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1.1: Background

Information is the ultimate source of power in the hands of common people in the democratic societies. Access to public records is an essential requirement for a modern government, especially in a democracy. The democracy expects openness and openness is a concomitant of free society. The openness is possible only when the ‘right to know’ is exercisable by the people. In a democratic set up, the people are sovereign and they have right to know what their representatives are doing. Hence, information is indispensible for the transparency and accountable functioning of a true democratic Government. It provides an important guard against abuses, mismanagement, corruption and corrupt practices. It is also beneficial to the governments as openness and transparency in the decision-making process assist in developing citizen’s trust in governmental actions and maintaining a civil and democratic society.

True democracy cannot exist unless all citizens have right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless citizens are well informed of all sides of the issues in respect of which they are called upon to express their views. One sided information, disinformation, misinformation and non-information, all equally create uninformed citizenry, which makes democracy a farce when medium of information is monopolized, either by State or any other organization.

The right to Information Act, 2005 is the most important and progressive piece of legislation and effective tool in the hands of a public for curbing corruption and mal-practices which has gained much popularity today.
The Colonial Government had ruled for a longer period in India which promoted the culture of secrecy in our country and this had continued even after India became republic\textsuperscript{iii}.

However, after independence when India became welfare state, powers of the administration were bound to increase. In a welfare State, it is the executive cum administrative branch of the government, having the duty and responsibility to plan and implement welfare schemes, which expands and acquires vast powers, most of which are discretionary in nature\textsuperscript{iv}. The discretionary nature of power of these public authorities may sometimes go against public interests which are required to be analyzed in the right spirit. However, actions of the public authorities are subject to judicial review and Courts have also extended the scope of judicial review but even it has its own limitations.

Judicial review is sporadic and formal. Abuse of power can be very subtle and may escape judicial scrutiny. Corruption and abuse of power are the inevitable fall-outs of such an unaccountable system of governance. Hence, RTI Act and its critical analysis are felt to be justified for the proposed research work.

1.2: Historical movement of RTI ACT, 2005

In the early 1990s, in the course of struggle of the rural poor in Rajasthan, the Mazdoor Kisaan Shakti Sangathan (MKSS) hit upon a novel way to demonstrate the importance of information in an individual’s life through public hearings\textsuperscript{v}. The MKSS’s campaign demanded transparency of official records, a social audit of government spending and redressal machinery for people who had not been given their due. The campaign caught the imagination of large cross-Section of people, including activists, civil servants and lawyers.
Right to information laws were first successfully enacted by the State Governments Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004). Bengal was a noteworthy exception. As far as the Union of India was concerned, in 2003 a feeble attempt was made to assure the public demand in the form of the Freedom of Information Act, 2002. This Act was severely criticized for too many exemptions, no upper limit on the charges that could be levied and no penalties for not complying with a request for information. The act never came into effective force.

The Right to Information Act, 2005 has been enacted by the Parliament, while repealing the 2002 Act, for setting out the practical regime of right to information with a view to creating environment of transparency and sharing of information and provide every Indian citizen the basic constitutional and democratic right to gain access to certain information that may be held by public authorities. It primarily seeks to encourage and enhance transparency and accountability while intending to curb corruption.

1.3: RTI Act at a glance

The Right to Information law is one of the most important laws which have been enacted by our Parliament. It recognizes the people’s right to information which has been proclaimed by numerous judicial pronouncements as a fundamental right enshrined in our Constitution. The passage of the Right to Information Act, 2005 is a historic movement. It replaces the culture of secrecy and control with openness and participation. By encompassing in its scope the Central and State Governments, as also the grassroots democratic bodies and the institutions receiving government grants, the law has got a wider reach to empower citizens with information for ensuring transparency, accountability and good governance. The Act also casts an obligation on every public authority to provide information *suo motu* to the public and to publish
annually various particulars concerning the Organization including the categories of documents available with it. Citizens are gradually becoming more aware of their right to information. The Act has been used as a tool to hold elected representatives accountable for the manner in which they spend public funds. In this way, more than the law, Right to Information Act is a process, a tool, a concept and a cultural approach to life. The Right to Information Act consists of six Chapters arranged as under:

Chapter I: Preliminary

In this part of the Act explanation about right of the public, meaning of information, public authority, record, right to information, rejection of request, competent authority, public information officer (PIO), CIC, etc. have been given in detail.

Chapter II: Right to information and Obligations of Public Authorities

Every public authority under the RTI Act has to fulfill certain obligations as mentioned under section 4 of the Act,

(1) Every public authority shall

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;

(b) It further states that public authority has to publish within one hundred and twenty days from the enactment of this Act,—

(i) the particulars of its organization, functions and duties;

(ii) the powers and duties of its officers and employees;
(iii) the procedure followed in the decision making process, including
channels of supervision and accountability;
(iv) the norms set by it for the discharge of its functions;
(v) the rules, regulations, instructions, manuals and records, held by it or
under its control or used by its employees for discharging its functions;
(vi) a statement of the categories of documents that are held by it or under
its control;
(vii) the particulars of any arrangement that exists for consultation with, or
representation by, the members of the public in relation to the formulation
of its policy or implementation thereof;
(viii) a statement of the boards, councils, committees and other bodies
consisting of two or more purpose constituted as its part or for the
purpose of its advice, and as to whether meetings of those boards,
councils, committees and other bodies are open to the public, or the
minutes of such meetings are accessible for public;
(ix) a directory of its offers and employees;
(x) the monthly remuneration received by each of its officers and
employees, including the system of compensation as provided in its
regulations;
(xi) the budget allocated to each of its agency, indicating the particulars of all
plans, proposed expenditures and reports on disbursements made;
(xii) the manner of execution of subsidy programmes, including the
amounts allocated and the details of beneficiaries of such programmes;
(xiii) particulars of recipients of concessions, permits or authorisations
granted by it;
(xiv) details in respect of the information, available to or held by it, reduced in an
electronic form;
(xv) the particulars of facilities available to citizens for obtaining
information, including the working hours of a library or reading room, if
maintained for public use;
(xvi) the names, designations and other particulars of the Public Information Officers
(xvii) such other information as may be prescribed and thereafter update these publications every year;
(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information *suo motu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) Every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication at local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of-the medium or the print cost price as may be prescribed.

Chapter III: The Central Information Commission

The Central Government is empowered to constitute Central Information Commission within the meaning of the RTI Act, 2005. Section 12 of the Act provides that the Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

(2) The Central Information Commission shall consist of—
(a) Chief Information Commissioner; and
(b) Such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(3) Chief Information Commissioner and Information Commissioners be appointed by the President on the recommendation of a committee consisting of—

(i) the Prime Minister, who shall be the Chairperson of the committee;
(ii) the Leader of Opposition in the Lok Sabha; and
(iii) A Union Cabinet Minister to be nominated by the Prime Minister.

This chapter discusses the qualification & eligibility of CIC, tenure of CIC, power & functions, removal from the office in detail.

Chapter IV: The State Information Commission

Sub-section (1) of section 15 contains the provision that every State Government shall, by notification in the Official Gazette, constitute a body to be known as the (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to it under this Act.

(2) The State Information Commission shall consist of (a) the State Chief Information Commissioner, and (b) such number of State Information Commissioners, not exceeding ten. as may be deemed necessary.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(i) the Chief Minister, who shall be the Chairperson of the committee;
(ii) the Leader of Opposition in the Legislative Assembly; and
(iii) a Cabinet Minister to be nominated by the Chief Minister

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State
Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be the persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance,

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The head quarters of the State Information Commission shall be at such place in the State as the State Government may, by notifications in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

Chapter V: Powers and Functions of the Information Commissions, Appeal and Penalties

Power and function of information commission have been discussed in detail. Appeal and penalties provisions under RTI Act have also been analyzed in detail in this chapter.

Chapter VI: Miscellaneous

Protection of action taken in good faith, bar of jurisdiction of courts, act not apply to certain organizations, monitoring and reporting under the RTI Act,2005 have been discussed under this Act.
1.4 Proactive disclosure of the information

The RTI Act not only requires government to provide information upon request, it also imposes a duty on public authorities to actively disclose, disseminate and publish information, as widely as possible. The RTI Act, 2005 also requires all public authorities covered under the law to publish *suo motu* or proactively a wide range of information on their own, even if no one has specifically requested it.

Section 4 of the Right to Information Act, 2005, requires all the public authorities to routinely publish seventeen categories of information. This provision clearly specifies that all public authorities must make constant efforts to provide as much information *suo motu* to the public at regular intervals, through various means including the Internet, so that the public have minimum need to use this Act to obtain information. In addition, self-disclosure by the public authorities should be disseminated with considerations about the local language, cost-effectiveness and the most effective means of communication, so that it reaches large sections of citizens. This ensures that citizens always have access to authentic, useful and relevant information. This is a key provision because it recognises that some information is so useful and important to the community at large, that it should be given out regularly, without anyone specifically requesting it. Self disclosure enables promotion of transparency and accountability in governance, and also reduces the demand for information by the citizens from public authorities, as most of the important information is available in the public domain vii.

It is important to mention here that information sought by the applicant should be clear within the scope of section 4 (1)(d) of this RTI Act, 2005 otherwise it can be rejected. The commission was also of the view that information sought by the applicant must be provided free of cost. The Commission held that every public authority, particularly after the implementation of the Right to Information Act, must take all measures in pursuance of Section 4(1)(a), to implement efficient record management
systems in their offices so that the requests for information can be dealt with promptly and accurately.

The Commission further states that “every public authority is required to make pro-active disclosures of all the information required to be given as per the provisions of Section 4(1)(b), unless the same is exempt under the provisions of Section 8(1). In fact, an information system should be created so that citizens would have easy access to information without making any formal request for it”.

1.5 Exemptions from disclosure of information

People have the right to know everything and public authority has the duty to disclose everything but there are certain information which cannot be disclosed and they are known as exemptions as mentioned in sec 8 of RTI Act, 2005. The Right to Information Act does not provide access to citizens to all kinds of information held by the public authorities. Some exemptions from the disclosure of information have been provided in Section 8(1) of the RTI Act; categories of information listed in this section can be denied to the citizens by the PIOs. Citizens must also know the provisions of Section 8 and the related judgments already listed in this section, so that they do not waste their and the PIOs’ time,. It is mandatory for the PIOs to know this provision and develop a clear understanding of it, so that any denial of requested information by him clearly falls within the scope of Section 8(1). The PIOs must also know that mere quoting of a clause of Section 8(1) is not sufficient; it should be backed by reasonable justification.

The PIO of a public authority can deny the following categories of information under the Act:

1. Information whose disclosure will affect the security and integrity of India.
2. Information barred from disclosure by a court.
3. Information whose disclosure would be a breach of privileges of the parliament/Assembly.
4. Information relating to commercial secrets.
5. Information which is available to a person due to a special relationship of trust (fiduciary relationship).
6. Confidential information obtained from foreign governments.
7. Information, the disclosure of which would endanger the life and physical safety of a person.
8. Information, which would affect the process of investigation.
9. Records of meetings of cabinet (council of ministers).
10. Personal information, the disclosure of which has no relationship to any public interest.
11. There should not be any disclosure of third party confidential information, hence, the CIC held that a bank is under duty to maintain the secrecy of accounts of its customers who are also third party.
12. Frivolous applications should not be entertained.
13. The information which is twenty years old cannot be disclosed.
14. Consultation between the President and the Supreme Court cannot be disclosed.
15. Reason for rejection of request for information must be clearly provided.

However, a PIO may allow access to information to the applicants in spite of the above exemptions provided in Section 8(1), if public interest in providing the information is greater than the harm done in private interest. Thus, the PIOs, while dealing with requests for information must always remember that public interest shall outweigh private interest in the disclosure of information, and that disclosure of information is the rule and denial of information is an exception.
1.6: Partial Disclosure of Information

Citizen can have partial access to that information which is covered under exemptions from disclosure [Section 8(1) of RTI Act]. If the request for information has been rejected by a PIO on the ground that it relates to information, which is exempt from disclosure [under Section 8(1) of the RTI Act], then some part of the information, which is not covered in the exemption list, can be disclosed. Such information should be reasonably severed from the information, which falls in the exemption list. This means if a document or record contains information, part of which is exempted from disclosure under the RTI Act while the other part is not exempted from disclosure, then the PIO of a public authority can severe (separate) the parts and provide information which is not exempted to the applicant.

1.7: Objective of the Study

The Right to Information Act, 2005 is the most important and progressive piece of legislation since independence, and it has tremendous potential to improve the functioning of public authorities in the country. The proposed research study aims at:

1. To highlight the different aspects of RTI Act, 2005.
2. To identify the basic problems or hurdles in the effective implementation of this Act.
3. To measure the effectiveness of this Act in India.
4. To highlight the function of Central and State Information Commission.
5. To highlight the role of Govt. in improving the delivery system of the administration through RTI Act, 2005.
6. To know the benefit and drawbacks of this Act.
7. To measure the relationship of RTI with other legislation.
8. To highlight the role of Judiciary regarding RTI
9. To make the comparative study about the position of RTI between the different States of India.
10. To find out the actual status of pro-active disclosure in India and other country
11. To find out whether the Right to Information Act, 2005 is able to achieve the ideal transparent Government.
12. To analyze the law relating to the Right to Information according to the constitutional and legislative commitments.
13. To suggest the means for its effective implementation.

1.8: Hypothesis of the Study:
The proposed research work consists of the following hypothesis which have been tested during the period of research.

1. The right to information is essential for the exercise of all other rights.
2. The lack of infrastructure in the government machinery and mindset of public officials are main problems in the implementation of the recent legislation RTI Act, 2005 regarding proactive disclosure of information.
3. RTI Act 2005 is more effective in checking misuse of administrative discretion in India.

1.9: Research Methodology of the study:
The present research work is based on analytical and empirical study. The study was conducted to understand the historical background of the citizens’ right to know and its applications in the present era in the light of Right to Information Act, 2005. Analytical studies of the Reports of the Central Information Commission and State Information Commissions have been made conducted. A comprehensive study has been made through the statutes, websites, journals, newspapers and books. In the empirical study, data have been collected on the basis of interviews and well designed questionnaires.
1.10: Review of Literature

The literatures available on RTI Act 2005 have also been consulted for the proposed research work in order to know its actual situation in our Country.

Martin ix (2006) said that one must distinguishes between four different though related notions: freedom of speech, freedom of the press, freedom of expression and freedom of information. It is essential to keep the four separate, even though they are often used interchangeably. Although they related to similar things, they are not identical.

In Reliance Petrochemicals Case x (1989), Justice Sabyasachi Mukharji observed that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy.

In Cricket Association of Bengal Case (1995) xi, the Supreme Court expanded its views on Article 19 (1)(a) towards the right to information. In this case question was whether an organizer or producer of any event has a right to get the event telecast through an agency of his choice.

Acknowledging the importance of right to information in rapidly changing economic industrial scenario the Supreme Court in Reliance Petrochemical Ltd. Case (1989) made an illuminating observation: “We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the Industrial life and democracy.

In Dinesh Trivedi Case (1997) xii, while considering the questions of the disclosure of the Vohra Committee Report the Supreme Court once again acknowledged the importance of open government in a participative democracy. The court observed that, “In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare”.

Justice V.R. Krishna Eyre, who observed that: “Right to express one’s thought is meaningless if it is not accompanied by relaxed right to secure all information on matters of public concern from relevant public authorities.
1.11: **Scope of the Study**

The study is confined to India. However, an attempt has been made to find out the position of Right to Information in other countries also. Important Govt. establishments and public authorities have been considered for the study.

1.12: **Limitations of the Study**

The study covers the period of Ten years from 2005 to 2015. The information collected through questionnaire have also been counter checked in order to make the study meaningful and fruitful.

1.13: **Plan of the Work**

The whole research work has been split up in the following Chapters:

1.13.1: **Chapter I**: Introduction

This chapter goes to explain the basic concept of RTI. It includes the historical background of the Act. Objective of the study, Hypothesis, Methodology, Review of Literature, Scope of the Study, Limitations of the Study & Plan of the Work have been explained under this Chapter.

1.13.2: **Chapter II**: A study of Right to information in Global perspective with reference to Pro-active information

This chapter deals with the right to Information vis-a-vis International Conventions, Covenants, Declarations and Treaties. It sets down the international as well as regional human rights instruments that form the legal framework for the protection of the right to information. It discusses about the status of proactive disclosure in different states of world.
This chapter goes to explain the historical perspective of freedom of information which ultimately created RTI Act, 2005. Freedom of information at international level through united nation’s universal declaration of human rights, international covenant on civil and political rights and joint declaration have been discussed in detail in this chapter. The development of RTI and freedom of information in certain leading countries of the world have been highlighted in this unit of the proposed dissertation. Freedom of information at global level in the light of proactive disclosure of information has been critically examined in this unit.

1.13.3: Chapter III : Comparative study of Right to information Act, 2005 With Freedom of information Act, 2002:- Emergence of Pro-active information

RTI Act, 2005 has been introduced just after Freedom of information Act, 2002. Proactive transparency has come with Right to information Act, 2005. This chapter gives a comparative study between Freedom of information Act, 2002 and Right to information Act, 2005 with special reference to Pro-active information.

This chapter highlights the movement for a right to information law in India as well as states initiative for framing this law on right to information. Basic features and weaknesses of freedom of information Act, 2002 and right to information Act, 2005 have been analyzed in detail in this chapter of the thesis. An attempt has been made to make distinction between these two Acts. Emergence of pro active disclosure under freedom of information Act,
2002 and RTI Act, 2005 has also been clearly spelt out in this chapter in detail.

1.13.4: Chapter IV : Relationship of RTI Act, 2005 with Constitution and other Legislations in India

There are several other legislations which contradict and compliment RTI Act, 2005 such as the Official Secrets Act, 1923, The Indian Evidence Act, 1872, Destruction of Official Record Act, 1917, Public Record Act, 1993, Public Interest Disclosure and Protection of Persons Act, 2010, Freedom of Information Act, 2002. The main theme of this chapter is to highlight the harmonious relationship of these enactments with the Right to Information Act, 2005. All these enactments contain certain provisions in favour and disfavor of the disclosure of information.

This Chapter goes to highlight the provisions of RTI Act, 2005 which are existing under Constitution. Other Indian legislations carrying the provision of RTI Act, 2005 were also taken into consideration in order to establish the relationship between them. The Provisions of Indian Act have also been discussed in the light of proactive disclosure and restrictions on them.

1.13.5: Chapter V : Implementation of Pro-active disclosure by public authority

Certain goals are specified under section 4 of RTI Act, 2005. All the public authorities are required to achieve these goals. The obligation of the Govt. to prepare programme is also given under section 26 of the RTI Act, 2005. To what extent the Govt. has played a role in
implementing this Act, this has also been discussed in detail in this chapter.

The implementation of RTI in India and in its different states has been discussed in this chapter. The pace and progress of implementation in different sectors as well as in different areas has also been analyzed in this unit. This chapter highlights the challenges as found in the effective implementation of this Act in India during the period of the study. An attempt has been made in this chapter to find out the positive aspects of proactive disclosure in different departments of the government.

1.13.6: Chapter VI : Power and functioning of the Central and State Information Commission regarding disclosure of information

This chapter explains the constitution of the central and state Information Commission. Their power and functions have also been discussed in detail. This chapter goes to explain the kind of action taken on the complaints received and for ensuring the effective implementation of suo motu disclosure. The procedure adopted by the commission has also been analyzed in this chapter.

The powers and function of CIC/SIC as per section 18, 19 and 20 of the Act have been discussed in detail in this unit of dissertation.

The powers of information commission in context of monitory and imposing penalty for avoiding proactive disclosure of information by public authority has been highlighted in detail. The effective role of CIC and SIC has been critically examined in this unit of dissertation.
1.13.7: Chapter VII : Role of Judiciary regarding Right to Information Act, 2005

The role of judiciary is very significant to make RTI Act more effective in our Country by giving some landmark decisions in favour of people's right to know.

This chapter discusses the role of judiciary before and after the enforcement of RTI Act, 2005. Decisions of the Supreme Court and High Court have also been discussed in detail in this chapter.

Role of judiciary regarding Right to Information Act, 2005 has been critically analyzed in this chapter of the thesis. The role of judiciary in promoting proactive disclosure of information for judicial and non-judicial activities has been analyzed in detail.

Different court judgments of High court and Supreme Court in respect of suo motu disclosure of information of press and media, election commission, etc. have been highlighted in detail in this unit of thesis. Judicial autonomy and independence under RTI Act, 2005 and limitations of RTI have also been discussed in this unit. This chapter examines the changing role of judiciary in realising the importance of RTI in Public interest.

1.13.8: Chapter VIII: Conclusion and Suggestions

This chapter concludes the whole research work by offering certain suggestions to make this Act more fruitful and effective.

This chapter goes to identify the theme of the research work. The findings of each and every chapter of this thesis have been incorporated in this unit. This chapter
concludes that RTI Act, 2005 is the landmark development in the Participatory democracy to ensure openness and transparency in public authority but its implementation has not been so effective during the period of the study. Certain Suggestions have been offered in this chapter to remove those challenges in order to make this Act more effective.
References:


x. Reliance Petrochemicals Case AIR,989 SC

xi. Secretary Ministry of information and Broadcasting, Government of India v. Cricket Association of Bengal AIR 1995,SC1236


xiii. AIR 1975 SC 865.

xiv. AIR 1982 SC149.