



**RIGHT TO INFORMATION ACT AND THE CHALLENGES FACED BY THE RTI USERS**

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**ABSTRACT**

Transparency is important for the Democracy form of government. It was a period, people were forced to abide and strictly follow the orders pronounced by the King or queen without questioning their authority. It is not that much easy to seek information in the monarchy or Authoritarianism forms of government. But as the result of evolution in law and human rights The right to Information concept is now an important pillar to uphold democracy.

**Key words:**

Transparency

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**INTRODUCTION**

The right to information legislation is not a new idea. This history can be traced from the 18th century. Sweden was the first country in the world to enact a law on freedom of information back in 1766. The Swedish Parliament 'Riksdag' enacted freedom of Press Act in the year 1766. The Act dealt with the official documents or records of the government that should be immediately made available on request free of charge to the public. This Act later became a part of the Constitution of Sweden, which insisted that "every Swedish citizen shall have free access to official documents" and public authorities must promptly respond to the request for open documents<sup>1</sup>.

Thomas Blanton made an observation, "Today, as a consequence of globalization the very concept of freedom of information is expanding from a purely moral stance as an indictment of secrecy, to include a moral value-neutral meaning as another form of more efficient administration of 20 government as a contributor to economic growth and the development of Information industries"<sup>2</sup> The evolution of the freedom of information have taken a transition from the past to ensure transparency and accountability in the system of governance.

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**REVIEW OF LITERATURE**

Harassment and murder of RTI applicants across the country is also a grave challenge, forcing the court to step in and to ask authorities to give special protection to RTI applicants. But the Centre is simply passing the buck to the law-enforcing machinery of state governments. (*Shanthanu nandan Sharma, 2013*)

In several commissions, despite large number of pending appeals and complaints, governments had failed to take steps to appoint information commissioners, thereby frustrating peoples right to know" (*Anajali bharadwaj 2019*)

**Right to Information: International perspective**

In 1946 during the first session of the UN general Assembly the resolution 59(1) stated that the freedom of information is a fundamental human right. In 1992 during the Rio declaration on Environment and Development it recognized the fact that access to information on the environment, including information held by public authorities, is the key to sustainable development and effective public participation in environmental governance<sup>3</sup>

The International Covenant on Civil and Political Rights in 1966. Article 19(1) of the Covenant provided that everyone shall have right to hold opinions without interference, whereas sub-clause (2) stated that: "everyone shall have right to freedom of expression which includes freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers, either orally or in writing, or in print, or in the form of art or through any other media." Sub-clause (3)

<sup>1</sup> Anders Chydenius Foundation , The world first freedom of information Act (2006)

<sup>2</sup> Thomas Blanton, The World's Right to Know, researchgate (2002),

<sup>3</sup> Krishna Pal Malik, Right to Information, ( Allahabad Law agency, 2013)

of Article 19 of the Covenant provides certain restrictions on rights specified in sub-clause (2) and states that the exercise of the rights provided for in subclause (2) of the Article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, as are provided by law and are necessary: a) for respect of the rights or reputations of other; or (b) for the protection of national security or public order, or public health morals.<sup>4</sup>

The proclamation of the Universal Declaration of Human Rights was adopted on December 10, 1948. In Article 19 of the Declaration it was stated that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and of association. Article 20 confers right of peaceful assembly, and of association and Article 21(a) confers the right to take part in the Government of the Country."<sup>5</sup> European Convention on Human Rights and Right to Information, 1950 .The European Convention on Human Rights adopted on 4 November, 1950 contained a provision on freedom of speech and expression and to impart information in its Article 10.

### **Right to Information in India**

The concept of Right to information in India can be traced from 1977. During the jantha party government in India working group was formed to take initiative in order to amend the official secrets Act 1923 and make a provision to disclose the information to the public to ensure transparency. In 1986 The Supreme court in the Mr.koolwal v. Jaipur municipal Corporation<sup>6</sup> case made an observation that Right to Information as without information the freedom of speech and expression ensured in Indian constitution cannot be fully used by the citizens.

In 1989 v.p. Singh expressed his interest to amend the official secrets act in India. Followed by this a grassroots level farmers movement namely MKSS Mazdoor kisan shakti Sangathan voiced out for the right to information. In 1996 NCPRI A national campaign for the People's Right to Information was launched and in 1997 Tamilnadu became the first state in India to pass law on Right to information. In 2000 Freedom of information bill in parliament was passed and later Right to information Act 2005 came into existence with more 150 amendments.

### **Right to Information Act 2005**

The Right to information Act came into existence with the following preamble An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith<sup>7</sup>.

Under this act The type of information which may be obtained is defined under section 2 (f)<sup>8</sup> of the Act as any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any

electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.<sup>9</sup> Though this Act ensures the provision for Information to the public by the government authorities there are many obstacles in receiving the information from them.

### **Laxity of public authorities**

In 2011, the Punjab-Haryana High Court while deciding on 24 civil writ petitions against the Central/State Information Commissioners had held that scope of definition of 'public authorities'<sup>10</sup>. But in many cases The public authorities do not give much importance to the RTI application filed. In Mr.Rakesh Kumar v. Under Secretary (Regulation), National Council for Teacher Education in Second Appeal<sup>11</sup> The central information Commission observed that there is complete negligence and laxity in the public authority in dealing with the RTI applications It was also observed that the conduct of respondent was against the objective of the RTI Act, 2005 which was came into existence to ensure transparency and effective access to the information.

### **Pendency of cases**

The greatest dilemma faced by the Indian judiciary is the pendency of cases similarly the cases pending before the State information commission and the central information commission is large in number. recently a study revealed that Pendency of Cases grew by 7,000 in five months<sup>12</sup>. And few activist also allege that many cases are wrongly clubbed together and disposed wrongfully without following the procedure. If the information commissioners at the both state and central are appointed as per the regulations made by the Supreme court then the number of pendency cases can be controlled.

### **Non imposition of penalties**

As per Section 20(1)<sup>13</sup> of the RTI Act, the Central Information Commission or the State information Commission, has the powers to impose a penalty on the public information officer who failed provide information to the RTI users. The penalty imposition will be after the second appeal based on the facts of the case. But in the previous year penalty should have been imposed in 68,900 cases but it was levied only in the 3% of the cases (2091 cases)<sup>14</sup>. This discloses the poor administration of the information commission in both the State and the central level. A study reveals that Tamilnadu is one among the state where no fine is imposed as penalty under the section 20(1) of the RTI Act.

### **Threat to RTI Users**

According to the commonwealth human rights initiative a Delhi based non-governmental organization working in the area of human rights reveals a data that since inception of the right to information act so far 86 RTI users were killed 170 were assaulted 183 of them were harassed or threatened and 7

<sup>9</sup> <https://cic.gov.in/node/3410>

<sup>10</sup> *The Hindu Urban Cooperative Bank Limited and Ors . v. The State Information Commission and Ors.* [2011] (Pun & Har HC)available at - <<http://indiankanoon.org/doc/155741837/>>

<sup>11</sup> Mr. Rakesh Kumar v. Under Secretary (Regulation), National Council for Teacher Education in Second Appeal No.-: CIC/NCTED/A/2017/135651-BJ, Date of Decision: 14.08.2018 ,

<sup>12</sup> Gaurav Vivek bhatnagar, (The wire , 06/06/2019) , Accessed on 28.02.2020

<sup>13</sup> <https://rti.gov.in/rti-act.pdf> Accessed on 28-02-2020

<sup>14</sup> Special correspondent , Penalties levied for RTI violations in 3% of cases in 2018-19, THE HINDU (12/10/2019)

<sup>4</sup> <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>5</sup> <https://www.un.org/en/universal-declaration-human-rights/>

<sup>6</sup> L.K. Koolwal vs State Of Rajasthan And Ors. on 19 September, 1986

AIR 1988 Raj 2, 1987 (1) WLN 134

<sup>7</sup> <https://rti.gov.in/webactrti.htm>

<sup>8</sup> <https://indiankanoon.org/doc/1516599/>

of them died by committing suicide<sup>15</sup>. This Ngo also records that Since 2005, hundreds of public-spirited citizens have been attacked for obtaining the information under RTI. Many people have been put to death because of getting information about matters such as the implementation of the Mahatma Gandhi Rural Employment Guarantee Act, unauthorised construction, illegal sand-mining, distribution of fake disability certificates, diversion of subsidised food grains meant for the poor and other illegalities. Added to this Psychological pressure has driven a handful of RTI users to death by suicide.<sup>16</sup>

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<sup>15</sup> [www.attackonrtiusers.org/home/issues/](http://www.attackonrtiusers.org/home/issues/) Accessed on 29-02-2020

<sup>16</sup> <http://attacksonrtiusers.org/Home/AboutUs/> Accessed on 29-02-2020

## **CONCLUSION AND SUGGESTIONS**

The objective of the RTI act is to ensure transparency and accountability in the working of every public authority and to end corruption and uphold the democratic ideals. But there are hurdles in accomplishing the objective of the Act. Though the act paves way for the right to information the public authorities do not give much importance to the RTI applications. The appointment of authorities following the supremecourt guidelines and the provisions in the Act should be taken into serious consideration.

Special Attention should be given to RTI Users, The State should take all necessary steps to decrease the pendency of the cases, Public authorities should also be trained regarding the importance of the RTI act and the Penalties imposed should be paid by the Public information officer at the earliest without any delay.

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