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# **CONSTITUTIONAL VALUES, TRANSPARENCY AND GOOD GOVERNANCE VIS-A-VIS ARTICLE 19 AND 21 OF THE CONSTITUTION WITH REFERENCE TO THE RIGHT TO INFORMATION ACT, 2005**

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## **ABSTRACT**

From its inception, the Indian Constitution has been grounded in the idea that power shall be exercised under public scrutiny. The framers of our Constitution aspired to create a system where authority and accountability can go hand-in-hand. As the Great Dr. B.R. Ambedkar said “Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it.”<sup>1</sup> The Right to Information Act, 2005 is an express example of the law makers attempting to realise the hopes of the constitution framers. It is not merely a statute, rather an acknowledgment of an existing constitutional right I.e. the Right to Know flowing from Article 19(1)(a). With the adoption of this Act, India truly promoted the concept of Democracy, by establishing a procedural system to increase transparency in governance. To expand upon the words of B.R.Ambedkar, constitutional values - in this case i.e. Morality and Transparency are concepts not to be restricted simply to a abstract entity, instead should be practically enforceable and visible to the citizens. It is then that the idea of Good Governance will come to the fore. The Right to Information Act, 2005 now acts as a plot device for the public to ensure the continuity of these constitutional values.

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<sup>1</sup> Constituent Assembly Debates, Vol. VII, (4 November 1948) Speech by Dr. B.R.Ambedkar, 7.48.229.

## 1. DOCTRINAL FOUNDATION OF RIGHT TO INFORMATION AS A FUNDAMENTAL RIGHT

The foundational grounds of the Right to Information Act, 2005 were laid decades before the adoption of the Act. Post-Independence, the Supreme Court realised that for the best application and interpretation of Article 19(1)(a) that talks about Freedom of Speech and Expression, it is necessary for the citizens to have the Right to Know, only then can they exercise their Right to Speech adequately. Similarly, this Right is of utmost importance in the context of democracy. India is a democratic country and that means the participation of citizens is simply irreplaceable. For this participation, a citizen must have the Right to Know the facts that concern the Government he/she is being represented by.<sup>2</sup> With the implementation of the RTI Act, 2005 that mandate has been purposefully addressed. The Act now serves as a tool to ensure transparency and accountability. The development of RTI Act has gone through different decades and multiple judicial pronouncements.

### LANDMARK PRECEDENTS -

*State of U.P. v. Raj Narain*<sup>3</sup> - An incredibly famous case where Raj Narain filed an election petition challenging then Prime Minister Indira Gandhi's victory, accusing her of using electoral malpractice. The Court discussed the Right to Know in this case, stating that the Right to Know is derived from the concept of Freedom of Speech and although it doesn't come without restrictions, is still a necessary element to uncover the veil of secrecy. The Court had also observed that the citizens of this country have a Right to Know every act done in a public way, by the public functionaries. This Case laid the foundations for upcoming years to follow this path and keep progressing towards a State where secrecy by public officials is kept to a minimum. In this case, the Court linked the constitutional value of transparency with democracy. The Court further warned against secrecy in matters that do not require so.

*S.P. Gupta v. Union of India*<sup>4</sup> - A few years down the line, the Court reiterated the fact that Right to Know is a part of the Right to Free Speech and Expression under Article 19(1)(a). The objectives of an open and democratic government can only be met when there is a mechanism for disclosure of information of working of the public officials. The only exception to that would be when disclosing information would be directly contradictory to Public Interest.

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<sup>2</sup> Kumari M., 'Right to Information : A tool of Good Governance,'(2024) 6 *International Journal for Multidisciplinary Research* <https://www.ijfmr.com/papers/2024/4/25881.pdf>.

<sup>3</sup> State of U.P. v. Raj Narain, AIR 1975 SC 865.

<sup>4</sup> S.P. Gupta v. Union of India, 1982 2 SCR 365.

Moving further down the line, we saw the Indian Freedom of Information Act (FOIA), 2002 which was enacted to provide the Right to Information but failed in its function due to incomplete formulation and lack of operational rules. To replace this Act, soon enough in 2005, the Right to Information Act, 2005 came and replaced the FOIA for the long haul.

It is also quite important to also establish the nexus between Right to Know and Article 21. Article 21 talks of the Right to Life and Personal Liberty and it also has been broadened by the Court to include the Right to a dignified life. A citizen that has elected the government must possess the right to know of its functions that shall directly affect his life. Taking an example, details of Government pension schemes or the MNREGA job opportunities, these are aspects that are crucial for realization of the socio-economic rights and dignity of the citizens. The scope of Article 21 too had to be broadened to subsume the Right to Know within it, as any information that is required for accessing essential services or challenging arbitrary action of the State affects the livelihood of citizens and finds itself under the umbrella of Article 21. Thus, this dual constitutional foundation displays the importance of the RTI Act today and for the future.

## **2. THE CRUX OF THE CONFLICT BETWEEN RIGHT TO KNOW AND STATE INTEREST: SECTION 8 OF THE RIGHT TO INFORMATION ACT, 2005.**

The RTI Act's primary objective is to ensure a harmonic balance between the need for transparency and accountability and protecting administrative efficiency along with confidential preservation. Section 3 and 4 talk about the former part of the scenario and the purpose is to promote a culture where openness, transparency and minimum secrecy exist. As for the latter part, it has been clearly established that the Right to Know stems from Article 19(1)(a), it is not absolute and can be restricted under exceptional circumstances.<sup>5</sup> It has limitations, mentioned in Section 8 of the RTI Act and it is itself governed by Article 19(2), permitting reasonable restrictions such as The Sovereignty and Integrity of India, the security of the State, public order, decency or morality amongst the others. The exemptions on the Right to Know laid out in Section 8 of the RTI Act operate on these constitutional principles.

Now, Section 8 is perhaps the tool most used by the State in attempting to balance out State Interest with the Right to Know. It is indeed true that unrestricted Right to Know could end up completely destabilizing governments, affecting the officials and their ability and intentions to perform their duties, keeping that cloud of uncertainty over them. As mentioned, these restrictions are not arbitrary and derive their origin from the constitution itself.

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<sup>5</sup> Dinesh Trivedi v. Union of India (1997) 4 SCC 306.

Some of the crucial exemptions laid out under the Section include - National Security, Sovereignty and Foreign Relations: Section 8(1)(a) discusses exemption from disclosing such data/information that may prejudicially affect the sovereignty and integrity of India, the Security of the State, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.<sup>6</sup> This exemption takes direct birth from Article 19(2). It is also key to note that the onus and responsibility is on the body denying the disclosure of information to prove harm beyond apprehension.

### **Upholding of Parliamentary Privileges guaranteed by the Constitution:**

Section 8(1)(c) says that a public authority is not obligated to publish any such information that may cause a breach of privilege of Parliament or State Legislature. For example, Articles 105 and 194 define the powers, privileges and immunities enjoyed by the members, and this provision complements that arena.

### **Balancing Commercial Confidence and Trade Secrets:**

Section 8(1)(d) exempts disclosure of information concerning trade secrets or commercial confidence where any disclosure of such information may harm a third party's position in the market as a competitor. It is important from a constitutional perspective to protect the interests of such persons and their proprietary assets. Yet it is to be noted that this Right is not absolute and information can be disclosed if the competent authority deems it necessary for the larger public interest. For example, the Court has held that agreements between public departments and third parties regarding driving licence smart cards or optical smart cards cannot be denied under Section 8(1)(d) as their disclosure would further the larger public interest by allowing for critical improvement.<sup>7</sup>

### **Maintaining the trust in Fiduciary Relationships:**

Under Section 8(1)(e), the disclosure of information available to a person in a fiduciary relationship is exempted. But this right is not absolute either. If the larger public interest warrants the disclosure of such information, the authority must then reveal such information. This exception allows for the sensitive data that may have been passed on due to trust to remain confidential.

### **Ensuring the safety of persons holding confidential information :**

Section 8(1)(g) exempts the disclosure of any such information whose disclosure may

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<sup>6</sup> Right to Information Act, 2005, § 8(1)(a).

<sup>7</sup> Shonkh Technology International Ltd. v. State Information Commission Maharashtra Konkan Region, and United Telecom Limited v. State Information Commission Maharashtra Konkan Region and Ors., 2011 (113) BOMLR 2433.

endanger the life of the person that was in possession of such information. It is an exception that is of utmost importance and follows constitutional values of Article 21, ensuring the right to life and dignity.

### **Confidentiality and Collective Responsibility:**

Section 8(1)(i) exempts cabinet papers that include records of deliberations of Council of Ministers and other officers. This provision attempts to balance out transparency with administrative efficiency and security. The law-makers believe that for frank and open debates, it is necessary that these records are kept confidential. It does seem almost contradictory to the idea of transparency and accountability, however the Government accepts this for the sake of better efficiency, as ultimately, the provision further provides that after the decision is reached, the records can be made public.

### **The overriding effect of Section 8(2) in the name of Public Interest:**

Section 8(2) is a crucial provision of the RTI Act. Its framing, being a non-obstante clause, puts it in an overwhelming position. This provision subjects these exemptions to a presumption of disclosure of information which can only be withheld if clear and demonstrable harm to the State interest is proven to outweigh public interest and constitutional values of transparency and accountability. This creates a situation where the idea of democracy comes to the fore when we take away the unfettered discretion of the State. It is indeed key to note that the 'public interest' must be interpreted in a strict sense.

## **3. JUDICIAL SYNTHESIS AND UPHOLDING OF CONSTITUTIONAL MORALITY**

The Judiciary has expounded upon the provision of Section 8 of the RTI Act, 2005 in line with the constitutional principles beforehand in multiple cases. It has dealt with the various facets under the provision and delivered judgments keeping in mind the evolving landscape in the country.

In the case of *Central Board of Secondary Education v. Aditya Bandopadhyay*<sup>8</sup>, the Court examined the facts of the case and the legal aspects attached to it and observed that the answer sheets asked for disclosure did not fall under the purview of any restrictions provided under Section 8(1) of the RTI Act. The Court prioritized transparency, but maintained a stand that demands that may hamper the efficiency of administration must be dealt with caution.

Similarly, the Court has observed that when the overall stability of the system is concerned, the public interest in having transparent disclosure of information outweighs the need of other

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<sup>8</sup> *Central Board of Secondary Education v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

interests. Specifically seen in the case of Reserve Bank of India v. Jayantilal N. Mistry<sup>9</sup>, the RBI's duty as a public authority is of constitutional importance and they must be held accountable to the public. This decision is demonstrative of the values of that time when ultimately public interest would outweigh privacy and information may be withheld but only if it surpasses the public interest test under Section 8(2) of the RTI Act.

### **Evolving landscape of Privacy v. Transparency**

Perhaps the most important judicial pronouncement was one that took place in 2017- the K.S.Puttaswamy v. Union of India case. Recognition of Privacy as a Fundamental Right and formulation of the proportionality test were landmark parts of the judgment. The aftermath of this judgment meant that any demand for disclosure of information would go straight against the Right to Privacy and be subjected to the proportionality test. The act of balancing the right of privacy and right to information was on play from this moment forward. As a result, the exemptions under Section 8 would now be viewed in a different and stricter sense.

### **Balance between Privacy and Transparency :**

Section 8(1)(j) establishes a balance between these 2 principles. It exempts the disclosure of any personal information that has no relation to public interest or would cause unwarranted invasion into a person's privacy, unless the authorities are satisfied that larger public interest warrants such disclosure. This Right stands at more delicate grounds than ever since the Right to Privacy was recognised as a Fundamental Right.<sup>10</sup> It essentially put the judiciary into a dilemma on how to effectively even out both these contentions. However, this provision saw a resounding alteration through the Digital Personal Data Protection Act, 2023, which removed the element of "larger public interest" and gave complete power to the government to withhold data. It has most definitely been a point to discuss as to how much of a negative effect this could have on the idea of transparency and accountability. The Public's right to information stands on weak ground and constitutional morality appears to be undermined in the name of data protection.

## **4. GOOD GOVERNANCE AND THE NEXUS WITH RIGHT TO INFORMATION**

Democracy expects openness and openness is a concomitant of a free society and the sunlight is the best disinfectant.<sup>11</sup>

Good governance essentially is a term that translates to the work done by the government

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<sup>9</sup> Reserve Bank of India v. Jayanti Lal Mistry, (2016) 3 SCC 525.

<sup>10</sup> K.S.Puttaswamy v. Union of India, (2017) 10 SCC 1.

<sup>11</sup> Dinesh Trivedi, MP V. Union of India, (1997) 4 SCC 306.

keeping in mind the maximum benefit and welfare of the people. In a democratic country, the people have elected their representatives and must possess the right to know the actions and reasoning behind those actions of the government.<sup>12</sup> This is where the RTI Act comes in, allowing for citizens' engagement in social, economical or political business of the country. RTI allows for citizens to have a mechanism through which they can be hopeful of continuing transparency and accountability of their government. Giving citizens the right to possess information, obliging public authorities to disclose information are central features of this Act.

For Good Governance to prevail, there needs to be minimal corruption as it is this evil that negatively diminishes the positive concept of Good Governance. The RTI Act provides for a breakthrough, erasing that cover of secrecy for the officials. It is an essential tool that is of remarkable importance. The vision behind its adoption was to eradicate the administrative inefficiency that rises out of zero accountability and improper execution of the services assigned to the men-in-charge. Good Governance is believed to be a 4-headed principle : Transparency, Accountability, Predictability and Participation.<sup>13</sup> When a citizen is given the mechanism to keep check on the government and its work, it becomes a more faithful and understandable system of democracy. In a democratic State, the Citizens are never meant to be in an uncertain state of mind. Lastly, extending the principle of Universal Adult Suffrage, every citizen has a right to participate in the running of their country and the RTI plays a crucial role in that respect too.

## **5. ASSESSMENT OF ADMINISTRATION EFFICIENCY AND IMPLEMENTATION CHALLENGES OF THE RTI ACT**

The assessment of the RTI Act and its effects is considered in three major sections:

Firstly, Section 4 of the Act which requires suo moto disclosure of information by public authorities at regular intervals.<sup>14</sup> The question is, how much of that is being followed, if at all. The point of concern here is the lack of mechanism to implement the obligations that this provision has set out. There is the presence of Section 18 of the RTI Act, using which anyone can file a complaint to the State or Central Information Commission. But is unfeasible to expect every case of non-compliance with Section 4 to be met with a complaint directly under

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<sup>12</sup> M.P. Jain, *Indian Constitutional Law* (9th edn, LexisNexis 2025) 1190.

<sup>13</sup> M. Sahina Laskar, Importance of Right to Information for Good Governance in India, (2016) Bharati Law Review 220, <https://docs.manupatra.in/newslines/articles/Upload/AC9CD2C7-B8AD-4C5A-B910-3751BFE5CB28.pdf>.

<sup>14</sup> Right to Information Act, 2005, § 4.

Section 18.<sup>15</sup>

Secondly, The 2019 Amendment Act and the risk of Institutional Erosion. Before the amendment act of 2019 came, the tenure of the Information Commissioners was fixed for 5 years and salaries were the same as those of Election Commissioners and Secretaries, essentially keeping a sense of independence in the functions of these officers. After the Amendment Act of 2019 came through, these provisions were removed and instead handed over to the Central Government.<sup>16</sup> This subjecting of the service conditions of the Information Commissioners' to the Central government hampers the ability to maintain transparency against the government without fearing retaliation by the government officials. This is a clear example of compromising of independence and undermines the effectiveness of the RTI Act.

Thirdly, the shameful reality of attacks and violence faced by the RTI users and information seekers. 80+ deaths of RTI Activists have been witnessed ever since the Act came into force and double the amount of cases of physical assault and violence.<sup>17</sup> Exposure of these citizens to such grave offences against them will most definitely push them back in fear of losing either their own or someone close's lives. These crimes are an indication of a strong, connected network that works against the constitutional idea of transparency and is actively looking to submerge the system in corruption.

## 6. RECOMMENDATIONS FOR REFORMATION

It is necessary to state first and foremost that the legislature must review the changes that have been made during the lifetime of the RTI Act. The Amendment of Section 44(3) of the Digital Personal Data Protection Act, 2023 is called for. It is essential to reinstate the part of 'public interest override' to align with the constitutional proportionality test that has been laid out.

Secondly, the statutory independence of the Information Commissioners must be re-established for them to have the security of their jobs and livelihood. The Central government shall be stripped of such overwhelming power in cases where their own actions are concerned.

Thirdly, there should be stricter and appropriate enforcement of the existing provisions of the RTI Act. Public authorities must be faced with harsh measures if they fail to comply with statutory duties.

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<sup>15</sup> K. Ravi Edara, Section 4 of RTI Act : How to strengthen the weakest link? (28 April,2015,) Criticles <https://www.newslaundry.com/2015/04/28/section-4-of-rti-act-how-to-strengthen-the-weakest-link>.

<sup>16</sup> Roshni Sinha, Explainer : The Right to Information(Amendment) Bill, 2019. (19 July 2019) PRS Legislative Research, <https://prsindia.org/theprsblog/explainer-the-right-to-information-amendment-bill-2019?page=9&per-page=1>.

<sup>17</sup> Shikha Chhibar, As attacks on RTI applicants continue, authorities must do more to bring perpetrators to justice, (24 February 2021) Scroll.in, <https://scroll.in/article/987740/as-attacks-on-rti-applicants-continue-authorities-do-little-to-bring-perpetrators-to-justice>.

Finally, the users of the RTI Act need more protection and safeguarding of their lives. One such measure could be to enact a strong Whistleblowers Protection Act, that guarantees the activists safety against the corrupt officials and their network.

### **SUMMARY OF FINDINGS**

The RTI Act is now an essential tool to promote the idea of constitutional morality through increasing transparency and accountability by creating an enforceable mechanism where users can now ask the government when they believe questions need to be asked. The RTI Act maintains a balance between transparency and confidentiality through its provisions such as Section 3,4 and Section 8 respectively. A question in this regard however is raised by the Section 44(3) of the DPDP Act, which prioritizes absolute privacy over any public interest, modifying the RTI Act with it. Judicial pronouncements such as the Raj Narain case to the S.P. Gupta case to the CBSE v. Aditya Bandopadhyay case have expanded the right to know as a fundamental right. The K.S.Puttaswamy v. Union of India case while recognizing privacy as a fundamental right also plays its part in ensuring that when the competing interests collide, they do not result in a unfair or immoral outcome by laying down the proportionality test. The statutory framework and legislative aspect aside, the practical implementation of RTI seems far far away from the ideal scenario. The multiple factors addressed in this article all indicate that this regime still needs much more attention and swift plus strict action to be an optimal framework.

### **CONCLUSION**

The RTI Act traces its foundation from the time of the constituent assembly debates, when the framers themselves discussed the importance of the right to know, to multiple judicial pronouncements which emphasized on the relevance of the principles of transparency and accountability as elements of constitutional morals. With constitutional values enshrined in the very foundation of this Act, its enactment in 2005 served as a legislative measure to bring these principles into practice. In the past 2 decades, it has been often utilised as a tool by the citizens. The Judiciary too has made multiple interpretations in this realm across the years, whilst simultaneously keeping a balance between the citizens' right and the state's duties. The Act also is fundamental for the principle of Good Governance, and for that to happen, the Act must stay aligned with constitutional values. Yet, it must also be stated that there have been challenges in upholding of these principles due to a multitude of factors as discovered throughout the research done in the article. Ultimately, this Act possesses the 'Master Key' for good governance and the democratic values our constitution enshrines, and we must do the required work to enforce it in that regard.

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