



## RIGHT TO INFORMATION ACT: SUSTAINING DEMOCRACY AND FACILITATING DEVELOPMENT

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### ABSTRACT:

Today good governance has become the central concern of most governments. Accountability and transparency are key elements of good governance. Democracy requires an informed citizens and transparency of information. When a government is transparent there is less chance for corruption and more room for accountability. Citizens access to information is pre-condition to good governance. It allows citizens to participate in the government process which leads to participatory democracy. Transparency refers to availability of information to the public and clarity about functioning of government. The citizens know what the government does and how it is functioning. RTI Act was introduced in 2005. It was one of the progressive laws passed in the post independent India. It ushers a people centred governance. The poor and marginalised sections of the society will be benefited by using this act. Without good governance the government welfare schemes cannot reach to the needy persons. RTI makes the citizens to fight against corruption, which is one of the major impediment in the way of good governance. Since its enactment RTI Act proved to be a strong weapon in the hands of people for ensuring transparency in the system. RTI has great democratizing power. Economic development is enhanced by RTI. In this paper an attempt has been made to analyse how RTI leads to good governance which strengthens democracy and development and challenges in its way.



**KEYWORDS:** central concern , good governance, strengthens democracy and development.

### INTRODUCTION

Recognising the fundamental importance of access to information to democratic participation, to holding governments accountable and to controlling corruption, as well as to personal dignity and

business efficiency, [we declare that] the right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example,

Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions. - UN Special Rapporteur on Freedom of

Expression, 2004<sup>1</sup>

### Right to Information: The Basic Need of Democracy:

Freedom of speech and expression could be considered one of the most fundamental of all freedoms. While it is of dubious value to rate one freedom over another, freedom of expression is a basic foundation of democracy. It is a core freedom without which democracy could not exist. The term encompasses not only freedom of speech and media but also freedom of thought, culture and intellectual inquiring. Freedom of expression guarantees everyone's right to speak and write openly without state interference, including the right to criticize injustices, illegal activities and incompetence's. It guarantees the right to know and right to inform the public and to offer opinions of any kind, to support revolutionize, to give the minority the opportunity to be heard and became the majority and to challenge the rise of state tyranny by force of words. In such regimes the State not only exerted full control over freedom of speech and expression and right to know, it also used the media to direct citizen's thoughts and opinions through propaganda, indoctrination, denunciation, and social conformity. During the commencement of the nineteenth century, freedom of speech and expression joined realm of core freedoms that are now protected as universal standards. Presently, people are thus empowered to make proper choices for participation in democratic development process<sup>2</sup>. Access to information is a foundational human right as without its protection, it is almost impossible for people to fully exercise their other rights and freedoms as enshrined under the constitution and statutes.

### Right to Information: Global Outlook

Freedom of information is a human right. In order to make governments accountable, citizens have the right to know, the right of access to official documents. Freedom of information has been developing at a strong pace only recently, but it is hardly a new concept. The roots of the Freedom of Information principle date back to the 18th Century, the Age of Enlightenment<sup>3</sup>. The world in the 21st century has marked many a stepladder and paradigm shifts in the understanding, analysis and contextualization of the various ideologies of democracy. RTI which is the cynosure of this discourse is not something new. In fact, there is a long history at international level towards the attainment of the right to access information and mobilization of the masses for achieving its goal. With development of human ideals and establishment of democratic governments in most of the civilized countries, the concept of freedom of information increased. Many international organizations and regional groups recognized the right to information to be integral part of their governing systems.

The origin of right to information can be traced from the way back from the year 1766. The Swedish Freedom of Information Law<sup>4</sup> was passed in 1766<sup>5</sup>. Anders Chydenius<sup>6</sup> took an active part in the Diet of 1765-66. One of the lasting results of his activities was this Ordinance on Freedom of Writing and of the Press (1766), which he considered himself to be one of his greatest achievements. Subsequently, numbers of countries have passed the RTI legislation for providing information as a matter of right. For example, Finland in 1950, Denmark in 1950, Norway in 1970, and United States of

<sup>1</sup> General Assembly on the contemporary challenges to *freedom of expression* ..2004 E/CN.4/2004/62. Report of the *Special Rapporteur on* implementing.

<sup>2</sup> M. M. Ansari, Right to Information and its Relationship to Good Governance and Development, <http://cic.gov.in/CIC-Events/IC-MA-LectureAtUNESCO-04122008.pdf>

<sup>3</sup> Anders Chydenius' Legacy Today, The World's First Freedom of Information Act, Anders Chydenius Foundation's Publications 2, (Ed. 2006), p.4

<sup>4</sup> Issued in Stockholm, in the Council Chamber, on 2 December 1766, Printed at the Royal Printing-Press

<sup>5</sup> Ibid,1

<sup>6</sup> Anders Chydenius was a Finnish priest and a member of the Swedish Riksdag, and is known as the leading classical liberal of Nordic history

America in 1966<sup>7</sup> enacted right to information laws to ensure and to facilitate information access. This paper inquires into the world scenarios on right to information in general and India in particular, the emphasis also made on analysis of relation between RTI and modern democratic process in UK and US. It is argued that important of social bond between civilian and government has more relevance for the addressing the functional needs of democratic system.

### RTI vis-a-vis International Legal Instruments

Under international legal regime various international instruments such as treaties, charters etc have recognized the concept of right to information as right that ought to be available to the people. All the citizens have a right to decide, either personally or by their representatives, as to necessity of the public contribution, to grant this freely, to know to what use it is put; and to fix the proportion, the mode of assessment and of collection and the duration of taxes, Article 14 of the Declaration of the Rights of Man<sup>8</sup>. Modern International law is not confined to relations between the states but devises upon matters of social concern also e.g. information, human rights, health, education and like. Freedom of Information was recognized at the early stages, as fundamental rights. United Nations accepted right to information right from its beginning in 1946. The General Assembly resolved that: "freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated<sup>9</sup>." These are the following principles propounded by the UNO in order to ensure the freedom of information viz:

- Maximum disclosure
- Obligation to publish
- Promotion of open government
- Limited scope of exceptions
- Processes to facilitate access
- Costs
- Open meetings
- Disclosure takes precedence and
- Protection for whistle blower

The right to access information is firmly set in the body of international human rights law. It is enshrined in Article 19 of the Universal Declaration of Human Rights.

### The International Covenant on Civil and Political Rights, 1968

Article 19 of the Covenant states as "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers either orally or in writing, or in print, or in the form of art or through any other media of his choice, subject to certain restrictions in sub-clause (3) of the covenant." The Commonwealth nations also acknowledged the existence of Right to Information by emphasizing the participation of people in the government processes. The law ministers of the Commonwealth at their meeting held in Barbados<sup>10</sup> stated that "Public participation in the democratic and government process would be most meaningful when citizens had adequate access

<sup>7</sup> "Freedom of information" is the designation adopted around the world after its North American example as the freedom of human actors to access existing documents. In the United States such an act was passed in 1966, and became effective through improvements made to it in 1974. This can be said to have signalled the triumph of laws of freedom of information throughout the world". Juha Manninen, "Anders Chydenius and the Origins of World's First Freedom of Information Act, [http://www.chydenius.net/pdf/worlds\\_first\\_foia.pdf](http://www.chydenius.net/pdf/worlds_first_foia.pdf)

<sup>8</sup> S. P. Sathe, Right to Information, p. 11.

<sup>9</sup> United Nations General Assembly, resolution 59(1), 65m plenary meeting, 14 December 1946

<sup>10</sup> in year 1980

to official information" where, Article 21 of the same declaration confers the right to take part in the Government of the country<sup>11</sup>.

### European Convention on Human Rights

The European Convention on Human Rights states that "Everyone has the right to freedom of expression". This right shall include freedom to hold opinions, and to receive and impart information and ideas without interference by public authority and irrespective of frontiers<sup>12</sup>. However, clause 2 provides that such right is subjected to such formalities, conditions, restrictions or such penalties as are prescribed by law, and are necessary in a democratic society, and if it harms the national interest or territorial integrity. Nevertheless European Court of Human Rights interpreted Article 10<sup>13</sup>. It was held that freedom to information prohibited the Government from restricting a person from receiving information. But, at the same time it does not provide any positive right to a person for obtaining the information. This interpretation was based on the difference between 'freedom' and 'right'. Most of the above discussed international instruments do not deal with RTI directly. Their role however is not lessening at all by this fact. Approximating a first step they showed the world community a direction to be explored in order to materialize the democratic value of RTI, thereby making the systems transparent and world more amicable for the people.

Article 13 (1) of American Convention on Human Rights, 1969 confers freedom of thought and expression and right to information and exchange of ideas<sup>14</sup>. Similar provision on freedom of speech and expression and imparting information contained in Article 10 of European Convention on Human Rights, 1950<sup>15</sup>.

### United Kingdom: Information Freedom Regime

Democracy has been the basic ideology of England since ages but 'secrecy' is emphasized rather than openness. This is due to the innate tendency of legislature and executive to maintain the confidentiality of the policies instead of making it transparent and accessible. In England the law related to the freedom of information made in the Official Secrets Acts of 1911<sup>16</sup>, 1920<sup>17</sup>, 1939<sup>18</sup>. The English judiciary has approved of candidness in Government. The same was reflected in the Conway v. Rimmer decision of House of Lords where it established its jurisdiction to order the disclosure of any document<sup>19</sup>.

The facts of the case were an ex-police officer sued for wrongful prosecution and sought disclosure of some police files. The Home Secretary claimed public interest immunity for all such files. It was held that the Home Secretary's certificate was not conclusive, and it was up to the court to examine the documents and order disclosure if the public interest in the administration of justice

<sup>11</sup> Article 21(1) of UDHR- Everyone has right to take part in the government of his country, directly or through freely chosen representative.

<sup>12</sup> Article 10 (1) of the European Convention on Human Rights Convention

<sup>13</sup> strictly<sup>13</sup> EHRR 433, Para 74, cited in S.P. Sathe, Right to information, p. 15

<sup>14</sup> American Convention on Human rights, article 13 (1) – Everyone has the right to freedom of thought and expression. This right shall include freedom to work, to receive and impart information and ideas off all kinds, either orally, in writing, in print, in the form of art, or through any other medium of one's choice

<sup>15</sup> European Convention on Human Rights, 1950, Article 10-Everyone has a right to freedom of expression. This right shall include within it, freedom to hold opinions and receive or impart information and ideas without interference by public authorities regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

<sup>16</sup> 1 & 2 Geo 5 c 28) is an Act of the Parliament of the United Kingdom. It replaces the Official Secrets Act 1889

<sup>17</sup> Royal assent, 23 December 1920

<sup>18</sup> Avinash Sharma, "Right to Information : A Constitutional Perspective", Vol. VIII Nyayadeep, p. 121

<sup>19</sup> Conway v. Rimmer, (1968) A. C. 910

outweighed the public interest in confidentiality. The decision in *Duncan v Cammell Laird*<sup>20</sup> should not be followed. The House of Lords simply distinguished the *Conway* case from the *Duncan* case on the facts, rather than explicitly overruling it.

Lord Morris was willing to "depart" from *Duncan* on two grounds:

1. It was based on a misapprehension of the law enforced at the time.
2. Lower courts obliged to follow the *Duncan* decision have expressed regrets in having to do so.
3. Lord Pierce on a third: There has been a great change in circumstances since 1942. There is a greater proliferation of administrative tribunals, giving the Crown greater scope to invoke privilege against the interest of litigants<sup>21</sup>.

The analysis of this case reveals that the court refused the crown privilege. While deciding this case Justice Lord Reid, said that "The document must be produced in the court for deciding the case and held that it is not crown privilege but it is public interest privilege". However, it was also emphasized that balance between conflicting interests of secrecy and publicity should be maintained. The court held that the entire class of the document cannot be pleaded as privileged document and first time classified the document in two parts as class document as a privileged document and content document as non privileged one.

Keeping in view the desirability of "openness" of government affairs in a democratic society, the Franks committee recommended a repeal of section 2 of the 1911 Act<sup>22</sup>, and its replacement by the Official Information Act. The United Kingdom has enacted Freedom of Information Act 2000. Most of the countries of the Western Europe have now such legislations. Importance of freedom of expression in English law can be ascertained by the observation of Lord Steyn in a case<sup>23</sup>. This goes as "Freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country...." the current freedom of information law in the England was passed in 2005, under the title of the Freedom of Information Act, 2005<sup>24</sup>

### Right to Information in United States of America:

America is an oldest democratic country and India is the largest democracy in the world. America passed the surfeit of democratic rights that ought to be the part of a true democratic framework. Antipathy towards the inherent secrecy is therefore not a surprising attribute exhibited by the Americans. Schwartz observes, "Americans firmly believe in the health effects of publicity and have a strong antipathy to the inherent secretiveness of government agencies<sup>25</sup>." The Freedom of Information Act, 1966 and The Administrative Procedure Act, 1946 are two main statutes which confer the Right to Information in the USA.

The Constitution of America does not deal specifically with concept of Right to Information. However, such right is considered to be corollary of the First Amendment freedoms<sup>26</sup>. A provision of a

<sup>20</sup> [1942]

<sup>21</sup> [http://sixthformlaw.info/02\\_cases/mod2/cases\\_precedent\\_hol.htm#Conway v Rimmer \[1968\] HL](http://sixthformlaw.info/02_cases/mod2/cases_precedent_hol.htm#Conway v Rimmer [1968] HL)

<sup>22</sup> Rosamund Thomas, , *Espionage and Secrecy* (Routledge Revivals): The Official Secrets Acts 1911-1989 of the United Kingdom. (2016), Routledge. P.6

<sup>23</sup> *R. v. Secretary of State for the Home Department Ex P. Simms*, (2000) 2 LR 115(AC)

<sup>24</sup> S.P. Sathe, *Right to Information*, Lexis Nexis Butterworths

<sup>25</sup> Schwartz, *Administrative Law*, (Ed. 1984). p. 129

<sup>26</sup> Thomas Emerson, *Legal Foundation of Right to know*, Washington University Law Quarterly, (1976), p.2



statute was held to be a restriction on the unfettered exercise of First Amendment Rights <sup>27</sup> and was declared invalid by the Supreme Court. Similarly in *Stanley v. Georgian*<sup>28</sup>, it was observed that freedom of speech necessarily protects the right to receive information. The American government passed Freedom of Information Act, 1966 which gives every citizen a legally enforceable right to excess to government files and document which the administrations may be tempted to keep confidential. If any person is denied this right, he can seek injunctive relief from the court. The Act ensures access to government information in three broad categories as follow:

1. Publication in the Federal register;
2. Making available for inspection and copying certain certified information and
3. Making available reasonably described records on request.

### Right to Information: Indian Perception

India has steered a new era leading us towards the development of the participatory democracy. It has led to a series of debates and civil society movements. Right to Information implicitly forms part of fundamental rights guaranteed by the Constitution of India<sup>29</sup>. Democracy in real terms requires public to act as a sovereign force. India is a signatory to the UDHR (1948) and the ICCPR (1966). Hence, it is under an international obligation to effectively guarantee the right to information. Further, under Article 51 (c) of the Indian Constitution states that the state is duty bound to foster respect for international laws and treaty obligations<sup>30</sup>.

### Participatory Democracy: Right to Information Policy and Law

The right to information is part of the constitutional framework enshrined as freedom of speech and expression. Explicit exercise of this right was not possible due to its derivative and implicit existence within the Constitution. This facilitated the need of a specific legislation enabling the citizens to enjoy the right available to them. Right to Information is derived from our fundamental right of expression under Article 19. The freedom of the press is an essential element for a democracy to function.

Access to information held by a public authority was not possible until 2005. The Official Secret Act, 1923 acted as a remnant of colonial rule shrouding everything in secrecy. The citizens did not have any legal right to know about the public policies and expenditures as in the form right to access information. Under the Official Secret Act denied access to the relevant information and this practice was resulted in rise of corruption and malpractices in administration of governance. In face of non-accountability of the public authorities and lack of openness in the functioning of government, abuse of power and unscrupulous diversion of the public money was the increased. Public complain against the corrupt practices of officials, public and civil society demanded greater access to the information held by public authorities. The government acceded to their demand and passed the RTI Act 2005. By virtue of this enactment transparency has increased than ever before in the working of the public bodies as a result of number of RTI applications. "Right to know is an important ingredient of participatory democracy. The concentration of political and administrative power in the management of the country's economic and social resources led to wide spread corruption jeopardizing the universally acknowledged principles of good governance namely democracy, liberty and the rule of law. Democracy, in turn requires accountability and transparency through devolution of information and effective participation citizens in decision making"<sup>31</sup>.

<sup>27</sup> *Lamont v. Post Master General*, 14 Lawyer Edition 2d. (1965), p. 398

<sup>28</sup> 22 L. Ed. 2d. 542 (1969)

<sup>29</sup> Article 19 (1) (a) of the Constitution of the India

<sup>30</sup> Article 51 (c) - Promotion of international peace and security- The State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another.

<sup>31</sup> Dr. N. V. Paranjape, *Right to Information Law in India*, (Ed. 2014), LexisNexis, p.2

The Right to Information generally understood as the 'right to access information held by public authorities', is not just a necessity of the citizens; it is a precondition for good governance. To be specific, Access to information makes democracy more meaningful and allows citizens to participate in the governance process<sup>32</sup>. An efficient representative democracy assumes that free access to information held by public authorities. In Reliance Petrochemicals Ltd case,<sup>33</sup> the Supreme Court held that right to information is an essential ingredient of a participatory democracy. These trends of the judiciary followed in other cases few of them given below;

Delhi High Court in Subhash Chandra Agrawal v. Office of Attorney General held that the office of the Attorney General of India is a public authority under the Right to Information Act. Hence, it has to furnish the relevant information. A division bench of Kerala High Court in Jiju Lukose vs State of Kerala held that the police authorities are obliged to provide the copy of the FIR on the petition to the Public Information Officer under the Act

The Supreme Court in the Reserve Bank of India v. Jayantilal Mistry declared that RBI does not place itself in a fiduciary relationship with the financial institutions because, the reports of the inspections should be liable to supply. In Vijay Kumar Mishra v. CBSE, the Central Information Commission has directed CBSE to pay Rs 25,000 as compensation for denying RTI seeking copy of answer sheets. The Central Information Commission has directed the Central Board of Secondary Education (CBSE) to furnish the copies of answer sheets. In Vansh Sharad Gupta v. PIO the, Central Information Commission held that the State is duty bound to provide easy access to up-to-date Legal Information to its citizens these case illustrate the trends of the judiciary in promoting the public access to information.

## CONCLUSION

International bodies have recognized that freedom of information is a fundamental human right and effective laws are needed to secure freedom of information. Despite of this recognition, until the implementation of the Right to Information Act, it was not possible for an ordinary persons to seek the details of a decision making process, which was found most often, as ineffective in terms of its outcome. It was, therefore, not possible to hold a free and frank discussion on issues of common concern of people or to fix the responsibility for any action. Such an era of darkness in policy planning, including monitoring and evaluation of schemes by affected persons, is over." RTI has been in enforcement ever since 2005, it has effect of dismantling the culture of secrecy and changing the mindset of bureaucrats and politicians and created conditions for taking informed decisions, inspite of this the Act it is not free from the ambiguity in certain levels it should be answered.

The government has appointed multiple Public Information Officers. This results in search of proper place and authority competent under the Act. Hence it is suggested that Right to Information Act is a social legislation to enable every citizen of the country to obtain information from the public bodies as a matter of right thus facilitated the every citizen to get information from the government agencies, thereby bringing transparency in governance and it may possible to establish corruption free society. Right to Information Act is in fact life line of any democracy, since it empowers the citizen, keeps check on corruption in public offices and brings greater transparency and accountability in government agencies. In Maneka Gandhi case<sup>34</sup>, Justice V. Krishna Iyar opined that "A government which functions secretly not only act against the democratic decency, but buried itself with its own burial." No democracy can be meaningful where their citizens cannot audit the performance of the government business, bureaucrats and the other functionaries who act on behalf of the state. In order to audit the

<sup>32</sup> P. Chandra Sekhar, Right To Information In Strengthening Participatory Democracy, Global Media Journal - Indian Edition Winter Issue / December 2010, available at [www.caluniv.ac.in/global-mdiajournal/WINTER%202010%20COMMENTARIES/Commentaries%204.pdf](http://www.caluniv.ac.in/global-mdiajournal/WINTER%202010%20COMMENTARIES/Commentaries%204.pdf),

<sup>33</sup> Reliance Petrochemicals Ltd. v Proprietors, Indian express Newspapers Pvt. Ltd AIR 1989 SC 190

<sup>34</sup> Maneka Gandhi vs. Union of India, AIR 1978 SC

performance of the government, the people have to be well informed of its policy, actions and failures. An informed citizenry is a pre requisite for participatory democracy

In a democratic setup there must be direct participation of the people in the democracy. The lack of awareness amongst civilians hamper the spirit of the law, therefore it recommended that greater emphasis must be given in creating mass awareness on the provisions of the law and case laws. At the same time it is also suggested for severe penalties on delinquent officers under the Act for unreasonable delay or withholding of information, knowing provision of incorrect information, concealment or falsification of records etc.