**Right To Information and It's Exceptions**

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**Abstract**

 In a democracy, when the people of a country elect their representative to govern them, they naturally procure the right to be informed about the course of action in which they will be governed and administered. This  holds the true essence of a democracy. The Right to Information Act was passed in 2005by the Parliament. The act was passed with the specific intent of empowering Indian citizens to have means to access the required information relating to the work of the government and the public authorities, to ensure transparency, make the government more accountable to the citizens and to serve as a tool to control and end the chain of corruption in India. This transparency and people's partaking in the government's working mechanisms are critical to the nation's good governance. The right to information is one of the fundamental rights, it is an important means of ensuring citizens' right to know, which is in fact crucial for functioning of a Democratic country The right to information is inextricably linked to the fundamental right to free speech and expression, which allows a person to express their opinions and ideas, and thus having  information about any particular issue will  enables them to fully exercise this right to the fullest, by communicating their feedback and suggestions. Every right has its own set of constraints; no right can ever be absolute, and subjected to some reasonable limitations thus the right to information has certain restrictions which are necessary to be imposed in certain circumstances. This paper will begin with an introduction to the Right to Information Act, its objective and purpose, further study the role of RTI in India. The paper will also examine the exceptions to the Right to Information imposed by the act to secure the interest of the people and ensure that the right is not misused and abused by any individual. The paper will also analyse if the laid down restrictions really fulfil the said motives, or hinders the process of transparency.

Key Words- Right to Information, Democracy, Information, Government, transparency.

**Introduction-**

As a democracy, it is the responsibility of the ruling government to protect and improve the lives of the people of India. The citizens have the power to elect their representatives and the manner and by which they want to be governed , thus, citizen's right to know about the country's administration is one of the important pillars of a democracy. Over past the years this evolutionary piece of legislation, right to information act, has been largely recognized as a fundamental human right by many countries around the globe, one of the important reason being, that it encourages people’s participation in government’s affairs, which is the essence of democracy.

The right to information, as a fundamental right has been incorporated into various international human rights documents, including the Universal Declaration of Human rights, the International Covenant on Economic, Social, and Cultural Rights[[1]](#footnote-1). The origin of RTI law in India can be traced back to 1986, when the Supreme Court ruled in *L.K. Koolwal V.State of Rajasthan and Ors,[[2]](#footnote-2)* that citizen’s fundamental right of freedom of speech and expression under article 19 of the Indian Constitution is reliant citizen’s right to know. National Campaign Committee for People’s Right to Information played a huge role in bringing about the revolutionary piece of legislation. The first draft of the Right to Information Bill was presented on 22 December 2004 before the Indian Parliament and after intense debate and series of amendments, the Bill was passes in 2005, with the goal of promoting government transparency and accountability. ‘Information’ under section 2(f) this act is defined as any material in the form of records, notes, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports papers, samples, templates, data material stored in any electronic form, and information relating to any private entity that a public authority can access under any other law currently in force

1. **Role of RTI**

The right to information act is a legislation which brings to light the secrecy in the administration and provide an effective means to the citizens to promote democratic ideology[[3]](#footnote-3). Information not only provide people with knowledge about government’s affairs, but it also broadens their minds, allowing them to make informed decisions and provide feedback. In S.S.C. *Maneka Gandhi v. Union of India[[4]](#footnote-4)*, it was held that information, and the means of obtaining it, is critical for clean and healthy administration and efficient participatory democracy.

Another major role that RTI plays in India is keeping check on corruption. Corruption, no doubt is one of the biggest loophole in the administration and hindrance in India’s development . People had no means of assessing information from the public authorities prior to the implementation of RTI. The right to information gave the people the power of accessibility, allowing them to extract information that the authorities withheld in order to expand their scope of control and unaccountable exercise of power. The act also played an important role in raising public awareness and encouraging people to exercise their rights. For example, the infamous Commonwealth scam was brought to light as a result of an RTI request filed by a non-profit organisation.

1. **Right To Information- Exceptions**

Every right is accompanied by an obligation, and no right is absolute. Though the right of citizens to know advances transparency and accountability of the government and public authorities, it is still subject to some limitations. Before disclosing any information to the public, the RTI act requires that the nature and specifics of the information be thoroughly examined such that it does not disturb the general order of the society. Such restrictions also ensure that the government remains free from the pressure and hindrance in its course of its day to day governance and administration . In case of *S.P. Gupta and Ors. V. President of India and Ors[[5]](#footnote-5).* it was held that non-disclosure of any information is justifiable only if disclosure is detrimental to the public interest.

1. **Exceptions under section 8-**

 Section 8 of RTI Act specifies some exemptions from public disclosure of the information. The public authority must establish that the information to be disclosed falls within the restrictions outlined in this section. Under clause 1 (a) of this section, information that would jeopardise India's sovereignty and integrity, or any such information that might impede the nation's security, is not required to be published. Also, any information pertaining to the State's scientific, economic or strategic interests foreign relations with states, or information that could lead to the incitement of an any kind of offence should also not be disclosed.

Section 8 (1)(b) prohibits the furnishing of any information that is expressly forbidden by any the court or tribunal from being published, or the disclosure of which may constitute the contempt of court. The information prohibited by the court could include any information relating to the facts of the case that must be protected for the sake of the case. In *Jiju Lukose v. State of Kerala[[6]](#footnote-6)*, the court ruled that thought the FIR is covered under the purview of Section 8(1) of the RTI Act, it does not have to be unveiled to the citizens until the investigation is completed, even if it is a public document. Whereas the  contempt of court is committed by either saying derogatory words about the court's authority or disobeying any order or decree of the court.

Parliamentary privileges, which are an important part of the parliamentary form of government, are the privileges of freedom of speech and immunity from court proceedings with respect to anything during a parliamentary proceeding , allowing members to carry out their duties freely and efficiently. Members of Parliament and state legislatures are granted such privileges respectively under Articles 105 and 194 of the constitution. In this regard, section 8(10)(c) states that information that would violate the privileges of Parliament or the State Legislature if disclosed is not required to be furnished. In *Sajjan Singh vs. State Public Information Officer and Ors.[[7]](#footnote-7)*, in the matter relating to copies of certain pages contained in a Committee report ,it was held by the Rajasthan High Court that action of denying the respective report under Section 8 (1)(c) of the RTI Act is justified on the ground of it being under consideration of the Cabinet. However, Section 8(1)(c) does not appear to be covered by Article 19(2), resulting in a violation of Article 19(1)(a)[[8]](#footnote-8)

Further, Section 8(1)(d) states that the disclosure of any such information that would harm a third party's competitive position is prohibited. Every company is entitled by law to hold its trade secrets, commercial confidences (loan details, immovable assets, securities etc.) and information regarding intellectual property(invention, research, idea etc.) if any of these information is furnished to the public, it might impair the competitive position of any such third person. Unless the appellate authority is satisfied that public interest governs the disclosure of any such information, then only the information is to be furnished. For example, in case of *Electronics Co. of Tamil Nadu Ltd. vs. Tamil Nadu Information Commission[[9]](#footnote-9)*, the High Court held that information relating to a field inspection reports of water bodies  for determining the suitability of those lands cannot be withheld because the larger public interest governs the disclosure of the information.

A fiduciary relationship is one in which one person places their trust and confidence in another person, and that person or organisation is legally bound to act on the other's behalf, putting their interests first. A fiduciary is to hold any such information confidential which he acquire in course of his employment and act for the merit of beneficiary in good faith. sub clause (e) of section 8(1), the competent authority is not required to provide any such information that is available to an individual in his fiduciary relationship  unless it is satisfied that disclosure of such information is in the broader public interest. In the case of *Reserve Bank of India v. Jayantilal Mistry[[10]](#footnote-10)* it was held that the RBI could not deny information under the Right to Information Act by claiming a fiduciary relationship because the information obtained by the RBI was not obtained under the guise of confidence.

Under section 8(1)(f) any information that the Government of India receives from the foreign government is not subject to disclosure to the public, as furnishing such information might affect the international relationship.

Under section 8(1)(g) the competent authority is under no obligation to provide any such information whose disclosure would endanger the physical safety or life of a person or to establish the source of such confidential information. For instance, if an individual provides the government or any other government authority with any sensitive information, nature of which is such that it can put the life of the person providing such information at risk, then the identity (name, address etc.) of such person must not be furnished.

When an investigation in process, the confidentiality of the facts and information regarding the investigation is necessary, as long as such facts and information if furnished can become a hindrance in the procedure of investigation. Section 8 (1)(h) states that the competent authority is not required to provide information that impedes the ongoing investigating, apprehending, or prosecuting offenders.

Another exemption under section 8 is cabinet papers, which include records of deliberations of the Council of Ministers, Secretaries, and other officers. Furthermore, the proviso of 8(1)(i) states that decisions of the Council of Ministers, their reasons, and the information on which the decisions were taken must be made available after the decision is made and the matter is closed.

Under section 8(1)(j) the competent authority is not required to provide information relating to personal information, the disclosure of which has no connection to any public activity or interest, or which would result in an unwarranted violation of the individual's privacy, unless the CPIO or the SPIO, or appellate authority, as the case may be, is persuaded that the greater public interest merits the disclosure *.*Under the Constitution of India, the right to privacy is recognised as a fundamental right. In countries like the US, Ireland, and India, where this right is not explicitly mentioned in the Constitution, it is an inherent part of some other provisions[[11]](#footnote-11). Each individual residing in the country is entitled to right to privacy and to secure their personal information. The government holds valuable information about the individual of the country such as medical, banking and other financial records, investment and tax details etc. which can be easily misused by public disclosure, however, if the Appellate Authority's Central Public Information Officer or State Public Information Officer determines that the broader public interest demands the furnishing of such information, appropriate orders can be issued; however, these details cannot be asserted as a matter of right. The right however is also not absolute and can have justified restrictions for the prevention of crime, public disorder or chaos, protection of health or moral; or protection of rights and freedom of others individuals[[12]](#footnote-12). The proviso of the same section states that any such information which cannot be denied before the state legislature or the Parliament , cannot be denied to any individual.

As per Clause 2 of section 8 if the public interest in disclosure of the information outweighs the harm to the protected interests, the competent authority shall allow access to information. The quasi-judicial and judicial fora are authorised to review cases through the prism of whether disclosure of information even if covered by any of the exemption clauses under section 8 will serve the broader public interest[[13]](#footnote-13).

Section 8(3) states that any information relating to any event, case, or matter that occurred or occurred twenty years before the date of any request, subject to the provisions of sub-section (1) clauses (a), (c), and shall be provided to any person making such request.

1. **Restrictions under section 24-**

Section 24 exempted intelligence and security organisations, which were formed by the Central Government, from the RTI act's provisions. The responsible authority is under no duty to make public any information provided to that government by such organisations. Some of these organisations are -Central Bureau of Investigation, Strategic Forces Command, National Investigation Agency, national Intelligence Grid, Intelligence Bureau, Narcotics Control Bureau, Directorate of Enforcement and others specifies in second schedule. However the exemption under section 24 is not absolute, the proviso provides that the information in relation to the allegations of corruption and human rights violation will not be subject to this section. The Central Information Commission must authorise the disclosure of any such information requested in the case of a human rights violation, and the information must be released within 45 days of approval.

 Section 24 has been improved under the 2005 Act, which is a significant change over the 2002 Act, which aimed to include an absolute exception in favour of a specific class of government entities.[[14]](#footnote-14) However, even after such improvements, section 24 somehow violates the purpose of RTI act by excluding number of high functioning central authorities from the purview of this Act. Even the provision of this section that allows a person to seek information in the case of allegations of corruption does not serve its full purpose, as most appellants are unable to gather sufficient substantive proofs, or are only provided with partial information, which does not serve the purpose of this act. The Punjab and Haryana High Court ruled in *Harinder Singh vs. State Information Commission, Punjab & Ors[[15]](#footnote-15)* that if an organisation has nothing to conceal or cover up a corrupt operation, the information should be made public.

1. **Conclusion**

The provisions of the RTI act provide citizens with a powerful and useful mechanism for actively participating in political affairs and promoting government transparency. However, the rights granted by the act are not absolute and are subject to some required limitations. Section 8's prohibitions have no function other than to maintain public order, avoid the misuse and any possible abuse of right and allow the Government to work without any pressure and hindrance, as providing details unrelated to openness and accountability in the operation of public institutions, as well as the eradication of corruption, will be counterproductive and would also reduce the administration's performance. However, the restrictions under Section 24 are debatable since they act as an obstacle rather than a platform for general individual participation. It allows the public and central authorities to harbour information in the name of confidentiality. Specific changes to the said section are needed to make such authorities more transparent an accountable. Aside from that, there are several other impediments to the effective enforcement of the RTI Act. A large section of the population is unaware of the RTI act due to low literacy levels and lack of public knowledge, and those who are diligent in seeking information under the act are not provided with adequate information. Though the act provides a mechanism for obtaining important information from the government, there is no provision for essential and general information relating to food, healthcare, sanitation, environmental sustainability and resources, and other such matters that directly affect the general public. As a result, in order for the RTI act to fulfil its intended function, required changes to the provision and related restrictions must be made to encourage openness, accountability, and people's involvement rather than advancing secrecy. By such means only India can move towards good governance process.

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5. AIR 1982 SC 149 [↑](#footnote-ref-5)
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