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**IMPACT ASSESSMENT OF THE RTI ACT: GROUND REALITY
AFTER NEARLY TWO DECADES**

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1 RIGHT TO INFORMATION ACT

If people do not have the right to know and access authentic information, floodgates to corruption will be opened. Democracy stands on the idea of government working for its people. The people must know what the government is doing with their resources. Thus, this right is recognised to promote transparency, accountability and openness. Without access to information, the idea of welfare gets defeated. According to Soli Sorabjee, the right to information leads to transparency, accountability, and integrity. Similarly, P B Sawant also acknowledges the need for transparency. He says that barriers to information promote embezzlement, arbitrary decisions and manipulations.²

Although the Constitution of India has not mentioned the Right to Information as a right, the Supreme Court widened the scope of the Right to Freedom and Expression to include the right.³ The court has held that the true meaning of democracy will be fulfilled only if the people are aware of how the government is functioning and hold them accountable will the meaning of true democracy be achieved.⁴ Enacted into law on 12th October 2005, this legislation is a cornerstone of transparency and accountability in the government's operations. It empowers citizens to access public information from government authorities and gives them a voice and a role in governance. This Act and other information-prioritising laws like the Office Secrets Act of 1923 and the Whistle-blowers Act of 2014 are a testament to India's commitment to an informed and participatory democracy.

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² Varsha Khanwalker *The Right to Information Act in India: Its Connotations and Implementation*, 72 THE INDIAN JOURNAL OF POLITICAL SCIENCE 2, (2011)

³ *State of UP v Raj Narain*, AIR 1975 SC 865

⁴ *S P Gupta v Union of India*, AIR 1982 SC 149

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The Right to Information Act is not just a piece of legislation but a comprehensive system. It mandates the establishment of Information Commissions at both the central and state levels.⁵ These Commissions, functioning as independent quasi-judicial bodies, are crucial in implementing the Act. They hear appeals and complaints relating to RTI, conduct thorough investigations, and have the authority to impose fines based on the complaints.⁶ This robust system, coupled with the enactment of RTI laws by various states, ensures the government's accountability and instils confidence in citizens that their concerns will be heard and addressed.⁷

In 1966, the United States adopted the Freedom of Information (FOI) Act, which established a right to information held by federal governmental agencies. After the resignation of President Richard Nixon on the grounds of power misuse, the right's necessity became even more glaring. By 2010, nearly 70 countries had adopted similar statutes. While the FOI Act applies only to the national government, the RTI Act also includes states and local governments within its scope.⁸

After nearly two decades of the Act, the paper intends to revisit the efficiency of the Act and how it has helped transform India into a better country.

1.1 RIGHT TO PRIVACY V RIGHT TO INFORMATION

While there has been a cry for the right to information and sharing documents with the public, the flip side is maintaining privacy. There is a need to draw a line between the two. The apex court has held that privacy, like any other right, is not absolute and that public order outweighs privacy.⁹ Privacy is given only to the 'personal' life of the authority. The statute allows for specific information to be exempted from being shared. It includes information that might affect the nation's sovereignty, parliamentary privilege, or anything else the court forbids.¹⁰

⁵The Right to Information Act, 2005, § 12, No. 12, Acts of Parliament, 2005 (India)

⁶The Right to Information Act, 2005, § 18, No. 18, Acts of Parliament, 2005 (India)

⁷ Bhavna Singh, *An Overview of the Right to Information Act in India*, 5 INDIAN J. L. & LEGAL RESEARCH 1 (2023)

⁸ Nancy Roberts & Alasdair Roberts, *A Great and Revolutionary Law? The First Four Years of India's Right to Information Act*, 70 PUBLIC ADMINISTRATION REVIEW 6, 2010

⁹ *K S Puttaswamy v Union of India*, AIR 2018 SC 1841

¹⁰ The Right to Information Act, 2005, § 18, No. 8, Acts of Parliament, 2005 (India)

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2 EXECUTION OF RTI

The Act aims to give the citizens information about the government quickly. It has laid down numerous provisions and procedures for the public authorities to maintain records and face punishments if they fail to follow them. The duties include keeping records, disclosing them, and implementing decisions of the Information Commission. The Commissions need to submit reports annually to the Governments on implementing the Act.

However, the field study suggests a different picture. There is a delay in the dispensation of the information. A PricewaterhouseCoopers survey in 2009 indicated that the record management system plays a vital role in disposing of RTI requests. 38% of the PIOs said that the record management system was the reason for the delay. Meanwhile, 79% said that collecting data from the offices was the cause of the delay. In most departments, the rules concerning record management deal with categorising the records. The method has rarely been changed, and there has been no cataloguing, indexing, or orderly storage of the documents, as mentioned under the statute. The report has further found that the state governments have failed to disclose information adequately. The Central Information Commission had asked the public authorities to file returns using websites. As of 22 September 2012, out of the 2336 registered authorities, 890 did not have a website. Out of the remaining, 779 were not updated with the RTI measures.

There have been problems with the submission of returns as well. There has been a constant decline in the number of authorities filing returns. In the financial year 2009-10, the number of authorities filing returns was 77.26%. In the following year, the number reduced to 68.8%. Subsequently, it decreased to 67.5%.¹¹

Rajya Sabha member Mysura Reddy once asked for information from twenty-six state commissions. Seventeen did not acknowledge his applications, while eight others complained of being understaffed and the work was improper. Only Maharashtra replied. However, even this state has rejected 20,142 applications.¹²

¹¹ Pankaj Shreyaskar, *Investigating Compliance of the RTI Act*, XLVIII EPW 9 (2013)

¹² *Auditing the Right to Information Act*, XLIII EPW 18 (2019)

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The Supreme Court held that an answer sheet can be requested by the applicant at any stage after the exam since it will not harm the competitive position of anybody else¹³. Despite this, the Central Board of Secondary Education (CBSE) charged ₹500 to all the RTI applicants who wanted their OMR answer sheet for the IIT-JEE exam.

In another case, the Delhi HC prevented the supply of documents about a company from the PIO of the Registrar of Companies. The court held that the Companies Act is a special legislation and thus will prevail over the RTI Act. The court further said that a piece of information would no longer be “held by” the public authorities once it is on the internet freely.¹⁴ However, the RTI Act clearly states that it has an overriding effect.¹⁵ This judgement also deprives any person of any information public information who cannot afford the Internet. Publishing information in the open does not relieve the authorities of their duties. A survey in 2008 showed that three-fourths of the applicants were dissatisfied with the responses from the authorities. Although the data is old, a similar attitude among government officials persists.¹⁶

Daksh, an NGO, has reported that around ₹58000 crore is spent on litigations in the country. Around two-thirds of this money is spent on land disputes. Such expense is a loss to the nation's GDP. There has been a reluctance from the officials to update the land records. On requesting the papers, the requests are declined because they are not public information and may infringe upon privacy.¹⁷

Post offices have also been accused of denying heirs information about their forefathers. Rightful receivers also reject pensions. They refuse to offer information because it will interfere with privacy.¹⁸

These discrepancies indicate that the Act is not fully utilised to achieve its aims.

¹³ICAI v Shaunak H Satya, (2011) 8 SCC 781

¹⁴Registrar of Companies v Dharmendra Kumar Garg, ILR (2012) 6 Delhi 499

¹⁵The Right to Information Act, 2005, § 7(5), No. 22, Acts of Parliament, 2005 (India)

¹⁶N Sai Vinod, *Attempts to Erode RTI Mechanism*, XLIX EPW 6

¹⁷The Right to Information Act, 2005, § 18, No. 8(1)(j), Acts of Parliament, 2005 (India)

¹⁸Madabhushi Sridhar, *Right to Privacy and the RTI Act*, LII EPW 38

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3 POLITICAL REACTIONS TO THE ACT

The law has also faced obstacles from the executive and the legislature. Besides the delay in responding to RTI by keeping the commissions understaffed, the UPA-I government tried to exempt the “file noting” of bureaucrats from disclosure. They only backed out when the Central Commission passed a direction. Another such attempt was to excuse political parties from the ambit of the law in 2013 through an amendment, although a parliamentary standing committee struck it down.¹⁹

The BJP government has also tried to change the law by changing the terms of employment to control the information commissioners. In July 2019, the central government amended the RTI Act and altered the tenure and terms of service of Information Commissioners. The tenure of the commissioners was reduced to three from five. Their salaries were also fixed to a certain amount. Post-retirement perks could be at the government's discretion. This move has been called a way for the government to control the body's workings.²⁰ The government justified it because the Information Commission is not a constitutional body, unlike the other bodies such as the Election Commission and the judiciary. Although the premise is true, it can be argued that the Right to Information stems from the Freedom of Expression, a fundamental right.²¹

¹⁹Vidya Venkat, *Despite Free and Fair Elections, Our Idea of the Republic Is at Risk*, 54 EPW 3 (2019)

²⁰Gaurav Vivek Bhatnagar, *Information Commissioners' Tenures, Salaries Now Firmly in Centre's Hands*, THE WIRE, 25 October 2019, available [Information Commissioners' Tenures, Salaries Now Firmly in Centre's Hands \(thewire.in\)](https://www.thewire.in/information-commissioners-tenures-salaries-now-firmly-in-centre-s-hands/)

²¹M Sridhar Acharyulu, *Downgrading the Status of Chief Information Commissioner*, LIII EPW 28 (2018)

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4 MISUSE OF THE ACT

Till now, we have discussed how the executive has caused delays or refused to entertain applications. However, there have been instances where the applicants have misused the Act. In one example, the applicant asked for 1800 pages of information from All India Radio. During the appeal, the appellant left the room tossing the papers. This shows that he did not require the information and was misusing his right to harass the government.²²

Another example of harassment is when Ashok Kumar Goel filed numerous applications seeking information about third parties. The commissions rejected the applications as they were intruding on someone else's privacy. The intent behind filing numerous applications was to get information about his brother and try to seek revenge.²³

On another occasion, the applicant did not pay the required amount to collect the necessary documents and repeatedly asked for documents. This is another form of harassment since the authorities put in a lot of time and effort to compile the document, but the applicant never responded.²⁴

Applicants have also tried to use it to earn money through compensation. In a decision, the commission cautioned the petitioners from using such tactics when they refused to entertain a petition for compensation on being served the documents in English when the applicant was unfamiliar with the language. The commission sentenced him since he had knowingly filed an affidavit in English.²⁵

²²Dinesh K. Gohil v All India Radio, 2008 SCC OnLineCIC852

²³Ashok Kumar Goel v Public Information Officer Vat, 2012 SCC OnLine Del 1457

²⁴Shripal Jain v North Western Railway, 2008 SCC OnLine CIC 2063

²⁵Yogesh Rajarao Reddy v South East Central Railway, 2008 SCC OnLine CIC 3888

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5 RECOMMENDATIONS FOR THE RTI ACT

As observed from the above instances, there has been a delay or reluctance to dispose of RTI applications. This indicates that there should be a revamp in the commissions. One of the major problems is the influence of the executive over the bodies. The bureaucrats working in these offices think themselves to be the master. They feel they can get away by doing things their way, thus justifying the delays. To ensure that the executive does not influence the body, outside personalities like the Chief Justices should also have a say in the appointment of the commissioners. The Chief Information Commissioner should be given the power to take action against the other commissioners if they go against the idea of the Act.²⁶

The act covers only public authorities and excludes private bodies. However, with the opening of the economy, several private authorities have assumed monopolies or replaced government authorities and provided services that the government would have otherwise provided. There have been instances where the CEOs of these companies have fled away with the public's money but cannot be held responsible by the taxpayers since they are not covered within the ambit of the Act. South Africa is the only country where citizens can access information from private companies. In Bangladesh, the scope of the public authorities has been expanded to include NGOs or bodies administered with public finance or working for the government or under contract with them. Nigeria also proposed a law to include private companies that perform public functions. Similarly, the Indian statute should also extend to private bodies.²⁷

As also observed, the act was misused on the part of the applicants. Costs can be imposed on the appellate level to curb unnecessary applications intending only to harass people. This will act as a filter and allow those genuinely interested in their matters to file a complaint.²⁸

²⁶ Prem Singh Dahiya, *Efficacy of RTI Act*, XLIV EPW 24

²⁷ Prabodh Saxena, *Public Authority and the RTI*, XLIV EPW 16

²⁸ Nikita, *Misuse of Right to Information Act: Causes and Case Analysis*, 27 SUPREMO AMICUS 352 (2021)

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