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Evolution of Right to Information & its Current Controversies

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ABSTRACT

Named word of the year by Webster's Dictionary in 2003, "transparency" might well prove to be the word of the last decade and a half. In the two hundred and thirty years from 1766 when the first transparency law was passed in Sweden, till 1995, less than twenty countries had such laws. In the fifteen years, from 1995 to 2010, nearly sixty additional countries have either passed transparency laws or set up some instruments to facilitate public access to institutional information. In the South Asian Region, the state of Tamil Nadu, in India was the first to pass a freedom of information law way back in 1997. Though the law was essentially weak and ineffective, it was soon followed by somewhat more effective laws in many of the other states. Globally, it has been argued that the major impetus to transparency has been the growth of democracy. This article attempts to describe the genesis, evolution of the RTI regime in India, within the global and regional context. It describes the events leading up to the coalescing of the RTI movement in India and its current controversies. It goes on to list the challenges before the RTI movement, identifies its allies and opponents, and discusses the strategies adopted, and the resultant successes and failures. Based on all this, it attempts to draw out lessons that might be learnt from the Indian RTI movement. The paper ends with a summary of the findings of two nation-wide studies recently conducted to assess the implementation of the RTI Act in India and suggests an agenda for action, aimed at strengthening and deepening India's RTI regime. Clearly, transparency is an idea whose time has come.

I. INTRODUCTION

Dr. Manmohan Singh, the Prime Minister of India, when bringing to light India's first significant step towards anti-corruption – The Right To Information Bill, said: "The passage of the Bill will see the dawn of a new era in our processes of governance, an era of performance

and efficiency, benefits of growth will flow to all sections of the society, eliminate the scourge of corruption, and will bring the common man's concern to the heart of all processes of governance and fulfill the hopes of the founding

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fathers of our Republic."²

Under the provisions of RTI Act, 2005, which replaced the former Freedom of Information Act, 2002, any citizen of India may request information from a "public authority" (defined in Section 2 (h) of the Act as a body of Government or "instrumentality of State") which is needed to reply expeditiously or within 30 days. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request information formally³. In the first ten years of the commencement of the act over 17,500,000 applications had been filed⁴.

II. INTERNATIONAL ROOTS

Information rights have a long history of around 246 years if the international front is taken into account.

Stockholm issued world's first Freedom of Information Act on December 2, 1766. Press freedom in Sweden was established through this law and the government, courts, and parliament were the stakeholders. Anders Chydenius was a Finnish enlightenment thinker and politician who played a crucial role in creating this new law and gave the world an insight into the benefits of a transparent democracy. The English translation of his initial work was published in 2006;

through it, the Anders Chydenius Foundation aimed to provide a brief introduction to the origins of the FOI principle⁵.

In 1789, a part of the French Constitution, Declaration of Human and Civic Rights, had Article 14 stating that "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration". Although this cannot be taken to be an assertion of a right to access information from those responsible to the public, there is a hint of a "right to know" of a French citizen as to where the taxes that he pays are being spent.

The United Nations General Assembly passed a resolution in 1946, which concerning Freedom of Information stated, "Freedom of Information is a fundamental right and is the touchstone of all the freedoms to which the United Nations is consecrated. Freedom of Information implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such it is an essential factor in any serious effort to promote the peace and progress of the world."⁶

In 1948, the history of human rights came to know of The Universal Declaration of Human Rights (UDHR) as a milestone. It was accepted as a common standard of achievements for all

² Stuti, *Evolution and Development of the Right to Information Act in India*, LEGAL SERVICE INDIA (Sept 21, 2021 5:01 PM), <https://www.legalserviceindia.com/legal/article-323-evolution-and-development-of-the-right-to-information-act-in-india.html>

³ Frederick Noronha, *Access To Knowledge: A Guide For Everyone*, CONSUMERS INTERNATIONAL (2010 ISBN 978-0-9566117-4-1).

⁴ Nidhi Sharma, *1.75 crore RTI applications filed since*

2005: Study, THE ECONOMIC TIMES (Sept 19, 2021, 9:57 PM), <https://economictimes.indiatimes.com/news/politics-and-nation/1-75-crore-rti-applications-filed-since-2005-study/articleshow/54705694.cms>

⁵ PETER HOGG and Ors, THE WORLD'S FIRST FREEDOM OF INFORMATION ACT – ANDERS CHYDENIUS' LEGACY TODAY 6 (2nd edn. Anders Chydenius Foundation).

⁶ Supra 1.

peoples and all nations after the United Nations General Assembly proclaimed it in Paris on 10 December, 1948 (Resolution 217 A). It was expressly mentioned by UDHR in its Article 19(2), "Everyone shall have the Right to Freedom of expression which shall include freedom to: seek, receive and impart information; regardless of frontiers - orally, in writing, or in print."

In 1966, the United States of America enacted a federal law establishing the public's right to obtain information from federal government agencies. Called the Freedom of Information Act, it is codified at 5 U.S.C., Section 552, stating: "Any person can file a FOIA request, including U.S. citizens, foreign nationals, organizations, associations, and universities." After President Lyndon Johnson's initial reluctance to sign it, the Act did finally find its place in the United States of America.

III. INDIAN SCENARIO

In India, it all started with petitions of the press to the Supreme Court, relating to issues of enforcement of certain logistical implications of the right to freedom of speech and expression⁷.

It was not the birth of representative democracy, rather its subsequent failures that gave birth and impetus to the transparency regime. On October 12, 2005, a person called Shahid Raza Burney submitted India's first-ever Right to Information application to a police station in Pune and thus India entered the RTI age, formally. But before Mr. Burney could act and make use of his right,

there had been a background of growth and development in the Indian arena of transparency of those answerable to the public⁸. Three kinds of stakeholders were a part of the struggle for a right to access information that was inherently the public's but was kept from them, in the 1990s.

The basic economic rights and access to government schemes of the rural poor were a burning question and concern, and all-powerful and impactful leaders with several movements strived to achieve the right to information for them. When how landless workers in rural areas were often cheated and not paid their full wages were brought to the forefront by the regional movements for these rights at the state level, the relevance and importance of transparency came into the spotlight on a national platform. The paymasters were government officials who claimed that the workers had worked for fewer days than they actually had, and the latter could not challenge the claim because access to the attendance register where they had affixed their thumbprints every day they worked was denied to them, in the garb of them being "confidential government records".

Activists working for the benefit of society in conflict-prone areas of India formed the second group. Their efforts to prevent felonious detentions, human rights abuses, etc. were stalled because of denial of access to the relevant information and that was their main argument.

The third group of supporters was environmentalists. They propagated their view of

⁷ Romesh Thappar v State of Madras, 1950 AIR 124.

⁸ Sudesh Vasudeva, *The Role of Judiciary in the Creation of a "Right To Information" in India,*

International Conference on Trends in Economics, Humanities and Management (2014) 1.

the importance of access to the details of information regarding any developmental measures being taken, and their environmental impact.

Freedom Of Information Act, 2002

The Central Freedom of Information Act, 2002 was passed in December, 2002 and received Presidential assent in January, 2003. Some states had their individual State Right To Information Acts by then.

The National Campaign on People's Right to Information (NCPRI) was constituted in 1996 in New Delhi. The NCPRI aimed to provide active support to struggles for the right to information at the grassroots levels and to lobby the Central government to enact and implement an effective access to information legislation. A draft RTI law based on a nationalized, Central level idea was proposed by the Consumer Education And Research Council (CERC) in 1993. Immediately after this, Press Council of India was headed by Justice P.B. Sawant and a model law on the same was drafted by them to the Government of India in 1996, which was later updated and renamed the PCI-NIRD Freedom of Information Bill, 1997. But, the Government didn't critically consider this draft law. Afterwards, the Central Government set up the Shourie Committee, a working group under the chairmanship of Mr. H. D. Shourie, and gave the mandate to formally prepare draft legislation on freedom of information. During this period, an administrative order which enabled citizens to inspect and receive photocopies of files in his Ministry was issued by Mr. Ram Jethmalani, the then Union Minister for Urban Development in

1999. Again, very disappointingly, this order was not permitted by the Cabinet Secretary to come into effect.

The Freedom of Information Bill, 2000 incorporated the Shourie Committee's draft, but that somehow was even less satisfactory a Bill than the Shourie Committee's initial one. This Bill, as was sent to the Parliamentary Standing Committee, was discussed by this committee with civil society groups, before submitting its report in July, 2001. The Government was urged to address the flaws in the draft Bill, as had been pointed out. It was introduced in Parliament in 2002 just as it was, and was passed in December, 2002. The Presidential assent for it was received in January 2003, and the Bill finally stood as the Freedom of Information Act, 2002. Despite being passed by both houses of Parliament and having received presidential assent, this act was never notified and therefore never became effective.

IV. CHANGE IN GOVERNMENT & RIGHT TO INFORMATION ACT, 2005

In May 2004, the Bharatiya Janata Party-led National Democratic Alliance government was displaced and the power at the national level was held by the United Progressive Alliance (UPA) led by the Congress Party. A Common Minimum Programme (CMP) was brought out by the UPA government. The UPA government also set up a National Advisory Council (NAC), to monitor the implementation of the CMP.

In the meantime, a public interest litigation case being pursued by Advocate Prashant Bhushan on behalf of the NCPRI and Centre for Public

Interest Litigation since 2002, tried to compel the Government to notify an effective law to provide Indians with access to information from public servants immediately. The case was heard by the Supreme Court on July 20, 2004. The Supreme Court's Order set a deadline of September 15, 2004 for the Central Government to advise when the Act will be notified and if not, when interim Administrative Guidelines would be issued⁹.

Seizing the opportunity, in August, 2004, the National Campaign for People's Right to Information (NCPRI), formulated a set of suggested amendments to the Freedom of Information Act, 2002. These suggested amendments were forwarded to the NAC. Then, these amendments were endorsed by the NAC for the most part and forwarded to the Prime Minister of India for further action. The Draft Rules under the Freedom of Information Act, 2002 was released by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions on August 12, 2004. CHRI issued a CHRI Press Release on the Draft Rules on August 14, 2004. After a tense and pivotal meeting with the Prime Minister, in the middle of December, 2004, it was agreed by the Government to introduce in Parliament a fresh RTI Bill along the lines recommended by the NAC. A revised Right to Information Bill in Parliament was introduced by the Indian government on December 22, 2004.

The issue that cropped up thereafter was that the 2004 Bill applied only to the central government, and not to the states, and several of the NAC's

recommendations had been disregarded. In response to a sharp reaction from civil society groups, a group of ministers was set up to review the bill by the government, and the RTI Bill was referred to the concerned standing committee of Parliament by the Speaker of the Lok Sabha. Soon after, the unanimous support for their original recommendations was expressed by the NAC in a letter to the Prime Minister. The group of Ministers, chaired by the senior minister, Shri Pranab Mukherjee, was also lobbied. These efforts were mostly successful and the restitution of most of the provisions that had been deleted, including applicability to states, were recommended by the Parliamentary Committee and Group of Ministers. The Right to Information Bill, as amended, was passed by both houses of the Indian Parliament in May, 2005. Presidential assent was received by the Bill on June 15, 2005, and became fully operational from October 13, 2005.

State Legislatures-

While the nation was raging with a debate on the national law of Right to Information, state-level Right to Information laws were being started to be imposed by a few states. Below is mentioned how several states went about it before the Central Legislation was declared officially operating, in 2002-

- Goa: It is one of the most progressive state legislation for the Right To Information and has the fewest categories of exceptions. Most importantly, it also applied to private bodies and executive government works.

⁹ Centre For P.I.L. & Ors. v U.O.I. & Anr, W.P. (C) 637/1998.

- Tamil Nadu: Notably, this Act provided for the provision of information to those asking for it within 30 days from when it had been sought.
- Karnataka: There were limited pro-active disclosure provisions, but it came with a penalty clause for delay in supply of information, and an appeal to an independent tribunal was also provided.
- Delhi: The establishment of an advisory body was also provided for, known as the State Council for Right to Information. Apart from bare minimum exceptions, any type of information could be sought by the residents of the state after paying a nominal fee, from the civic body.
- Rajasthan: Rajasthan Right to Information Act was passed in the year 2000. Focusing at the grass-root levels, village-based public hearings called Jan Sunwais were organised by the Mazdoor Kisan Shakti Sangathan (MKSS). The Bill was eventually passed, however, but it placed around 19 restrictions on the right of access to information.
- Maharashtra: Following sustained pressure from social activist and anti-corruption crusader Anna Hazare, the Maharashtra assembly passed the Maharashtra Right to Information Bill in 2002. The Act not only

brought government and semi-government bodies within its purview but also registered societies including educational institutions, cooperatives, and state public sector units.

Controversies

The Right to Information in India has been mired with controversies ranging from their use in political battles, asking for educational degrees of political rivals, or cases of blatant refusals to provide information on high-profile projects to allegations of misuse by civil society¹⁰. The backlash against RTI by the state has hampered the citizen's right to know¹¹.

Commonwealth Human Rights Initiative (CHRI) data points to over 310 cases¹² across India where people were either attacked, murdered, physically or, mentally harassed or had their property damaged because of the information they sought under RTI. The data throws up over 50 alleged murders and 2 suicides that were directly linked with RTI applications filed¹³. Both central and state governments are applicable to R.T.I. Act, 2005. It also covers the acts and functionaries of the public authorities¹⁴.

It has been recommended by the Asian Centre for Human Rights that a separate chapter, "Protection of those seeking information under the (RTI) Act", be inserted into the Act.

¹⁰Rakesh Prasad, *Gomti River front Development - Irrigation Department Denied Information*, BALLOT BOX INDIA (Sept 19, 2021, 10: 54 PM), <https://ballotboxindia.com/dp/Gomti-River-front-Development-irrigation-department-denied-information/5182331549/>

¹¹Shalu Nigam, *The Right to Information Act: Ten Years of Transparency or Decade of Ambiguity*, SSRN (Sept 19, 2021, 10:56 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2653596

¹²Gaurav Vivek Bhatnagar, *Maharashtra, Gujarat*

Top in Attacks, Killing of RTI Users, THE WIRE (Sept 19, 2021, 10:59 PM), <https://thewire.in/politics/74320>

¹³Anahita Mukherji, *Maharashtra tops country in attacks, murder of RTI activists*, THE TIMES OF INDIA (Sept 19, 2021, 11:01 PM), <https://timesofindia.indiatimes.com/india/Maharashtra-tops-country-in-attacks-murder-of-RTI-activists/articleshow/27743408.cms>

¹⁴Supra 1.

Protection measures suggested include:

- Mandatory, immediate registration of complaints of threats or attacks against RTI activists on the First Information Report and placing such FIRs before the magistrate or judge of the area within 24 hours for issuance of directions for protection of those under threats and their family members.
- Conducting an inquiry into threats or attacks by a police officer not below the rank of Deputy Superintendent of Police/Assistant Commissioner of Police to be concluded within 90 days.

The subversion of the Right to Information Act by the invocation of Intellectual Property rights argument by the government agencies have been alleged by many civil society members from time to time.

Most notable are:

- The Right to Information denied by RBI on Demonetization citing Intellectual Property Laws¹⁵.
- Uttar Pradesh Irrigation Department denied the right to information after more than 8 months of wait on the under-construction Gomti Riverfront Development Project. A group of researchers requested for

environmental Impact and Project Report on the project which is flagged for negative impacts, tax money wastage by environmental scientists and research reports¹⁶.

Since the bureaucratic requirements, including the technocratic language used in filing, are too onerous and legalistic for ordinary citizens, it results in rejection of several RTIs. Sixty percent of the RTI appeals made to Information Commissioners in Delhi are rejected for a variety of reasons, including that appeals are not typed or not written in English, or lack an index of the papers attached or a list of dates¹⁷. Many citizens have to seek out NGOs, RTI activists, or lawyers, to file their RTIs¹⁸.

On the other hand, many activists view the Right to Information Act as a final liberation from British colonialism; they describe the RTI law as “a tool for empowering ordinary citizens and changing the culture of governance by making it transparent, less corrupt, participatory, and accountable”¹⁹. They also note that RTI requests provide strategy and substance for activists on a broad range of social issues, including “land and environmental rights, social security benefits, the working of financial institutions, political party

¹⁵Sulekha Nair, *RBI's refusal to share details under RTI is sheer arrogance, says activist Shailesh Gandhi*, FIRSTPOST (Sept 19, 2021, 11:03 PM), <https://www.firstpost.com/business/rbis-refusal-to-share-details-under-rti-is-sheer-arrogance-says-activist-shailesh-gandhi-3182134.html>.

¹⁶ Shoumojit Banerjee, *Centre's decision to bring amendments to RTI Act draws criticism from activists*, THE HINDU (Sept 19, 2021, 10:47 PM) <https://www.thehindu.com/news/states/centres-decision-to-bring-amendments-to-rti-act-draws-criticism-from-activists/article28629973.ece>.

¹⁷36 Aradhana Sharma, *STATE TRANSPARENCY AFTER THE NEOLIBERAL TURN: THE POLITICS, LIMITS, and PARADOXES OF INDIA'S RIGHT TO INFORMATION LAW*, 308-325 (PoLAR: Political & Legal Anthropology Review, no. 2, 2013).

¹⁸38 Aniket Aga and Chitrangada Choudhury, *A DAPPLED SUN: BUREAUCRATIC ENCOUNTERS IN THE WORKING OF THE RIGHT TO INFORMATION ACT IN INDIA*, 540-556 (no. 3, 2019).

¹⁹Supra 16.

financing reform, civic infrastructure, and even public-private partnerships”²⁰.

V. CONCLUSION

2 nationwide assessments of the impact of the implementation of the RTI Act were done in 2008 and 2009 by the Department of Personnel and Training, Government of India with the help of an international accounting company; both the reports came up in 2009. The following conclusions were drawn:

- Public Information Officers who are supposed to receive their applications and provide them with information often harassed applicants, especially in the rural areas.
- Training was required by government functionaries regarding proper response to RTI applications, and significantly improving record management.
- The functioning of the information commissions was a very weak area. Moreover, although the RTI Act mandated that a penalty is to be imposed every time information is not provided within 30 days without reasonable cause, very few penalties were actually being imposed.

In between October, 2005 to March, 2008, there were an estimated two million RTI applications filed across the country, of which an estimated 4,00,000 RTI applications were filed from the rural areas, belying the impression that only the educated urban people used the RTI Act²¹.

The overall scenario is that the RTI Act has been doing well in terms of the enthusiasm with which the public had taken to it, but there was much to be done to improve the functioning of the government and the commissions.

The balance of power in India has been changing at a gradual pace - A power has finally been rightfully given to the people, the asset and makers of a nation as a whole, that they deserved; And distribution and disclosure of the source of information have to done performed by the government and other powerful entities.

²⁰Supra 17.

²¹ Supra 1.