

INTERNATIONAL SCENARIO OF RTI

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“I for one have the conviction that government ought to be all outside and not inside. I, for my part, believe that there ought to be no place where everything can be done that everyone does not know about. Everyone knows corruption thrives in secret places and avoids public places².”

ABSTRACT

A healthy democratic society should have access to knowledge and knowledge is considered as a key to the growth for emergence of a country. The United Nations Development Programme (UNDP) adopted a public Information Disclosure Policy in 1997³. This Policy enumerates some specific documents which will be always available to the public for information. The policy states that information would be disclosed within thirty days and reasons must be clearly stated for any denial of access to information.

World Bank has also adopted a policy on the disclosure of information in 1993. World Bank Policy also creates a presumption in favor of disclosure. This policy sets a list of documents which are available on a routine basis from the Bank⁴. Many countries have information laws. Many countries have signed a number of convention and now this Right has been recognized at global level⁵. The right to know is really important and it is the basis for creating good governance as it includes openness, accountability, transparency, Public participation and awareness

Through this paper I have highlighted the basic knowledge of how this Act came and what steps were being taken at the global level for its performance. I have also highlighted the major events in India which were taken forward for the introduction of this very famous Act. The basic

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² Acc. to the Woodrow Wilson.

³ Public Information Disclosure Policy, UNDP, 1997(India).

⁴ The World Bank Police on the Disclosure of Information. (Washington, DC: World Bank, 1994)

⁵ RTI Act amend.1974, USA.

comparison between different countries has helped me to come to a conclusion of its weakness in promoting efficiency and transparency.

RELEVANCE OF RTI IN TODAY'S WORLD

Today RTI Act has helped the citizens to provide clarity in Information and to remove corruption by promoting accountability in the working of every public authority. Right to Information is basically synonymous to Democracy. It is necessary for a democratic country as it provides basic human rights to its citizens. Informed citizen mean a lively and functioning democracy. Citizens feel honored when they can have the information about the malfunctioning, and corruption in working departments.

RTI laws can play a crucial role in combating corruption and promoting and upholding Human Rights. There is no doubt in it that PIO's plays a vital role in ensuring the effective implementation of this act and these Information officers are directly supporting Good governance.

Conventions and Conferences for RTI Act:

By the passage of time, several International institutions like Council of Europe, Organisation of American States, commonwealth etc. provided civil rights and liberties demanding constitutional recognition to some freedoms including freedom of speech and expression, freedom from slavery, writing and broadcasting and access to justice.

International institutions have stressed the need for countries to adopt RTI so that corruption could be removed and transparency could be promoted in every field.

In order to incorporate broader concept of this act, a draft RTI model law was formulated for countries to create their domestic RTI laws accordingly. It was basically a blue print set by international organization for maintaining the efficiency of the act all over the world. It consists of some very basic principles that all member states are required to follow while enacting their RTI legislation.

In the 10th Annual convention-2015 of central Information commission modi spoke on importance of RTI. He said that there needs to be a trust between the Govt. and people. He said

that through online platform information could be easily secured and will make everything crystal clear.

It has been internationally accepted that state have the obligation to reveal the information that citizens want to know. Jurisprudential Dicta that 'rights and duties are co-relative' applies here too as citizens right to access information casts a duty on the state to reveal information.

Some of these basic organization who have actively supported the implementation of this RTI Act includes

The Universal Declaration of Human Rights, 1948

"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"⁶.

So, according to this we have right to freedom of opinion and expression which ultimately gives us the right to information i.e. right to seek and receive information. The UN Declaration have always given preference to human rights over the power of the State and so, no violation can be done with rights of the citizens⁷.

The International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights (ICCPR), which does have legal force and is a binding international treaty, was adopted by the General Assembly in 1966 and came into force in 1976. It guarantees right to information in its Article 19 similar to above provisions of UN Declaration that:

1. Every one shall have the right to hold opinions without interference;
2. Every one shall have the right to freedom of expression: this right shall include freedom to seek, receive and impart information to all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any media of his choice; and

⁶ Art. 19 of the Universal Declaration of Human Rights signed on 10 Dec. 1945.

⁷ Laws on Access to Official Documents, in Secrecy in Government, T.N. Chaturvedi, (ed): Indian Institute of Public Administration, New Delhi, 1980.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it the special duties and responsibilities.

It may, therefore be-subject to certain restrictions, but those shall only be such as are provided by the law and are necessary for respects of rights and regulations of others and also for the protection of national security or of public order, public health or morals.

The UNESCO Declaration, 1978

Article 1 of the UNESCO Declaration on 'Fundamental Principles Concerning the Contribution of the Mass Media is to Strengthen Peace and international Understanding, to the Promotion of Human Rights and to Countering Racism Apartheid and Incitement to War', 1978.

"The strengthening of peace and international understanding, the promotion of human rights and the countering of racism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information".

Article II of the Declaration states: "...the exercise of freedom of Opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding..."

The United Nations Convention on the Rights of the Child, 1989

Article 13 of the United Nations Convention on the Rights of the Child, 1989 states as follows;

The child shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds regardless of frontiers either orally or in writing or in print in the form of art or through any other media of the child's choice.

The exercise of this right may be subject to certain restrictions but these shall only be such as are provided by law and are necessary. It includes restrictions which are necessary for respect of the rights or reputations of others or for the protection of national security or of public orders or of public health or morals.

United Nations Convention against Corruption, 2003

Article 13 of the 'UN Convention against Corruption' is adopted by the United Nations General Assembly on 31st October 2003. It is necessary for effective access to information for public undertaking public information activities contributing to non-tolerance of corruption, respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption... as important measures to be taken by Governments for ensuring the participation of society in governance.

Article 10 of the 'UN Convention against Corruption' states: "... to combat corruption, each (member State) shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes and take measures.

Rio Declaration on Environment and Development

As per Principle 10 of Rio declaration by the UN conference on environment and development in 1992 it was proclaimed that the environmental issues are best handled with the participation of all concerned citizens so at the national level each individual shall have appropriate access to information concerning the environment i.e. held by public authorities including information on hazardous materials and activities in their communities and the opportunity should be given to the individuals to participate in decision making process , states shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings including redresses and remedies shall be provided.

Freedom of Information at regional level in International Perspective:

Asia Pacific – In Bangkok Declaration

In 1967 association of South-East Asian Nations concluded its aims and purposes according to United Nation Charter. In 2005 it mentioned a good governance objective which includes the need to develop freedom of information, mechanism and upgrading of statistical information, systems and data basis to involve the promotion of policies for access to information sharing.

African Charter on Human and People's Rights:

Article 9 of the charter recognizes the Right to Information. It provides that every individual shall have the right to receive information. It further concludes that every individual shall have the right to express his opinions within the law.

In 2002 the African Commission and Human on People's Rights adopted a declaration on principles of freedom of expression to the effect that the public bodies will hold information not for themselves but as custodians of the public and everyone has a right to access this information.

Part 4 of this declaration mentions the Right to Information having a mandatory effect.

American Convention on Human Rights:

Article 13(1) of American Convention on Human Right provides that everyone has the right to Freedom of thought and expression, this right includes freedom to receive and impart information regardless of frontiers whether orally or in writing in print or through any other medium of one's choice.

European Convention on Human Rights:

Article 10 of European Convention on Human Rights and Fundamental freedoms, 1950 provides that everyone has a right to freedom of expression. This right shall include freedom to hold opinions and to receive information and ideas without interference by public authority and irrespective of frontiers.

It further says that the exercise of these freedoms since it carries with its duties and responsibilities may be subject to such formalities, conditions, restrictions as are prescribed by law and are necessary in a democratic society in the interest of national security, territorial integrity, public safety or for the prevention of disorder or for the protection of health, reputation or rights of others or for preventing disclosure of information received in confidence or maintaining the authority and impartiality of the judiciary.

United States:

Under Section 3 of the Administrative Procedure Act, 1946 The government bodies were required to publish information about their structures, powers and procedures and to make them available to all except in the adjudication of cases and for good cause to be held confidential. The administration could withhold information relating to any function requiring secrecy in the public interest and for internal management. Since a very little information was given by the government bodies the media and the congress advocated for a more comprehensive law.

People also demanded for a new information act, therefore, Freedom of Information Act was enacted in 1966, it has been amended several times and in 1996 it was amended by the Electronic Freedom of Information Act.

United Kingdom:

The Freedom of Information Act of United Kingdom was passed in 2000 and came in to full effect in 2005.

Common Wealth countries

The law ministers of Common Wealth countries in a meeting in 1980 which was held in Barbados stressed on public participation the democratic and governmental process to be the most meaningful on the citizens adequate access to official information. They submitted a report in 1999 for consideration of law ministers of common wealth countries with the recommendation of the principles and guidelines on the right to know.

Principles:

Freedom of information should be guaranteed as legal and enforceable right permitting every individual to obtain records and information held by the executive, legislative and judicial arms of the state as well as any government owned corporation and any other body carrying out under-mentioned public functions:\

The legislation should contain a presumption in favor of maximum disclosure.

The right of access may be subject to only such exemptions which are narrowly drawn permitting government to withhold information only when disclosure would harm essential interest such as national defense and security, law enforcement, individual privacy or commercial confidentiality provided that withholding the information is not against the public interest.

Decisions under the legislation should be subject to independent review capable of ensuring compliance.

Guidelines:

Government should enact freedom of information legislation containing appropriate measures for its implementation.

Government should permit every individual or information seeker to obtain information promptly at low or no cost.

Legislation should provide for an independent review of decisions capable of providing an effective remedy in any case of delay or denial.

Government should maintain a preserved record to promote a culture of openness publically providing information related to the exercise of their functions and the information held by them.

World Conference on Human Rights

The World Conference on Human Rights, held in Vienna in 1993 declared the Right to Development adopted by United Nations General Assembly in 1986 is a universal right and cannot be changed and also it is considered as an integral part of fundamental human rights. The declaration recognizes that Right to freedom of expression is closely linked to the Right to Development. The right to seek, receive and impart information is not merely corollary of freedom of opinion and expression but it is a right upon which free and democratic societies depend. It is also a right that gives meaning to the right to participate which has been acknowledged as fundamental to men for realization of the Right to Development.

The Civil Society Declaration to the World Summit

The Civil Society Declaration to the World Summit on the Information Society held at Geneva on 8th December, 2003 and in this it Qa concluded that: “We are committed to building information and communication societies that are people-centered, inclusive- and equitable. Societies, in which everyone can freely create, access, utilize, share and disseminate information and knowledge, so that individuals, communities and people are empowered to improve their quality of life and achieve their full potential.”

A democratic perspective on information and communication societies, includes information, which is the most crucial thing for citizen, it is necessary in order to make choices by creating awareness of opportunities

“Everyone should have the opportunity to participate in communication processes and no one should be excluded from their benefits.”

It implies that every person must have access to the means of communication and must be able to exercise their right to freedom of opinion and expression, which includes the right to see, receive and impart information and ideas through any media and regardless frontiers.

International Conference of Information Commissioners

The 5th International Conference of Information Commissioners was held in Wellington, New Zealand. In this meeting, the information commissioners and government representatives discussed issues and challenges which they faced in enforcing FOI laws in their respective countries. The 3rd International Conference of the same was held in 2005 at Cacum, Maxico, the 4th International Conference was held at Manchester, United Kingdom, on May 22nd and 23rd, 2006 where participants from 40 countries had participated and the 6th International conference of Information Commissioners are going to be held in Norway during the fall of 2009 tool for commissioners and their s advice and assistance as to issues arise in their countries.

Right to Information around the World:

Over 50 countries around the world have now adopted comprehensive Freedom of Information Act to facilitate access to information. After its adoption, a very rapid growth has been seen in transparency and no doubt civil society organizations, the media and has done a lot for this.

Many of the northern and industrialized country have adopted this and the remaining countries are also seeking to implement such kind of laws for better governance. In Asia, Countries like India and Pakistan, have adopted laws in 2002. In addition to this many countries have adopted laws that can provide limited access which includes laws related to data protection. Such kind of law allows an individual to access their own records held by government agencies, private organizations and specific statutes that give rights of access in certain areas such as health or the environment. In South and Central America, half dozen countries have already adopted such kind of laws. The issue is starting to emerge in Africa, South Africa enacted its law in 2001 and many countries in southern and central Africa, mostly members of the Commonwealth, are following South Africa's lead while at the same time Nigeria, Ghana and Kenya are also likely to enact legislation in the near future.

BACKGROUND OF RTI IN INDIA

There are many steps taken by government and private institutions in order to bring right to information for the citizens. The Right to Information Act, 2005 has raised high expectations and awareness in India. The Official Secrets Act, 1923 allowed the Government to deny the public access to documents on grounds of 'secrecy'⁸. This Act of RTI superseded most of the provisions of the Official Secrets at one stroke.

Section 8 of the RTI Act categorically states that information which cannot be denied to the Parliament or a State. The Act lays down that all official institutions of the Central and State Governments and even. State Governments that are controlled or substantially financed by the Government are to be considered 'public authorities'

Some of the various important events in the evolution of the RTI Act, 2005 that made history of RTI Act 2005 are given below:

1975: Supreme Court ruled that the people of India have a right to know.

⁸ Capt P, Satya P (2010) How to use the Right to Information (RTI) Act?

1982: Supreme Court ruled that right to information is a fundamental right.

1985: Intervention application in the Supreme Court by environmental NGOs in Bhopal gas tragedy, asking for access to information relating to environmental hazards.

1989: Election promise by the coalition government to bring in a transparency law.

1990: Government falls before the transparency law can be introduced.

1990: Formation of the Mazdoor Kisan Shakti Sangathan (MKSS) in Rajasthan and launching of a movement demanding village level information.

1996: Formation of the National Campaign for People's Right to Information (NCPRI).

1996: Draft RTI bill prepared and sent to the government by NCPRI and other groups and movements, with the support of the Press Council of India.

1997: Government refers the draft bill to a committee set up under the Chairmanship of HD Shourie.

1997: The Shourie Committee submits its report to the government.

1999: A cabinet minister allows access to information in his ministry. Order reversed by PM.

2000: Case filed in the Supreme Court demanding the institutionalization of the RTI.

2000: Shourie Committee report referred to a Parliamentary Committee.

2001: Parliamentary Committee gives its recommendations

2002: Supreme Court gives ultimatum to the government regarding the right to information.

2002: Freedom of Information Act passed in both houses of Parliament.

2003: Gets Presidential assent, but is never notified.

2004: National elections announced, and the —strengthening of the RTI Act included in the manifesto of the Congress Party.

May 2004: The Congress Party comes to power as a part of a UPA coalition government, and the UPA formulates a —minimum common programme which again stresses the RTI.

June 2004: National Advisory Council (NAC) was set up under Mrs. Sonia Gandhi.

August 2004: NCPRI sends a draft bill to the NAC, formulated in consultation with many groups and movements. NAC discusses and forwards a slightly modified version, with its Recommendations to the government.

December 2004: RTI Bill introduced in Parliament and immediately referred to a Parliamentary Committee. However, Bill only applicable to the central government.

Jan-April 2005: Bill considered by the Parliamentary Committee and the Group of Ministers and a revised Bill, covering the central governments and the state introduced in Parliament.

May 2005: The RTI Bill was passed by both houses of Parliament.

June 2005: RTI Bill gets the assent of the President of India

October 2005: The RTI Act came into force.

In 1944 a mass based organization called the Mazdoor Kisan Sanghathan took this initiative. People in a very backward district of Rajasthan Bhim Tehsil asserted their right to information by asking copies of Bill and names of persons who have been paid wages in the construction of schools, dispensaries and community centers. After getting information it was concluded that most of the public funds were misused as school buildings were roofless, dispensaries were without walls, dams were left incomplete and community centers are without door and windows. This organization raised famous slogans like —Hamare Paisa, Hamara hisab (our money, our account) and —Hum Janenge, Hum Jiyenge.

In 1996 a provision was made by Press council of India by introducing a draft bill for securing right to information which is known as right to information bill, 1996. For the smooth functions of right to information bill, the government of India on January 2, 1997 appointed working group. The working group recommended that the bill should be named as Freedom of Information bill as Right to information bill has now recognized as a part of freedom and expression.

FRANCE:

"All the citizens, have a. right to decide, either personally or by their representatives, as to the necessity of the public contribution; to grant this freely; to know to what uses it is put⁹."

In 1978 a law was passed by which one can easily Access Administrative Documents that are held by public bodies. Suck kind of documents includes "files, reports, studies, records, minutes, statistics; orders, instructions, ministerial circulars, memoranda or replies containing an interpretation of positive law or a. description of administrative procedures, recommendations, forecasts and decisions originating from the State, territorial authorities, public institutions or from public or private law organizations managing a public service." There are many exemptions for documents that can harm the secrecy of the proceedings of the government and such kind of documents are under the executive power; national defense secrecy; France's foreign policy; State's security, public welfare and for the security of an individual. Many other exemptions of this includes currency and public credit; actions by the services for detecting tax and customs offences; or any other secret which is protected by the law.

SWEDEN:

Sweden is known for its long history of freedom of information as it has enacted the world's first freedom of information act - the Freedom of the Press Act in 1766. This Act mandated that all the official documents should be made available to anyone making a request" at no charge.

"Every Swedish subject shall have free access to official documents." Public authorities must respond immediately to requests for official documents; Requests can be in any form and can be anonymous¹⁰.

Each authority has to keep a register of all documents which can be available publicly. There is currently an effort to make the registers available electronically. Under the Act, some exemptions have been stated to protect national security and foreign relations fiscal policy. A comprehensive list of the documents which are exempted is also provided in the Secrecy Act.

⁹ Article 14 of the Declaration of the Rights of Man. (1789)

¹⁰ Freedom of the Press Act, (Amendment) in 1976.

UNITED STATES:

The Freedom of Information Act (FOIA) was enacted in 1966. In 1996 it was amended by the Electronic Freedom of Information Act. The law allows any person or organization to ask for records which is held by 253 federal government agencies. These Agencies includes executive and military departments, government corporations and other entities.

The Homeland Security Act in 2003 added a provision which prohibits the disclosure of business information relating to "Critical Infrastructure. The 1996 E-FOIA amendments mandated that agencies should create "electronic reading rooms" and available electronically the information that must be published along with common documents requested.

At the very beginning many loopholes were identified. In 2003, National Security Archive found a number of problems like Excessive backlogs, Inaccurate or incomplete information, Lost requests, Failure to acknowledge requests, FOI operations leading to delay and lack of oversight, Inconsistent practices regarding the acceptance of administrative appeals and many more.

UNITED KINGDOM:

After 20 years of campaigning, The Freedom of Information Act was adopted In November 2000. This Act gives right to access of information which is held by public authorities. This law mandated the authorities to respond within 20 days.

Some of the major exemptions of this act includes court records, most personal information, information from security services, information which is obtained under confidence, or any information which is protected under another law. Such kind of information cannot be disclosed.

Under the "qualified class exemption," information cannot be disclosed if it is related to government policy formulation, investigations, royal communications, safeguarding national security, legal privilege, public safety or was received from a foreign government.

Under the law, the Information Commissioner have full authority to receive complaints. When the Commissioner orders the release of information based on the public Interest, the Minister of the Department with a ministerial certificate can overrule the decision. Appeals of the Commissioner's decisions are made to the Information Tribunal which can also review and quash

certificates on limited grounds. Appeals of the Tribunal's decisions on points of law are made the High Court of Justice.

CONCLUSION

In conclusion it can be said that Right to Information Act 2005 is very essential in a country as it checks corruption, and holds the various bodies, agencies and departments of the government accountable to the public. Also it is important for enhancing transparency and awareness in the society. Over 50 years many countries have adopted this.

To maintain transparency it is essential to have a body answerable to all public queries. In some countries, the laws lie dormant due to a failure to implement them properly or a lack of demand.

Even after the enactment of the Right to Information Act (RTI Act), governments have failed to implement this law to our expectations. Governments must take immediate and effective steps to establish a regime of transparency at all levels of the administration. It is a matter of concern that even after nine years of the enactment of the RTI Act, several states and competent authorities have rules which are contrary to the letter and spirit of the RTI Act and curb this people's right to seek information in many ways.

A large number of public authorities have failed in fulfilling their obligation to provide information to people under Section 4 of the RTI Act. The government must take steps to create awareness about the RTI Act among people, especially amongst the disadvantaged segments of society such as women, dalits, adivasis, all kinds of minorities and differently-abled persons.

There is a need of Central and State Governments to ensure that the Whistle Blowers Protection Act (WBP Act), enacted in May 2014, is operationalised immediately or not.

It is the moral responsibility of the Government to protect RTI activists and users who are attacked, and take swift legal action against those responsible for these attacks. Protection must be provided to their families and adequate compensation is still not properly paid in many cases. Model WBP Rules for implementing this law must be made in a transparent, consultative and participatory manner, to establish a efficient framework for protecting whistleblowers across the country.

It is also the obligation of governments and information commissions to ensure that, whenever an RTI applicant is attacked, the information that was being sought by him or her is put in the public domain on and any pending appeal followed up on a priority basis and all persons demanding transparency in public interest who are attacked must be treated as human rights defenders. In many cases instances of murders, physical attacks on RTI users are not properly investigated and if they were investigated proper strict actions are not taken against them.

