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The Right to Information Act and Challenges ensuring Transparency and Participation

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To function democratically, governmental activities must be open and transparent. Citizens must engage in politics at every level to discourage authoritarian rule. Effective participatory governance must be accessible to the public to determine how the government will affect the well-being of its population. In addition, they must be familiar with the methods employed by government agencies, the regulations and laws that must be followed, the status of their applications, and other pertinent information. The implementation of the idea of ‘Government of the people, by the people, for the people’ is a vital step in the evolution of our democracy, which is made possible by the right to information. Development projects, effective governance, and citizen’s quality of life are all strengthened by the active engagement of people in decision-making processes that directly affect their lives. This essay examines the concerns and obstacles Indians experience when exchanging knowledge.

Keywords: *right to information, constitution, freedom, rights.*

INTRODUCTION

The Indian Parliament passed the Right to Information Act, better known as the RTI Act, on June 15, 2005. Information has been provided to millions of Indian individuals since the Act’s

implementation on October 12, 2005. This Act is one of the most effective laws in the country since it includes all constitutional powers.

An innovative legislation called the Right to Information Act seeks to improve Indian government openness. Due to the tireless work of anti-corruption campaigners, the Act was approved in 2005. It is seen as revolutionary because it makes government institutions open to public inspection. Anybody with knowledge of RTI may request information from any government agency. The organization must provide the requested data within 30 days otherwise, the responsible authority risks financial penalties.¹ Before the RTI Act was implemented in India, the culture of official secrecy that dominated public institutions led to widespread corruption and the arbitrary use of power by those in positions of authority. The British government in India passed the Official Secrets Act in 1923 and maintained it after independence. The Official Secrets Act made offenses like espionage, information exchange, and interference with military operations in banned or restricted regions criminal. If convicted, a person might get up to 14 years in jail, a fine, or both. The data might include any reference to a government-owned or -used location, a document, pictures, drawings, maps, plans, models, official codes or passwords.

The Act was initially enacted to impose British authority over India; nevertheless, it was a terrible judgment to continue enforcing it in an independent India. The Act was arbitrary since it did not clarify what information must be kept hidden from the public or define '*secret information*'. After independence, the climate of official secrecy persisted. The incidence of power abuse and unethical diversion of public funds increased due to the public authorities' lacking transparency and openness in the operation of governance. In several instances, the general citizen wants more access to government-held data. In 2005, the government established the RTI Act, enabling Indian individuals to seek information from government agencies and boosting government and employee accountability and responsibility. The doors of government offices, formerly inaccessible to the public, have been opened, enabling any Indian to enter and see what

¹ 'Beginner's Guide to RTI (Right To Information Act)' (*Online RTI*) <<https://onlinerti.com/about-rti>> accessed 10 January 2024

is taking on within. In a legitimate democratic sense, the freedom of knowledge has provided the population with substantial credible information.²

RTI-CONSTITUTION OF INDIA

The provision in Article 19(1)(a) that bears its name guarantees freedom of speech and expression and the right to information. Everyone has the right to free speech and expression, according to the provisions of Article 19(1)(a)³. According to Article 19(1)(a), the freedom to collect and distribute knowledge is referred to as '*freedom of speech and expression*'. It encompasses the capacity to disseminate information via any media, such as written, spoken, and audio-visual works, such as movies, speeches, and commercials. The ability to freely express one's beliefs or ideas to as many people locally and globally as possible without fear of repercussions is a necessary component of freedom. The distribution and receiving of information are both critical components of the information exchange process.

In the case of *Romesh Thapper v State of Madras*⁴, an Indian court upheld the right to information in Article 19(1)(a). In this case, Patanjali Shastri J. claimed, '*freedom of expression and the press are essential to all democratic institutions because they allow the public discourse to operate the popular rule process properly.*'⁵ The Supreme Court of India acknowledged this right in the case filed before it by *Raj Narain v State of Uttar Pradesh*⁶. It is common practice to assess a state's democratic credentials based on the degree of press freedom it provides to its media. The Supreme Court of India held in the case of *Prabhu Dutt v Union of India*⁷ that the capacity to acquire news and information on how the government is run is a vital component of press freedom.

² Ramesh Kumar, 'Right to Information: Issues and Challenges' (2019) 9 CPJ Law Journal 113-117
<<https://www.cpj.edu.in/wp-content/uploads/2022/11/CPJ-Law-Journal-2019-dt.-05-10-2019-min.pdf>>
accessed 10 January 2024

³ V N Shukla, *Constitution of India* (EBC 2017)

⁴ *Romesh Thapper v State of Madras* AIR 1950 SC 124

⁵ *Ibid*

⁶ *Raj Narain v State of Uttar Pradesh* (1975) 4 SCC 428

⁷ *Prabhu Dutt v Union of India* AIR 1982 SC 6

RTI-INTERNATIONAL STANDARDS

The great majority of international organizations working to preserve human rights have authoritatively accepted the fundamental nature and legitimacy of the right to freedom of information and the necessity for strict laws to ensure that this right is respected in reality. The Organization of American States, the Council of Europe, the African Union, and the United Nations are among these organizations.⁸

United Nations: Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) recognize the right to information as part of the right to free speech. It is part of the right to information. In 2011's General Comment 34, the UN Human Rights Committee highlighted the extent and limitations of the right to information, noting that Article 19 of the ICCPR grants access to information maintained by public organizations. Governments must actively provide information for the benefit of the public and guarantee that access is *easy, fast, effective, and attainable*. According to the opinion, nations must adopt *necessary procedures* such as legislation, to give effect to the right to knowledge. In addition, the idea stipulates that access fees must be kept to a minimum, requests must be processed promptly, authorities must explain reasons for withholding information, and governments must develop appeals processes.

RTI-ASIAN COUNTRIES

Sweden approved the first Right to Information (RTI) legislation in 1766 to get access to the king's information. Since then, 121 countries have approved comprehensive RTI legislation. Under Article 19, 90% of the world's population can access RTI laws or policies. Numerous international human rights treaties, including the Universal Declaration of Human Rights and the ICCPR, recognize the importance of information access.⁹ In 2002, Pakistan became the first

⁸ 'International standards: Right to information' (Article 19, 05 April 2012)

<<https://www.article19.org/resources/international-standards-right-information/>> accessed 18 January 2024

⁹ Shruti Sharma, (Friedrich Naumann Foundation for Freedom, 28 September 2021)

<<https://www.freiheit.org/south-asia/right-information#:~:text=The%20first%20Right%20to%20Information,an%20RTI%20law%20or%20policy>> accessed 19 January 2024

country in South Asia to pass the RTI law. Except for Bhutan, every country in the region is in the top 40 for its RTI law, according to the Global Right to Information Ranking Map. Strong RTI laws have been enacted in South Asian countries, allowing anybody to request documents from any public organization. This article will look at the shortcomings of each country's legal system.¹⁰

Afghanistan: Afghanistan is placed top of the RTI ranking because its constitutional and statutory rights are the strongest in the world. The only improvement that may be made is to ensure that the Access to Information Commission has total independence and the authority to establish a framework for holding public institutions accountable when they fail to satisfy their legal obligations to release the requested information. The political climate of the nation may alter the duties of the commission.¹¹

Sri Lanka: In Sri Lanka, an independent Right to Information Commission guarantees that the aims of the RTI statute are fulfilled. Professional communications, legislative privileges, and commercial agreements are exceptions. Sri Lanka had alleged excessive exclusions in declining RTI requests without specifying the corrective or punitive measures taken when the public body needed to provide the required information.¹²

India: Under RTI law, if a request for information is denied, Indians can make a second appeal. India has been rapidly expanding the scope of its general rejection policies under the guise of economic, scientific, and security institutions. The annual number of denied RTI inquiries has increased over the last seven years. Indian law also prohibits access to data stored by private businesses that serve a public purpose.¹³

Maldives: The RTI Act of the Maldives is quite robust and has various excellent elements. The primary flaws of the legislation are its exclusions, which include highly unclear explanations for withholding information from the petitioner, and its need for the petitioner to supply an

¹⁰ *Ibid*

¹¹ *Ibid*

¹² *Ibid*

¹³ *Ibid*

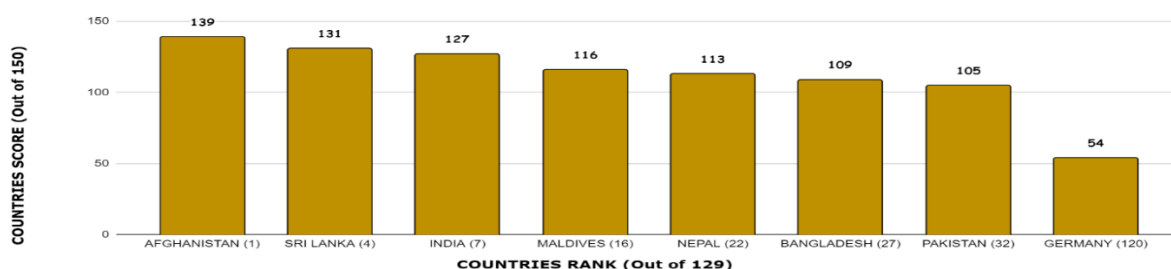
excessive amount of information to make requests. These faults may outweigh the broad public interest at the legislation's core.

Nepal: Citizens may seek information from the legislative, executive, and judicial branches of government under Nepalese law. The law's most fundamental flaw is that it restricts access to information by requiring citizens to justify their requests, which may be an unnecessary barrier.

Bangladesh: Bangladesh's RTI law gives the Information Commission substantial legal authority to conduct effective advertising campaigns. The Act also applies to a wide range of government entities, but its ineffectiveness needs to be improved by its exclusions for police, security, and intelligence services. In Bangladesh, other regulations may replace the RTI law, restricting people's access to information.

Pakistan: By providing access to information, Pakistan's Freedom of Information Act seeks to hold the government responsible to its citizens. However, the rule compels individuals to explain their requests for information, discouraging them from using their right to do so without restriction. In addition, the legislation limits the use of the gathered data to the application-specified reasons.

Bhutan: In 2014, Bhutan's National Assembly established an information access law. Article 7 of the Constitution grants every Bhutanese the right to access information. The Exempt Official Information section in the proposed law protects the ability to deny information requests.¹⁴

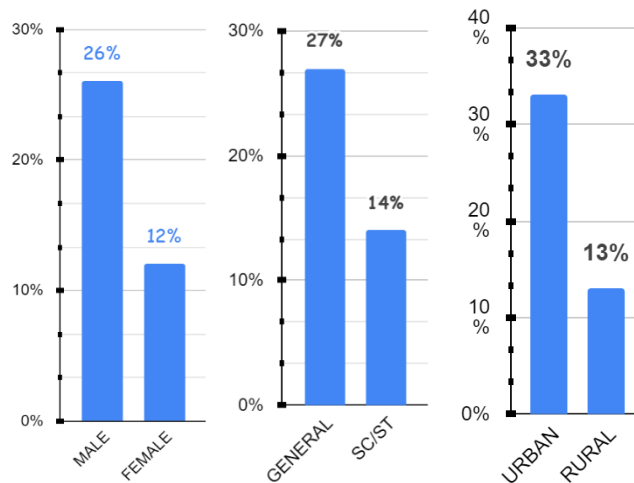


¹⁴ *Ibid*

An RTI Act permits individuals to get government information without adequate Open Government Data. A successful RTI system could reduce the information gap between people and information by providing them with the desired information. The constraints placed on RTI legislation in South Asian nations should be monitored to avoid the suppression of information. Governments must take the necessary measures to ensure the general populace is well-informed. To retain a nation’s democratic values, the free flow of information must be preserved.

RTI-ISSUES AND CHALLENGES IN INDIA

Implementation of the RTI Act is fraught with complications. The greatest obstacle is a need for more public knowledge, particularly among women, rural residents, and SC/STs. Even those aware of the Internet either do not utilize it or need to learn how to access it. Additionally, the government is making little effort to raise awareness of this issue. Contrary to the intent of the legislation, attorneys, public workers, and non-governmental organizations are the primary users of this fundamental right. Yet, for obvious reasons, government institutions conceal their actions and limit implementation, which fosters corruption.¹⁵



The Graph above displays the major issue regarding the awareness of the Right to Information. In males and females, awareness about RTI is less in Females. In general, and SC/ST, the

¹⁵ ‘Key issues and constraints in implementing the RTI Act’ (RTI) <https://rti.gov.in/rticorner/studybypwc/key_issues.pdf> accessed 19 January 2024

awareness about RTI is less in SC/ST Categories, and in Urban and Rural areas, the awareness is less in Rural areas.

Governmental bodies may withhold requested information, stating one or more justifications and obtaining legal counsel. With legal representation, the public is the stronger party. This limits the public's access to information and undermines the purpose of the RTI Act. Even the appeals process is arduous. In addition, the definitions of *private information* and *public interest* exclusions are vague, allowing public authorities to use them as a justification for rejection. Nonetheless, the authorities routinely withhold information until the last second of the 30 days and make no effort to do so.

CONCLUSION

One of the most important, innovative, and progressive pieces of legislation in the history of democratic India is the Right to Information Act 2005. The Act was passed to promote information accessibility and the development of informed citizens. It acknowledges that all information the government keeps ultimately belongs to the people in a democracy like India. The Act aims to show that secrecy in the operation of public institutions is the exception rather than the rule in democracies. However, most people, particularly the poorest, have yet to benefit from this admirable initiative. A strong democracy in India will gain from the sincere efforts of individuals in positions of authority to implement the Act locally.

Enhancing public understanding of the Act may make the right to information more relevant to the average citizen. Media initiatives and community awareness campaigns might be beneficial. Any information-seeking application costs may not apply to the rural populace. When the requested information is denied due to an exception, advice for expediting the application's determination should be supplied. To fulfill the principles of natural justice, a procedure should be in place for an alternative authority to process the application if the requested information relates to the RTI Officer. Clarifying the terms 'private information' and 'public interest' helps prevent their abuse or usage as an excuse for unethical conduct inside government agencies.