered marginalized communities. Evaluating the effectiveness of the RTI Act requires an assessment of its impact on access to information, transparency, accountability, citizen engagement, corruption control, awareness, and the involvement of marginalized groups. Continuous monitoring, evaluation, and feedback mechanisms are vital for identifying areas needing improvement and for reinforcing the Act's implementation. Public Awareness and participation are essential components of the RTI Act. Assessing the level of public knowledge about the Act and the degree of citizen involvement in utilizing its provisions is crucial for measuring its effectiveness. Evaluating awareness campaigns, understanding of rights and procedures, access to information, grievance redressal, Public interest litigation, civil society organization involvement, media engagement, and the empowerment of marginalized communities offers valuable insights into Public engagement and advocacy for transparency and accountability. The RTI Act has played a significant role in nurturing a more open and accountable democratic system. It has enabled citizens, boosted government transparency, and fostered citizen involvement in governance. Tackling implementation challenges and further raising Public awareness and participation will enhance the Act's effectiveness and further advance transparency, accountability, and citizen empowerment within India's governance framework.

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