



Research Paper

Need For the Strong Implementation of Right To Information Act

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Abstract

Human civilization has always been inclined towards attainment of power. Power can be defined in various forms; depending upon the context it suits, for say; for an entrepreneur capital is power, for a politician influence is power and so on. If we talk about politics it's again a struggle for power. Today, we live in neo-modern age or some thinkers might even contend that we live in an Information age where knowledge and information is considered as the most potent intangible assets which can even buy money. In India, we follow a democratic republic form of government which represents will of citizens. Under this form of government, it is very important that people should be aware of political agendas, functions of various governmental bodies, welfare schemes, policies and Et cetera. Meaningful substantive democracy ought to be founded on the notion of an informed public competent to participate thoughtfully and actively in the governance of the country.

Democratic government stands on two pillars namely; translucency and reasonable accountability as it is the fundamental goal of a democratic government to put peoples will into action and be answerable to people for the same. Thus, an easy and reliable access to information for citizens is a paramount requisite of a democratic republic and the Right to Information Act, 2005 aims to suffice the same.

Keywords: Information, Disclosure, Governance, Secrecy

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I. Introduction

“The right to information or Access to information is basic to the democratic way of life. In fact, real democracy cannot function without a free and unfettered exercise of this right.” -Justice Bhagwati

Even before the rising vacancies in Central and State Information Commissions, the delay in responding to second appeals was killing the spirit of the Right to Information Act. And now, with the non-appointment of chiefs at the Centre and in several states, besides leaving five positions vacant in the CIC, the RTI is facing a deep crisis, even as the Act completed 16 turbulent years on October 12, 2021.¹

The movement for transparency and access to justice is suffering since second appeals and complaints are languishing in the information commissions for indefinite periods.² The commissions, either because of vacancies or pendency, are not adhering to timelines. There is no time-bound disclosure.³ With around 40,000 second appeals and complaints pending at the CIC and around two lakh all over the state ICs, the implementation of the RTI is disappointing.⁴

¹ M. Sridhar Acharyulu, *It's Been 15 Years Since RTI Act Was Passed, But Is it Really Working?*, The Wire (Oct. 19, 2020), <https://thewire.in/rights/rti-act-15-years>.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

In the constitutional frame of structuring the Supreme Court, it is not mentioned that senior-most judge should become the chief justice. Installing the senior judge as the chief is a constitutional convention, which cannot be breached.⁵ Fortunately, successive governments have filled the office of the chief justice of India promptly, without leaving it vacant even for a day. Unfortunately, that is not the case in high courts. Several high courts are left without chief justices for many days and compelled to function under acting chief justices.⁶

The institution of the Central Information Commission is similarly important, though not at the same level as the Supreme Court is. The CIC and SICs are formed under the statute of the RTI Act, and hence called statutory institutions.⁷ But they implement a constitutionally guaranteed right to information evolved from rights under Articles 19(1)(a), 14 and 21. They should be given the same importance as a constitutional institution is given.⁸

In democratic countries at the present moment, emphasis is on open government. Participation in government by the people is regarded as an important aspect of democracy and people cannot participate unless they have information. A modern democratic government being answerable to the people. The peoples have the right to know what policies and programs, how and why are being followed by the government. Accountability, Transparency, participation is the key element of good governance. Transparency means that information should be provided in easily understandable forms. That it should be freely available and directly accessible to those who will be affected by governance policies and practices, as well as the outcomes resulting there from.

Accountability is a key tenet of good governance. Government should be accountable to the people who is accountable for what should be documented in policy statements. In general or government/organization should be accountable to those who will be affected by its decisions or actions. Participation by both men and women either directly or through legitimate representative is a key cornerstone of good governance. Participation needs to be informed and organized, including freedom of expression and assiduous concern for the best interests of the organization and society in general. Democracy becomes meaningful only when people have a sense of participation in the governance.

In democracy the greater the access to information the greater the responsiveness of government. the Right to information and freedom of expression have been recognized as Fundamental Right. It is essential for the discovery of truth and transparency. The time taken to operationalise the act was inadequate to change the mindset of the people in government, create infrastructure, develop new processes and build capacity to deliver information under this Act. This has led to implementation issues.

Right to Information Act, 2005 is aimed at transcending one step closer in proximity to the open society, where the State is highly transparent in nature and consequently progresses towards strengthening the democracy.⁹ When citizens gain the knowledge of how the Government is functioning, it enables them to take a better judgment on its real time implementation. Right to Information Act, which is derived from Right to Life of the Constitution of India, enables the Right to question.¹⁰ Art. 19(1)¹¹ of the Indian Constitution specifies Right to Information is a part of Fundamental Rights of citizens. It says that every citizen has freedom of speech and expression.

⁵ Prof. (Dr.) Madabhushi Sridhar, *Paralysis In Hearing Of RTI Appeals Without Chiefs & With Increasing Vacancie*, Live Law (Oct. 23, 2020), <https://www.livelaw.in/columns/paralysis-in-hearing-of-rti-appeals-without-chiefs-with-increasing-vacancies-164877>.

⁶ *Ibid.*

⁷ *Supra* Note 1.

⁸ *Ibid.*

⁹ SANJIV, STUDY ON CONSTRAINTS FACED BY RTI ACTIVISTS IN TELENGANA, Department of Personnel and Training Ministry of Personnel Public Grievances and Pensions, at 7 (2016).

¹⁰ *Supra* Note 9.

¹¹ INDIA CONST. art. 19, cl. 1. ((1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(g) to practise any profession, or to carry on any occupation, trade or business.)

https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2019).

In **Raj Narain v. State of U.P.**¹², it was held by the Supreme Court that people cannot speak unless they know. Hence, the Right to Information is embedded in Art. 19. It was also said in the same case that in Indian democracy, people are the masters, which gives them the right to know about the functioning of the government. RTI provides machinery for exercising this right.¹³

Ironically, the Act whilst aimed at improving implementation of key Government policies suffers in the key implementation phase.¹⁴ There was lot of excitement amongst members of public when the act was introduced in 2005. The perception that this Act alone might be the solution to the corruption and lethargy of Indian Bureaucracy is slowly replaced by the cynicism.¹⁵ This view gains further ground, when the incidents of not receiving information, and incidents of abuse faced by the Information seekers outnumber the success stories of the Act.¹⁶

Challenges to Archetypal Democracy

The inability to provide effective governance and semblance of justice to the poor and marginalized has its own consequences.¹⁷ Apart from the suffering that it imposes on the citizens of India, it has also fostered a violent response. From the late 1960s, there has been a festering armed revolution in parts of India. Originally known as Naxalism, after the Naxalbari village of West Bengal from where it originated, a new and somewhat transformed version of the armed "revolution" is now more popularly known as Maoism.¹⁸

Recently a few years back, the Prime Minister declared Maoism the greatest threat to India's internal security.¹⁹ The popularity of Maoism has ebbed and waned over the years. In the early 1990s, with the opening up of the economy, many believed that corruption and the poor delivery of services could now be tackled through the three pillars of the new economic order: privatization, liberalization, and globalization.

The dismantling of the "license raj"²⁰ and the inclusion of the private sector into core economic activities were seen as the way to break the nexus between the corrupt bureaucrat and politician, and deliver essential services and economic growth to the citizens of India. However, nearly twenty years down the line, though the economy has grown, the stock exchange is doing well and India has all but weathered the global economic meltdown, the plight of the poor and the marginalized seems no better. All that seems to have changed is that whereas earlier Maoists were fighting against the mis-governance of the state, they now fight against the usurping of natural resources and land by corporations intent on building factories, mining natural resources, and displacing local populations.²¹

From these modest beginnings grew the movement for the right to information, a movement that could promise an alternative to the gun. But is the RTI movement really an alternative to the armed struggles that threaten many parts of India? To answer this question, one has to look at the genesis and the outcome of both the armed struggles and the alternate, peaceful, movements in India.²² One common thread that seems to run through many struggles and movements is that they arise out of a sense of acute frustration among people who feel that their legitimate demands and grievances are being deliberately ignored by the government. On the other hand, movements like the RTI movement try and make the system face up to its own contradictions and try and force the state to respond to the demands of the people.²³

¹² AIR 1975 SC 865 (*India*), Hiteshi Agarwal, *Key issues and constraints in the implementation of RTI, Act, 2005*, Racolb Legal (June 16, 2020), <http://racolblegal.com/key-issues-and-constraints-in-implementation-of-rti-act-2005/>.

¹³ Hiteshi Agarwal, *Key issues and constraints in the implementation of RTI, Act, 2005*, Racolb Legal (June 16, 2020), <http://racolblegal.com/key-issues-and-constraints-in-implementation-of-rti-act-2005/>.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ SHEKHAR SINGH, *TRANSPARENT GOVERNANCE IN SOUTH ASIA* 44-78 (2011).

¹⁸ *See*, Shekhar, *Supra* Note 17.

¹⁹ PM warns of failure to tackle Maoist 'menace', Live Mint (Sep 15, 2009), www.livemint.com/2009/09/15114802/PM-warns-of-failure-to-tackle.html.

²⁰ The dismantling of government control and regulation in favor of private enterprise.

²¹ *Ibid.*

²² *Id.* at 18.

²³ *Ibid.*

Need for Right to Information Act

In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by countries, intergovernmental organizations, civil society and the people.²⁴ The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The right to information forms the crucial underpinning of participatory democracy-it is essential to ensure accountability and good governance. Greater the access of the citizen to information, greater the responsiveness of government to community needs.²⁵ Alternatively, the more restrictions that are placed on access, the greater will be the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights as citizens or make informed choices.²⁶

The free flow of information in India remains severely restricted by three factors:

- i. The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923;
- ii. The pervasive culture of secrecy and arrogance within the bureaucracy; and
- iii. The low levels of literacy and rights awareness amongst India's people.

The primary power of the right to information is the fact that it empowers individual Citizens to requisition information. Hence without necessarily forming pressure groups or associations, it puts power directly into the hands of the foundation of democracy-the citizen.²⁷

In the Constitution, Article 19 has been interpreted to mean that right to information is one of the essential ingredients of Article 19(1).²⁸ After going through Article 19 of the Constitution, it is pertinent to note that the interpretation of the provisions of the Constitution is the duty of the Supreme Court of India and the law declared by the Supreme Court is binding under Article 141 of the Constitution which reads as under: "[T]he law declared by the supreme court shall be binding on all courts within the territory of India."²⁹ When we come to the interpretation of Article 19 of the Constitution vis-a-vis right to information, the Supreme Court of India has laid down that right to information is a fundamental right under Article 19(1)(a) of the Constitution. The state under clause (2) of Article 19 of the Constitution, however, is entitled to impose reasonable restrictions, inter alia in the interest of the state.³⁰

Right of information is a facet of the freedom of "speech and expressions" as contained in Article 19(1)(a) of the Constitution. Right of information, thus, indisputably is a right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution.³¹ A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose.³² The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries.³³ They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.^{34,35}

Right to information and the recommendation by National Commission to Review the Working of the Constitution (NCRWC) -

The right to information is such basic right today that this right to information was considered by the National Commission to Review the Working of the Constitution (NCRWC) and as per its report under

²⁴ Dheeraj Mani, Right To Information Act - An Overview, Legal Service India (2017), https://www.legalserviceindia.com/articles/rti_dh.htm.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ S.P Gupta v. Union of India, A.I.R. 1982 S.C. 149 (*India*).

³⁰ People's Union for Civil Liberties v. Union of India, A.I.R. 2004 S.C.1442 (*India*).

³¹ Dr. Ritu Salaria, *Issues and constraints in implementation of the Right to Information Act, 2005*, Bharati Law Review 35-45 (2014).

³² Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal, A.I.R. 1995 S.C. 1236 (*India*).

³³ *Id.* at 31.

³⁴ State of Uttar Pradesh v. Raj Narain, A.I.R. 1975 S.C. 865 (*India*).

³⁵ *Id.* at 31.

Chairmanship of Justice M.N. Venkatachaliah, dated March 31, 2002, and it was held that right to information should be guaranteed and needs to be given real substance.³⁶

Accordingly NCRWC suggested that Article 19(1)(a) of the Constitution may be amended as:

(1) All citizens shall have the right-(a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas.³⁷

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or preventing the disclosure of information received in confidence except when required in public interest.³⁸

Reason for being right to information as a basic human right

The freedom of speech and expression includes right to acquire information and disseminate it. Freedom of speech and expression is necessary for self-fulfillment. It enables people to contribute to debates on social and moral issues.³⁹ It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavors of all sorts.⁴⁰ The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments.⁴¹

In one of the leading English case, Lord Simon of Glaisdale⁴² has said that the public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves.⁴³

Freedom of expression has four broad social purposes to serve:

- i. It helps an individual to attain self-fulfillment;⁴⁴
- ii. It assists in the discovery of truth;⁴⁵
- iii. It strengthens the capacity of an individual in participating in decision-making;⁴⁶ and
- iv. It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.⁴⁷

In our democratic set up the enlightenment of the electorate is very important for the fair functioning of the democracy i.e., for the fair election of the representatives of the power of the people of India.⁴⁸ It is we, the people of our country, who will decide the future of our country. So, it is possible only if we are well informed about the choices we have to make. It is only the knowledge, the information that can show us the right path.⁴⁹ All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration.⁵⁰

³⁶ National Commission to review the working of the Constitution, https://en.wikipedia.org/w/index.php?title=National_Commission_to_review_the_working_of_the_Constitution&oldid=997424512 (last visited Nov. 23, 2021).

³⁷ *Ibid.*

³⁸ *Supra* Note 36.

³⁹ Anthea J. Jeffery, *Free Speech and Press: An Absolute Right?*, 8(2) *Human Rights Quarterly* 197-226 (1986).

⁴⁰ *Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal*, A.I.R. 1995 S.C. 1236 (*India*).

⁴¹ *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, A.I.R. 1986 S.C. 515 (*India*).

⁴² *Attorney General v. Times Newspapers Ltd.*, (1973) 3 All. E.R. 54 (*United Kingdom*).

⁴³ *Id.* at 39.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Supra* Note 39.

⁴⁷ *Ibid.*

⁴⁸ DR. PUNIYA SHAILAJA, DR. P. RENGARAJAN & DR. VINOD KUMAR CHERUKI, *RIGHT TO INFORMATION ACT- TOOL IN STRENGTHENING DEMOCRACY IN INDIA* 91-102 (2020).

⁴⁹ *Ibid.*

⁵⁰ *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, A.I.R 1986 S.C. 515 (*India*).

The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1) (a).⁵¹ Therefore, disclosure of information in regard to the functioning of the government must be the rule and secrecy an exception.⁵² To conclude, right to information is a basic human right and even Article 19 of the International Covenant on Civil and Political Rights (ratified in 1978) declares that: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and to seek, and receive and impart information and ideas through any media and regardless of frontiers”. The Supreme Court of India while interpreting Article 19(1)(a) of Constitution. Right of expression, thus, indisputably is a fundamental right, a basic human right.⁵³

Access to information is at the foundation of a democracy. The right to know has been seen to be at the base of the democratic process and in *Romesh Thapar v. State of Madras*⁵⁴, the Supreme Court of India found the freedom of discussion to be included in Article 19(1)(a) of the Constitution and the freedom of press to be an aspect of the freedom of discussion so that members of a democratic society should be sufficiently informed to ‘be able to form their own beliefs and communicate them freely. The fundamental principle is the people’s right to know’. Later in many cases this view has been amplified by the Supreme Court.⁵⁵

Policy and Practice mismatch on the supply side

We all know that implementation of RTI is directly linked to the understanding of the provisions of the Act and the exercise of its right by the public, and concomitantly, availability of information and the capability of the supplier to do the needful in a timely manner.⁵⁶ The RTI Act provided the practical regime to guide through its implementation for both sides.

Emphasizing transparency as an overarching value, many countries have adopted a ‘push model’ of Freedom of Information (FOI) legislation that prioritises proactive disclosure of government information.⁵⁷ This is different from a ‘pull model’ that stresses citizen-initiated access or reactive disclosure. The RTI Act has through Section 4(1) (b) represents a clear move to a ‘push’ model, requiring government to suo motu part with information, and periodically publicize information.⁵⁸ The emphasis is on having a bias in favour of disclosure. It recognizes that information held by government is a public resource and should be made available to the public as a matter of course unless of course, to do so would be contravention to serving the public interest.⁵⁹

While Section 4(1)(b) guides through the pointers for disclosure, these are generally presumed to be the only items of disclosure which is not the case.⁶⁰ Further fresh guidelines have been issued (by DoPT on 15/4/2013), to include other more contentious items that need to be in the public domain.⁶¹ Hence the dilemma is not in what information to be disclosed but about what ought to, must and shall be disclosed. This brings us to the next question what are the parameters for withholding certain information and on what ‘stated grounds’ are we permitted to do so?⁶²

Areas of major concern in implementation of right to information

Access to information is critical for enabling citizens to exercise their voice, to effectively monitor and hold government to account, and to enter into informed dialogue about decisions which affect their lives.⁶³ It is seen as vital for empowering all citizens, including vulnerable and excluded people, to claim their broader rights and entitlements. But the potential contribution to good governance of access to information lies in both the

⁵¹ *Id.* at 48.

⁵² *Ibid.*

⁵³ *People’s Union for Civil Liberties v. Union of India*, A.I.R. 2004 S.C. 1442 (*India*).

⁵⁴ A.I.R. 1950 S.C. 124 (*India*).

⁵⁵ *Sakal Papers (P) Ltd., v. B.N. Sarpotdar*, A.I.R. 1962 S.C. 305; *Bennett Coleman & Co. v. Union of India*, A.I.R. 1973 S.C. 106; *Indian Express Newspapers (Bombay) P. Ltd., A.I.R. 1986 S.C. 515*; *Dinesh Trivedi v. Union of India*, (1997) 4 S.C.C. 306; *Vineet Narain v. Union of India*, (1998) 1 S.C.C. 226 (*India*).

⁵⁶ Ms Josyula Lakshmi, & Ms C. Lakshmi Prasanna, *A Decade of Right to Information Act – Review of the Past, Outlook for the Future* 1-13, https://www.cgg.gov.in/core/uploads/2017/07/A-Decade-of-Right-to-Information-Act_CIC.pdf (last visited Nov. 23, 2021).

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Huma Haider, Claire Mcloughlin, & Zoë Scott, *Communication and governance* (Aug, 2011), <https://gsdrc.org/topic-guides/communication-and-governance/access-to-information-and-its-constraints/>.

willingness of government to be transparent, as well as the ability of citizens to demand and use information – both of which may be constrained in low capacity settings.⁶⁴ A key question in this regard is: To what extent can access to information, and government transparency, advance the claims of poor and marginalized groups as well as the people in general and make governments accountable?⁶⁵

It is evident now that India's right to information laws have in a short period of time made the people aware of their rights in a whole new way. In developing countries, which face the twin challenges of corruption and inefficiency in governmental institutions and the need for rapid economic and social progress, the operation of right to information laws have shown they hold vast potential for transformation.⁶⁶ The RTI Act has given the citizens an instrument to directly challenge the system. So, during the course of its implementation over the period of time since its enforcement, many issues regarding its effective working have cropped up. These issues require concern and immediate remedial measures need to be adopted.⁶⁷

1. Issues faced by information seekers

- i. Faced in filing applications:** Sections 27(1), 28(1) and Section 6 of the RTI Act requires the PIOs to provide assistance to the applicant in drafting and submission of the application. But, practically there is non-availability of user guides for the applicants. The survey shows 52% of citizen surveyed requested availability of a user guide/ manual at all the Public Authorities.⁶⁸
- ii. Low public awareness and quality of awareness:** Section 26 provides provision regarding public awareness about how to exercise the rights under the RTI Act. Survey shows only 15% of the respondents were aware of the RTI Act.
- iii. Poor quality of information provided:** The survey shows that more than 75% of the citizens are dissatisfied with the quality of information being provided.
- iv. Constraints faced in inspection of records:** The discussion with the PIOs during the survey shows that 89% of the PIOs did not use the provision for inspection of records.⁶⁹

2. Issues faced by information suppliers

- i. Failure to provide information within 30 days:** During the study, more than 50% of the information seekers mentioned that it took more than 30 days to receive the information from the PIO. The experience of citizens from disadvantaged communities was similar to the overall experience levels.⁷⁰
- ii. Inadequate trained PIOs and First Appellate Authorities:** Findings of the report show that only 55% of surveyed PIOs had received RTI training. During discussions with the PIOs and the ATIs, it was highlighted that the frequent transfers/ changes in the PIOs adds to the challenge. This place additional workload on the training institutes entrusted with providing RTI training.⁷¹
- iii. Poor record management practices and obsolete guidelines:** Ineffective record management systems and procedures to collect information from field offices lead to delays in processing RTI applications. As per Section 4(1)(a) of the RTI Act, a public authority needs "to maintain all its records duty catalogued and indexed in a manner and form which facilitates the right to Information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated".⁷²
- iv. Non-availability of basic infrastructure:** The implementation of RTI requires the PIOs to provide information to the applicant through photocopies, soft copies etc. While these facilities are considered to be easily available at a district level, it is a challenge to get information from Block/ Panchayat level. PIOs highlight that the lack of infrastructure hampers the RTI implementation at the PA level.⁷³
- v. Lack of motivation among PIOs:** During the RTI workshops organized in the surveyed States, PIOs cited that there were no incentives for taking on the responsibility of a PIO; however penalties were imposed in cases of non-compliance. There is also a wide variance in the seniority levels of PIOs.
- vi. Ineffective implementation of Section 4(1)(b):** The internal processes within the public authorities are

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ Guide on the Right to Information Act, 2005, 2013, No. 1/32/2013-IR (*India*).

⁶⁹ *Ibid.*

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Supra* Note 68.

not defined, so as to take care of the requirement of the relevant suo-motu clauses. Various departments and ministries of government of India have in the last one year posted the requirements specified under Section 4(1)(b) on the website. However the status of the same in the state government departments and websites is significantly poor.

3. Issues faced at Information Commissions

- i. SIC Annual Reports:** During the survey it was also found that there is no centralized data base of RTI (at the State/Centre level) applicants. A centralized database of all RTI applicants with their information requests and responses from information providers would enable the information commission to publish more accurate numbers in the annual reports.⁷⁴
- ii. Perception of being lenient towards PIOs:** When the information which is not given within the stipulated time then if PIO as a person is not responsible, then it has to be a systemic failure within the public authority. However as highlighted in the next sub-section, the information commission does not possess adequate monitoring and review mechanism to track the failures of the Public Authorities in complying with the RTI Act.⁷⁵
- iii. Lack of monitoring and review mechanism:** There are inadequate processes and records available with the information commission to take such steps.⁷⁶
- iv. High level of pendency:** This is a grave situation; the pendency at the commission is a huge challenge. It is due to non optimal processes for disposing off appeals and complaints.⁷⁷
- v. Geographical spread of Information Commissions:** Some of the state governments have set up regional offices of their state commissions at various places in the state which saves lot of time and expenses. The CIC which has jurisdiction over RTI appeals relating to central government Public Authorities spread across the country is located in Delhi which results in wastage of considerable time/ expenses of PIOs and the appellants, who come from far off areas.⁷⁸
- vi. Variation in assumptions of role by SIC and State Governments:** It was found during the survey that there is no clear division of responsibilities between the SICs and Nodal Department in terms of monitoring the implementation of RTI Act.⁷⁹

4. Issues and constraints found in survey

While assessing the entire situation during the survey the following issues emerged:

- i.** The Public Authorities have to enhance the level of ownership to ensure the RTI delivery happens as per the spirit of the Act. They have to be ultimately responsible for identifying the gaps in their offices in the delivery of the information, thereafter identify the resources needed and appropriately budget for it.⁸⁰
- ii.** Maintenance of the information required to be furnished to the State Information Commission as per Section 25(3) the role of the Centre/State Government is to facilitate the Public Authorities in implementation of the Act. This can happen through providing support to Public Authorities for training, development of software applications, e-Training modules, generating awareness amongst citizens etc.⁸¹
- iii.** The role of the Information Commission has to go beyond the hearing of the appeals. As per the Act, they are expected to issue orders/directions to the Public Authorities to carry out their duties as per the mandate of the Act. However till the time Information Commission assumes the role of ensuring the compliance of the RTI Act by the various Public Authorities, there would not be any control mechanism. The State Government has to play a facilitative role to the Information Commission through issuance of supporting rules/orders to the Public Authorities.⁸²

Public Interest verses Protected Interests

The issue of public interest verses individual privacy and protected interests of third party have come to the fore on several occasions.⁸³ Several rulings of the various Information Commissions have pronounced and

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Supra* Note 68.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

⁸³ Third Party under RTI, Right to information wiki (Mar. 06, 2018), <https://righttoinformation.wiki/explanations/third-party>.

the Courts have affirmed it: “When the public interest outweighs private interest, the former shall prevail”⁸⁴. This is the thumb rule and an impregnable dictum. But one might ask, what are the justifiable parameters for indulgence in weighing public and private interests in obtaining a piece of information? Who is the authorized competent person in a Public Authority to make that decision and who states it?⁸⁵

When transparency is mandated for the functioning of the Government it forces public officials to be transparent to the citizens, raises questions about what information should be disclosed for the greater good.⁸⁶ High Court of Delhi in *UPSC v. R.K. Jain* held that merely because information that may be personal to a third party is held by a public authority, an applicant does not become entitled to access it, unless they said personal information has a relationship to a public activity of the third person (to whom it relates), or to public interest. If it is private information (i.e. it is personal information which impinges on the privacy of the third party), its disclosure would not be made unless larger public interest dictates it.⁸⁷

Individuals have a right of access to the information held about them. But when a person other than the individual whom it is about, seek such information, sub-clause (j) of Section 8(1) comes into play.⁸⁸ This is a qualified exemption. The PIO or the appellate authority can disclose information if they are satisfied that the larger public interest justifies such disclosure. But there are some restrictions on disclosure of information regarding victims of sexual offences and juveniles.⁸⁹

Exemptions

By now it is understood that ‘disclosure is the rule and exemption is an exception’. The categories of information enumerated as exempted from disclosure under Sec. 8, 9, 24 and Official Secrets Act (which is almost redundant by doctrine of eclipse), can be disclosed if public interest in disclosure outweighs the harm to protected interests.⁹⁰ An overview of the RTI Act, especially sections 6 to 8 seem to give an impression that the legislature has tried to balance and harmonize conflicting public and private rights and interests by building sufficient safeguards and exceptions to the general principles of disclosure under the Act (*Public Information Officer v. Andhra Pradesh Information Commission*⁹¹).⁹²

The exemptions that are sought to protect the sovereignty and security of the country, is harmful to the secular mosaic of the country, would be detrimental to the agreed protected commercial interest of the parties etc give enough indications on what not to be disclosed.⁹³ Not only do we have pointers to that, we are also guided by the Act and the rulings on the conditions for non-disclosure.⁹⁴ The observations of the Hon’ble Supreme Court⁹⁵ that information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability may be the guiding principle for demand based disclosure.⁹⁶

Limitation under Section 8 of the RTI Act, 2005

Sec 8 (1) mentions ten conditions which may exempt the Information officer from giving the information. Under Section 8(1)(a), a government entity is not to report any specifics of the defence, diplomatic, scientific or economic interests of India, its association with or incitement to an offence that would have an adverse effect on India’s sovereignty or integrity. Sovereignty means the supreme, utter and uncontrollable authority by which an independent state is ruled, as described in the Black Law Dictionary.⁹⁷ The principle of

⁸⁴ *Central Public Information Officer v. Subhash Chandra Agarwal*, AIR 2019 SC (*India*).

⁸⁵ *Id.* at 83.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ Deoul Pathak, Exemptions from disclosure of information under RTI, Legal Service India, <https://www.legalserviceindia.com/article/1345-Exemptions-from-disclosure-of-information-under-RTI-.html> (last visited Nov. 23, 2021).

⁹¹ 2009 (76) AIC 854 (AP) (*India*).

⁹² *Id.* at 90.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Supreme Court in Civil Appeal No.6454 of 2011, arising out of SLP [C] No.7526/2009 in the case of *CBSE & Anr Vs Aditya Bandopadhyay & Ors.*

⁹⁶ *Id.* at 90.

⁹⁷ Parveen Sayyed, Exemptions from disclosure of Information under Right to Information Act, 2005: A methodical Review Bharati Law Review (Dec, 2016), <http://docs.manupatra.in/newsline/articles/Upload/F8FF5487-7DF0-4F0F-9A11-74F3C2585AC9.pdf>.

sovereignty also requires independence from any external influence or dominance.⁹⁸ The word dignity denotes the state of being whole, whole or undiminished for the purposes of Clause (a) of Section 8(1). The Public Authority is under no duty to release details which may impact India's sovereignty and dignity prejudicially.⁹⁹ The definition of security is certainly broad and encompasses, among other aspects, political, economic, environmental, social and human aspects which affect the concept of security. Information related to India's national security could genuinely trigger damage if it were disclosed to the media.¹⁰⁰ The publication of information generating fear or threatening the quality of life may have a negative impact on the protection of the State and should therefore not be disclosed.¹⁰¹

Relations between countries can also be delicate, such that candid evaluations and behavioural review of other countries and strategies can quickly offend India's foreign interests and, in doing so, harm them.¹⁰² In *Delhi Metro Rail Corporation Ltd. v. Sudhir Vohra*,¹⁰³ since the information regarding the structural drawings were already revealed to the engineers, contractors, subcontractors and other people, it was held that the immunity from disclosure won't be attracted. And that the information had no issue with the economic and scientific interests of the Nation so it won't come under Sec 8 (1).¹⁰⁴

In *Union of India v. Central Information Commission and Anr.*¹⁰⁵, all letters submitted between 28 February 2002 and 15 March 2002 by the former President of India, Shri K.R. Narayanan, to the then Prime Minister, Shri A.B. Vajpayee¹⁰⁶, related to the "Gujarat riots" were demanded. In that case, the High Court of Delhi held that the production of all information on which ministerial advice was based enjoyed immunity from disclosure on the ground that, under the powers bestowed on it by the Constitution, the RTI Act enacted by the Legislature could not repeal the clause, extension or modification of the bar referred to in Article 74(2). The RTI Act should also be read in view of the provisions of the Indian Constitution.¹⁰⁷

Public - Private Sector Partnerships and RTI

These are times of liberalisation and the partnerships posed by the state with the private sector in large public infrastructure projects, is the order of the day. It has its inherent benefits in minimising the cost, manpower burden and time of the state. However it has repercussions for the government's accountability to people on the nature and mode of engagement with the private sector and the financial resources at stake. Under these circumstances, public must know how projects are planned to be executed, due diligence to be followed, and transparency and accountability in public transactions.¹⁰⁸

In the landmark decision of *Sarbajit Roy v. Delhi Electricity Regulatory Commission*, the Central Information Commission reaffirmed that privatized public utility companies continue to be within the RTI Act, notwithstanding their privatization. Private entities are covered under the RTI Act irrespective of whether they are substantially aided or funded by the Government.¹⁰⁹

With PSUs, corporations, state and central government agencies increasingly opting for Public Private Partnerships (PPP), all such projects¹¹⁰ are now open to public scrutiny. In private-public partnerships one can get access to public documents by putting a query to the 'public partner'.¹¹¹ However, balancing the right to know and commercial confidentiality is more relevant for private sector information, as compared to the government due to high sensitivity of information. Similarly, information pertaining to private entities can be obtained from government department or government regulator with which the private entity is registered or is

⁹⁸ *Supra* Note 97.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² What Type of Information Can You Legitimately Withhold: Exemptions, CHRI Right to information, https://www.humanrightsinitiative.org/programs/ai/rti/india/officials_guide/exemption.htm (last visited Nov. 16, 2021).

¹⁰³ AIR 2011 Delhi 167 (*India*).

¹⁰⁴ *Id.* at 98.

¹⁰⁵ 2012 (284) ELT 335 (Del.) (*India*).

¹⁰⁶ Law and Practice: A Digital eBook, <https://www.taxmanagementindia.com/> (last visited Nov. 16, 2021).

¹⁰⁷ *Supra* Note 98.

¹⁰⁸ Mukul Sharma, Extension of right to Information to private sector, academilike (Apr. 30, 2015), <https://www.lawctopus.com/academike/extension-right-information-private-sector/>.

¹⁰⁹ *Ibid.*

¹¹⁰ Guide on the Right to Information Act, 2005, 2013, No. 1/32/2013-IR (*India*) (OM of Department of Personnel and Training (DoPT) on April 15, 2013).

¹¹¹ *Id.* at 108.

being controlled or monitored.¹¹²

RTI Act and Whistleblowers -

‘Whistleblower’, not a new concept when talk about Right to Information. With time and again they kept people on edge, that their wrongdoings can be ‘leaked’/ ‘reveal’ on the price of keeping their own life at stake, but not enough to keep them on track. Whistleblowers are the people who disclose information against wrongdoers, whether done in public or private sectors, against an individual or group. They plays vital role in keeping public on loop, which is crucial as it helps them to decide who they will provide power in next elections. Mostly, disclosed information involves high profile people which mean higher the stakes. In order to protect their identity and security, Indian legislation enacted and enforced an act, “The Whistle Blowers Protection Act, 2014. The Act ensures identity protection to the source. But is it successful enough? Is it strongly implemented? Evidently, there are many whistleblowers that are now dead because they unveil the wrongs of others in the interest of nation security and public interest.

The Journalists working as whistleblowers to uncover the veil of scams, corruption, and unlawful acts or against morality face challenges. Well whistle-blowers isn’t a term which limit to someone’s profession. Anyone revealing information in public interest means to blow whistle on the “act”. Generally they are people who are on inside in the industry, organization, firm, office etc. Thereby the information has higher chances of being affirm.

“We the people”, constitutionally provide power to those selfish-beings who backstab in order to fill their pockets. And when veil lifts it’s of no surprise that politician, businessman and all those heavy bank accounts are the backbone of the scam/fraud/illegal/unlawful/offensive act. Right to Information Act is in dire need of strong implementation with amendments as people or rather citizen of India depends on the information it provide. The RTI Act was enforced when people realize that the power possess by the politician is something constitutionally provided by them and it’s important for them to know where their money goes, how country is run and what are the new policies government is planning to enforce.

With this RTI Act became an important tool for the whistleblowers to honk alert when they find an error or something that requires attention to balance the justice, equity and good conscience.

Implementation of Whistleblower Act gave sigh of relief to those who disclose the information but wasn’t enough. Although Act ensure the protection of identity but why the same is limited to information provided by sources with the identity and not on face of anonymity. Is the Act able enough to actually protect the identity? Why the Act is focused on revealing identity of source and not on the information it provide? Purpose of both Act may differ, Right to Information is focused on getting information from the authorities in power and position. Whistleblowers ensure that the power and position isn’t misused. These Saviors require shield of proper andstrict implementation of both the Acts in order to provide intel with no fear of losing their own life. Time and again whistleblowers that made disclosure regarding corruption in government sector, malpractices or criminal offences face harassment, threat, abuse and death. There are many examples such as Infosys Episode, Enron Case, NHA1 Scam, ICICI loan scam etc. wherein whistleblowers were unprotected of the consequences and face the very unexpected. It is understandable that in order to unveil future scams/unsolved mysteries it is essential to provide them safety and security. Contrary in 2015 an Amendment bill came on table according to which whistleblowers are restricted to disclose certain types of information mainly those fit in administration interests and secrecy Act. Such pointers on table show the malafide intent of the politicians/parliamentarian-seat holders to cloak their misdeed behind the bad-law.

It is essential to ensure that the law no more be taken for granted and strict implementation of Act be exercised to ensure the same. Rights of Whistleblowers working in interest of public shall cater to protection and safety.

International Perspective on Whistleblower’s Rights

Whistleblowers tell-tale is the same across globe. Existence of laws with the objective to protect them from the consequences or to reward the information providers is named differently across the continents but none proved to be as whistleblower-friendly as law makers claim them to be. United State of America, South Africa and UK etc. are some of the countries which have whistleblowers legislation. But it won’t be wrong to state that statute isn’t adequately strict, implying threat to their livelihood. United States of America wherein culture and beliefs is so modern, white collar crimes are believed to be higher in number, which lead to strict punishment and hawk-eyes on criminals. Still, the statute concerning whistleblowers isn’t ideal. Officials expect the citizen to talk-up with reference to matter subjecting to non-payment of taxes/ financial scams/corporate-fraud. The expectation is ethical as being the citizen of the country it is their duty to report wrong. But, what about the citizens who get unemployed or face situation of hostage due to the same? When will administration

¹¹² *Ibid.*

take the responsibility of those innocent families who act in public interest while abruptly disturbing their own? The reward they considerate, will it balance the settled job the person loose in the exchange of information? Or their identity and hovering risk on their family is just collateral damage? Isn't it the duty of the authorities to ensure that the whistleblower shall not be affected in any way? USA practices certain protection programs for the whistleblowers against the retaliation which they might suffer. Freedom of Information Act in USA gave right to its citizens to access information in possession of the federal government considering certain reasonable restrictions. Theoretically, the Act protects the whistleblowers against any retaliation. But, does it?

South Africa, is another country with weak implementation of law. Recently, Babita Deokaran, finance official, shot brutally for speaking as witness in an investigation involving matter of 332m rand of fraudulent contracts.¹¹³ Aforementioned incident is one among the thousand cases happen every now and then in some corner across the continents. Witnesses, Petitioners, social activist, victims, journalists, or whistleblowers, whenever people raise voice or blow whistle against the wrong, it is unlikely for them not to suffer.

Right to information is the right of citizens to know where the revenue is been used by government authorities, what policies are implemented and what contracts/agreements actually been abide by. Territories entitling different names suffer through same crimes and frauds, laws might be different, punishment might be strict or lenient but as in 'whistleblowers protection' they all suffer the same. The rights whistleblowers access isn't absolute, which frequently bring trouble on the table. It is the law which can guide but it is the implementation which can make it strictly abide.

Is Right to Information Still our Right?

It is the first time a government's attempt to amend the RTI Act entered the doors of Parliament and came out victorious. The RTI (Amendment) Bill, 2019 was tabled on July 19 by the Minister of State (MoS) in the Prime Minister's Office Jitendra Singh, who cited the government's belief in "*maximum governance, minimum government*" The bill, however, faced serious criticism from the Opposition, media, activists and the ordinary citizens—who alleged the government of sabotaging the citizens' right to information.^{114,115}

The opposition also demanded the bill be referred to a Select Committee for detailed deliberation, but all the protests went in vain. Although a similar attempt was made a year ago, the bill was not tabled in the parliament at the time. But with the NDA government coming with an overwhelming majority in the 17th Lok Sabha, it was able to get the bill passed despite the uproar.¹¹⁶

The RTI Act is believed to be one of the most progressive laws in the country since independence.¹¹⁷ It holds the reflection of the still-breathing remains of India's dying democracy. The soul of any democracy lies in the right of the citizens to question those in power. Without debate and dissent, the foundation of democracy will be hollow at its core.¹¹⁸ The Right to Information strengthens that foundation and has been enabling the people to keep a check on the arbitrary use of power by the governments with nearly 60 lakh applications being filed every year.¹¹⁹

The RTI Act (Amendment) Bill, 2019 gives the central government the power to set the salaries and the service conditions of the Information Commissioners both at central and state levels. By amending Section 13 of the RTI Act, 2005, the term of central Chief Information Commissioner and Information Commissioners—which was earlier set at five years (or until the age of 65, whichever is earlier)—will now be prescribed by the central government.¹²⁰

Also, the salaries and allowances of central Chief Information Commissioner and Information Commissioners—which were kept at par with the Chief Election Commissioners and Election Commissioners respectively—will now be determined by the central government. The same is the case with Section 16, which deals with the state-level Chief Information Commissioner and Information Commissioners.¹²¹

The reasons given by the NDA government to make this proposition of curtailing the autonomy of RTI authorities are shady and problematic. This article aims at highlighting the five major problems in the RTI Act

¹¹³ "South African whistle-blower: I don't feel safe", BBC News, 20th September 2021; <https://www.bbc.com/news/world-africa-58550717>.

¹¹⁴ *The Right to Information (Amendment) Bill, 2019*, PRS Legislative Research (Jul. 25, 2019), <https://prsindia.org/billtrack/the-right-to-information-amendment-bill-2019>.

¹¹⁵ Aastha Savyasachi, *Is The 'Right To Information' Still Our Right?*, Youth ki Awaaz (Aug. 5, 2019), <https://www.youthkiawaaz.com/2019/08/is-the-right-to-information-still-our-right/>.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Id.* at 113.

¹²¹ *Supra* Note 113.

(Amendment Bill), 2019. Also, it tries to point out that the reasons given by the government to back the bill are themselves contradictory.¹²²

1. The huge gap between the actions and words of the Government

The central government justified that the Information Commission is a statutory body that cannot be treated at par with the Election Commission, which is a constitutional body. But some actions of the NDA government in the past, unfortunately, do not match with its words now.¹²³

According to the Finance Act (June, 2017), the Modi government upgraded the salaries, allowances, eligibility criteria and the manner of appointment of the Chairpersons/Presiding Officers and Members of 19 Tribunals and Adjudicating Authorities Tribunals which include Central Administrative Tribunal, National Green Tribunal (NGT), Armed Forces Tribunal, Appellate Tribunal for Electricity, Railway Claims Tribunal, Intellectual Property Appellate Board, Debts Recovery Appellate Tribunal, Central Excise and Customs Tribunal, Telecom Disputes Settlement Appellate Tribunals, Securities Appellate Tribunal, Income Tax Appellate Tribunal, Authority on Advance Ruling and even the Film Certification Appellate Tribunal (FCAT) etc.¹²⁴ It is important to note that all of these tribunals were established under a specific law, and their members are not constitutional authorities.¹²⁵

The salaries of the Chairpersons of 17 of these 19 Tribunals were hiked to the same levels as that of the Election Commissioners, and the salaries of the members were upgraded to the levels of High Court judges. Also, we should note that the Chief Election Commissioner and Election Commissioners are entitled to draw the same level of salaries as judges of the Supreme Court of India (₹2,25,000). But on accessing the information regarding the salaries paid to them, we found out that they are continued to be paid ₹90,000. It raises doubt on whether their salaries have been upgraded or not. There is also a possibility that the information on the website has not been updated.¹²⁶

Another fact which casts doubt on the government's intention is that the salaries of the Chairpersons and members of the Statutory Tribunals mentioned above were upgraded even before the President of India gave his assent to the law which upgraded the salaries of the Supreme Court and High Court Judges who are constitutional authorities. And this law was gazetted in January 2018, six months after the salaries of the Statutory Tribunals were upgraded. So, choosing to upgrade the salaries of the statutory authorities before the constitutional authorities highlight the huge gap between the actions and words of the government.¹²⁷

2. RTI Act Amendment Bill, 2019 Violates the LCI Recommendations

The Law Commission of India (LCI) called for the harmonization of the salaries and allowances of many of the Statutory Tribunals.¹²⁸

This was recommended in a report "272nd Report on Assessment of Statutory Frameworks of Tribunals in India" released by LCI in October 2017.¹²⁹ The Central Government had already upgraded the salaries of the Chairpersons of the above-mentioned tribunals even before the report was released, and the salaries and allowances paid to the Information Commissioners were not discussed in the report. The salaries of the Information Commissioners were already kept at the same level as other statutory authorities thereby following the recommendation of LCI.¹³⁰

So this decision to treat the Information Commission differently because of the RTI Act Amendment Bill, 2019 violates the LCI recommendations.¹³¹

3. The Bill Fails To Comply With The Constitutional Right Of Every Citizen

Article 14 of the Constitution reads, "*The State shall not deny to any person equality before the law or equal protection of law within the territory of India*", this amendment may also violate this. The authorities of the Information Commission perform quasi-judicial functions much like the other Statutory Tribunals and

¹²² *Ibid.*

¹²³ Priscilla Jebaraj, Centre won't take Central Information Commission's orders seriously, *The Hindu* (July 24, 2019), <https://www.thehindu.com/news/national/centre-wont-take-central-information-commissions-orders-seriously/article28701866.ece>.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Supra* Note 122.

¹²⁷ *Ibid.*

¹²⁸ *Supra* Note 114.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

Adjudicating Authorities.¹³² Treating them differently does not pass the test of “intelligible differentia” which enables different treatment of unequal under Article 14.¹³³ So the new amendments in the RTI Act fail to comply with the constitutional right of every citizen to be treated equally before the law.

4. The Backbone Of The RTI Act Was Its Federal Structure

By vesting excessive powers with the central government, this amendment has killed the spirit of the people’s right to information.¹³⁴

5. The Bill Is A Clear Violation Of The 2014 Pre-Legislative Consultation Policy

The bill has been finalized without any consultation with the two primary stakeholders in this case: the citizenry and the Information Commissions. This is a clear violation of the 2014 Pre-Legislative Consultation Policy, which states that all the law-making exercises or amendments to the existing laws must be preceded by pre-legislative consultation.¹³⁵

The regimes till now were launching a two-pronged attack on the RTI Act. On the one hand, they were trying to amend the Act, while on the other the murders and the assaults on the RTI activists were going on rampantly. This story has been continuing since 2005. But with this amendment, the picture has changed altogether.¹³⁶

For the first time, the four senior-most judges of the Supreme Court held a press conference calling out to save the democracy. They declared that democracy in our country is at stake, and the Supreme Court needs to be preserved.

Most of the eminent economists holding the top ranks in the offices have withdrawn from their posts. Arvind Panagariya, the first Vice-Chairman of Niti Aayog who was a staunch supporter of Modi’s “Gujarat Model of Development” resigned in August 2017. Similarly, the then Chief Economic Advisor Arvind Subramanian also stepped down. A few months later, his book “Of Counsel: The Challenges of the Modi-Jaitley Economy” was released. The book described demonetization as a “*massive, draconian and monetary shock*”.

For the first time, CBI witnessed a tussle within the organization. There was a long-standing feud between CBI Director Alok Verma and the Special Director Rakesh Asthana. The Attorney General K.K. Venugopal told the apex court that the top two officials of CBI fought like Kilkenny cats and exposed India’s premier investigation agency to public ridicule.¹³⁷

The Election Commission also faced a serious crisis. Election Commissioner Ashok Lavasa decided to stay away from the meetings related to the Model Code of Conduct (MCC). He declared that he was forced to do so because his dissent on the clean chit given to PM Narendra Modi and then BJP President Amit Shah was not recorded.¹³⁸

From the Supreme Court to the Reserve Bank of India (RBI) to the Central Bureau of Investigation (CBI) to Election Commission of India (ECI), the storm has now reached the Information Commission.¹³⁹

The former Central Information Commissioner Sridhar Acharyulu called the amendment a “*stab in the back*” of the Central Information Commission and said that the RTI Act 2005 does not give executive the power to amend the salary and tenure of Information Commissioners. Acharyulu, who is famous for his pro-transparency orders in several high-profile cases, calls it a “*deathblow to the law*”.¹⁴⁰ He was the one who gave orders for the disclosure of Delhi University’s academic records of BA Pass students of 1978 batch (the year PM Modi graduated). It was he who had summoned the RBI Governor for not following Supreme Court on transparency. He alleges that the amendment will sabotage and undermine the autonomy of the Information Commission.¹⁴¹

The people’s Right to Information served as a deterrent to the misuse of power and has enabled the citizens to know about the “What, How and Where” of the decisions taken for them by the bureaucracy and the governments. It is the right of the people to gain information about the decisions which can change their lives forever.¹⁴²

¹³² *Supra* Note 114.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Supra* Note 114.

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

Roadmap to RTI

Implementation The roadmap to RTI implementation requires removal of inconsistencies in laws that need to be addressed and repealed. Proactive steps need to be taken to involve and indulge in capacitating the official machinery to submit to the requirements of the Act and to leverage technology to do the same.¹⁴³

Inconsistent laws and their repeal:

Some of the statutory provisions that must be repealed to facilitate increased space for openness in information area¹⁴⁴:

- a. Sec. 15 of The Census Act, 1948 (Act No. 37 of 1948, as amended in 1994) Records of census not open to inspection nor admissible in evidence.
- b. Sec. 57 of The Competition Act 2002- Restriction on disclosure of information: No information relating to any enterprise, being an information which has been obtained by or on behalf of [the Commission or the Appellate Tribunal] for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.
- c. Sec. 30 of The Bureau of Indian Standard Act, 1986-Any information obtained by an inspecting officer or the Bureau from any statement made or information supplied or any evidence given or from inspection made under the provisions of this Act shall be treated as confidential.
- d. Sec. 280 of the Income Tax Act, 1961 which provide that if a public servant furnishes any information or produces any record in contravention of the provisions of section 138(2) of the Income Tax Act, 1961, he or she will be punishable with imprisonment which may extend up to six months and shall be liable to a fine.

There is a need for bringing in complimentary legislations to RTI such as the Whistleblower Bill (Public Interest Disclosure and Protection for Persons Making the Disclosure Bill, 2010) in place so that safeguards are in place for information seekers that seek to protect public, community and social interests.¹⁴⁵

Digitization and Record keeping

The required level of proactive disclosure is not possible without appropriate record keeping, and this aspect needs focused attention. Record keeping practices may have to be reviewed from the point of view of comprehensive proactive disclosure requirements, especially through digital means.¹⁴⁶

What information should be mandatory to be digitally published? All information should be proactively disclosed unless there is a compelling and legal justification to the contrary. There is an urgent need for

- cataloguing and computerizing all records to disclose all or maximum information and periodic updating of dynamic information,
- Publication of service delivery standards and performance and grievance redressal mechanism.¹⁴⁷

Efforts at making all information available digitally in the public domain in conveniently accessible forms should be complemented by developing information kiosks at village/ ward levels where everyone can access digitally available information directly, or in an assisted manner.

Audit of *suo motu* disclosure:

Unless monitoring and enforcement is effective, no amount of guidelines on proactive disclosure will be useful. Although there is no penal provision under the Act for noncompliance, the Information Commissions have clear *suo motu* powers and responsibilities under the Act. The comprehensive oversight and advocacy role of the Information Commissions include investigation of complaints about RTI administration, review of access denial decisions, publication of RTI guidelines, and providing advice to government on information policy. Sec.18 (2) & (3) of the RTI Act provide that the Information Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, in deciding on all matters.

Appropriate directions for time-bound compliance should be issued against the concerned public authority and information audits by third party should be promoted, as a separate specialised process anchored by the Information Commissions.

¹⁴³ Ms Josyula Lakshmi, & Ms C. Lakshmi Prasanna, A Decade of Right to Information Act – Review of the Past, Outlook for the Future 1-13, https://www.cgg.gov.in/core/uploads/2017/07/A-Decade-of-Right-to-Information-Act_CIC.pdf (last visited Nov. 23, 2021).

¹⁴⁴ *Ibid.*

¹⁴⁵ *Supra* Note 142.

¹⁴⁶ *Ibid.*

¹⁴⁷ *Ibid.*

What can be done to address the limitations of the RTI Act?

So far we have discussed the grounds on which the RTI Act falls short and these grounds of limitations needs to be addressed and rectified to achieve the very objective of the RTI Act and to let the citizens enjoy the true essence of democracy by containing corruption, enjoy the accountability of government towards them and strictly monitor government's role as a watchdog and help the country speed up toward its multidimensional development.¹⁴⁸

There are few suggestions that can be applied to make the RTI Act more feasible:

1. There should be a uniform fee throughout the country for application and certified photocopies sought and no unnecessary documents should be added to make a hefty bill in order to intimidate the information seeker.¹⁴⁹
2. The Act should be amended to limit the power of state government and other competent authorities to make changes and in addition to that, the amendment should be made instructing all departments to display name of PIOs, APIOs, Appealing Authority, Mode of fee payment etc. in the best way possible so that every person of the society can understand it without any difficulty.¹⁵⁰
3. The Commission should be enforcing the Act more strictly especially when it comes to not following deadlines by the PIOs. The deliberate delay and furnishing of irrelevant information must be dealt with strict penalties as it amounts to refusal of information thus implicitly infringing the fundamental right of the citizen.¹⁵¹
4. To bridge the long duration of time from the very first appeal to reaching the commission in case of deliberate refusal from the PIO side, only one appeal should be kept in the process rather than two appeals.¹⁵²
5. Making that information public ultimately affects the public apart from very sensitive information which can prejudice national security.¹⁵³
6. The disposal rate of complaints should be handled as the prime concern. Creation of more vacancies and the hiring of more officers to hear appeals and complaints at the Commission level should be done as directed by the Hon'ble Supreme Court.¹⁵⁴
7. Regular awareness programs, *nukkad nataks* should be held to reach every end person of the democracy so that they can use their right at its fullest.¹⁵⁵
8. All information associated with RTI Act and its functioning must be made available in the local language considering the diverse nature of our country, India.¹⁵⁶
9. Education about the right to information/ right to know should be made mandatory at the school level in our new education policy to develop a sense of responsibility and vigilant citizenship in the forthcoming generation.¹⁵⁷
10. Use of technology in tracking, seeking, fee-paying (not everyone has digital banking services to resolve this photo of postal order signed and acknowledged by postmaster can be sent through the application as an attachment or through instant messenger applications like WhatsApp, telegram etc.) and delivering information should be appreciated to curb reluctant attitude of PIOs.¹⁵⁸

II. CONCLUSION

“Beware of he who would deny you access to information, for in his heart he dreams himself your master.”¹⁵⁹
Sid Meier

Although, there are many loopholes within the Act and in the implementation of the Act itself as discussed above. However, the RTI Act is one of the most important weapons in the hands of citizens to fight corruption and wrongdoing of authorities to keep the spirit of democracy bright and alive. RTI is also one of the greatest achievements in the history of revolutions in Indian democracy.

¹⁴⁸ Aman Singh, *Criticisms of the Right to Information Act, 2005*, iPleaders (July 21, 2021), <https://blog.iplayers.in/criticisms-right-information-act-2005-subjected/>.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Supra* Note 147.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

¹⁵⁸ *Ibid.*

¹⁵⁹ CHRIS McCUBBIN, DAVID LADYMAN, & SID MEIER, *SID MEIER'S ALPHA CENTAURI* (1999).

Even though there are several obstacles for poor and unaware people, still RTI plays an important role from getting a poor slum dweller his ration card through RTI to unearthing massive scams like 2G spectrum, Adarsh society scam, Commonwealth Games scam, Indian red cross society scam etc. There are many successful cases and also many unsuccessful cases. The Act needs proper review considering the current scenario and the parliament must take steps to fix the loopholes of the Act as observed and discussed thus far. Utilizing instant messengers and video conferencing platforms for hearing of complaints and appeals can bring instant positive changes by bringing down the backlogs and implementing digital solutions to make the information seeking-delivering process and RTI educating process smoother and effective are some of the suggestions which can be beneficial for public and commission mutually.