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Abuse of the Right to Information as an Unrivalled Right

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Thomas Jefferson once said, "Information is the currency of democracy." Citizens must be encouraged to have a mindset of curiosity and freedom of information in order for a society to mature into a developed democracy, and this type of informed citizenship can only be attained through broad access to information about government procedures. In 2005, Article 19(1)(a) of the "Right to Information Act" was enacted with the goal of ensuring information dissemination freedom. Many people have benefited from the Right to Information Act of 2005, while others have attempted to abuse the legislation's capabilities by filing RTIs indiscriminately and frequently in order to settle scores with enemies, opponents, and family members, or it is used in order to gain access to information.¹ The basic norm that every person has access to any information stored by or within the authority of governmental agencies exemplifies this right. Section 2(f)² of the RTI has a broad definition of "Information." As a result, the institutional machinery's efficacy and efficiency have been reduced. As a consequence, this study will recommend several ways and remedies to solve multiple flaws in the implementation system of "the Right to Information Act of 2005."

Keywords: *right to information (RTI), freedom of information, democracy, public authorities.*

¹ Dr. Punya Shailaja et. al., *Right to Information Act: Tool in Strengthening Democracy in India* (Nitya Publications 2021) 114-233

² Right to Information Act, 2005

INTRODUCTION

Every coin has two sides, one of which is useful and the other of which is not beneficial but is misunderstood by others. The same may be said about the RTI Act. Because the legislation does not question the purpose of the information exchanged with individuals, how it is utilized, or what the goals are for utilizing it, these are the fundamental questions that everyone considers, but there is something else that no one knows. The objective of obtaining information is not only to disseminate information to the administrative machinery in order to accelerate it up, but it may also be to malaise a department or a high-ranking government official. The Right to Information Act of 2005 has been abused multiple times. Citizens can be directed or managed by denying them access to knowledge, but it cannot create trust in their minds, which might lead to the death of democracy. Power abuse by officials, violations of poor and ordinary people's rights, and corruption are all consequences of a lack of access to information. Information should be widely available and accessible in order to prevent unethical behaviour, which would eventually lead to accountability in the area of government apparatus and institutions. Legislation should be enacted requiring government institutions to provide them with access to information regarding policies that are being developed and are about to go into effect.³ Many countries have responded by establishing laws pertaining to information access, generally known as the "Access to Information Act" or "The Freedom of Information Act," which is founded on the principles of transparency and accountability. RTI requests are sometimes used to gain vicarious joys as well as to satisfy one's skepticism. Many RTI petitions lack the public interest that the Act is supposed to protect. There have been cases where petitioners have requested policy-related information and have vested interests.

³ Nancy Roberts & Alasdair Roberts, 'A Great and Revolutionary Law? The First Four Years of India's Right to Information Act' (2010) 70 (6) Public Administration Review <<https://www.jstor.org/stable/40927109>> accessed 30 May 2022

JUDICIAL PRONOUNCEMENTS

Requesting a lot of information desperately

The Commission declared in the matter of *Dinesh K. Gohil v All India Radio*⁴ that whenever an appellant exploits the RTI Act by requesting excessive and unnecessary information, rendering the application itself useless, there should be some type of remedial action taken against them. The Appellant left all of the 1800 odd pages of material behind while fleeing in rage, telling the Commission that he was throwing all of the documents here. Nothing could be a more solid indicator that he didn't need the information and instead made the application to annoy and stress the authorities. As a result, the Appellant's actions amount to a conscious disregard for the Commission's Presiding Officer, who is conducting a judicial proceeding.

RTI filed as a vengeful tool to harass

*Ashok Kumar Goel vs Public Information Officer VAT*⁵In this instance, the Appellant filed over 100 RTI requests with various government agencies in order to get information about the Third Party in order to harass them. Despite obtaining all documents from numerous ministries, the Applicant was unable to show a breach of public interest by the Third Party, according to the Third Party. ⁶ "When we examine the current case, we conclude that information about a person's filing of sales tax returns is lawfully protected under the RTI Act and has properly not been given," wrote a bench consisting of "Acting Chief Justice AK Sikri and Justice Rajiv Sahai." The court determined that the Sales Tax Act and the RTI both are personal and that information about sales tax returns must not be disclosed.

⁴ *Dinesh K. Gohil v All India Radio* (2007)

⁵ *Ashok Kumar Goel v Public Information Office* (2012)

⁶ Varun Malik, 'Right to Information in India: A Hallmark of Democracy' (2013) 2 (2) IJMSSR 42

<https://www.academia.edu/5373363/Right_to_Information_in_India_A_Hallmark_of_Democracy> accessed 30 May 2022

RTI filed in the name of 'whistle blower'

The Supreme Court stated in "*Nimmagadda v CBI*"⁷ that the RTI Act has made it easier to expose corrupt public officials, and whistle-blowers play a significant part in an organization's cleaning and promotion of openness in the governance structure. They are used to detect and prevent fraud as a vigilance tool. However, there have been countless cases when the Right to Information Act has been exploited by disgruntled personnel inside a department or foundation who pose as "whistle-blowers" in order to push their own objectives or exact retribution on a competitor by tarnishing his reputation as a crook.

Taking interest in the matters of other colleagues without any justifiable rationale

The CIC ruled in *R.C. Jena v Department of Posts*⁸ that, in many circumstances, a requester is more interested in the business of others than his own, for no good reason, as in this case. They do it by utilising office infrastructure to acquire data rather than devoting enough time and attention to providing high-quality, legally mandated public services. Such employees are simply promoting personal interests at the expense of public resources, which is a clear violation of the Act. The current appeal is an example of a government employee violating the Act by demanding specifics of service-related information on another employee in order to advance his own personal interests.

COMPARATIVE STUDY

The **United Kingdom** provides an intriguing paradox in terms of the right to information, contrasting a lively media functioning in an environment of generally robust respect for freedom of expression with a government that has a history of secrecy. This explains why the UK's Freedom of Information Act 2000 (RTI Law) was not approved until November 2000, long after other established democracies had done so, and was not completely implemented until January 2005. The UK's RTI Law features a variety of novel promotional initiatives, as well as excellent process guarantees and a broad area of applicability. It proposes the concept

⁷ *Nimmagadda Prasad v CBI* (2013) Criminal Appeal No. 728/2013

⁸ Caesar Roy, 'Right to Information and It's Significance to Ensure Good Governance in India' (*SSRN E-Journal*, 23 October 2013) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2343109> accessed 30 May 2022

of a proactive publication scheme, which provides a flexible mechanism for expanding the area of material subject to disclosure over time. At the same time, it is severely harmed by a broad set of exceptions. They are not only wide on the surface, but they also lack any kind of damage test and are not subject to public interest override. **Mexico** was one of the earlier countries in Latin America to pass the right to information law, significantly with the signing into law by President Fox of the Federal Transparency and Access to Information Law in June 2002. The right to information was simply guaranteed by the state in 2002, according to Article 6 of the constitution: "Freedom of information will be ensured by the state." A comprehensive amendment to Article 6 was voted overwhelmingly by both houses of the Mexican Congress as well as the legislatures of 16 states, considerably extending constitutional protections for the right to knowledge. The new promise states, among other things, that all information will be made public, with the exception of personal information, which will be protected.

The **United States of America's** Constitution provides significant protection for the right to freedom of expression, although in a negative sense, by banning Congress from making any law restricting freedom of speech or the press.³⁰⁷ The Supreme Court of the United States has ruled that this does not "[mandate] a right to access government information or sources of information under the authority of the government." The RTI Act in the United States has a variety of positives and problems. It has reasonable fee conditions, strict standards for electronic information delivery, and a variety of effective advertising techniques that were recently implemented... Rules on the timely dispensation of information, which can be circumvented, permission to classify documents, which has grown significantly in recent years, and the lack of an independent administrative oversight mechanism, including the power to hear complaints about public bodies failing to follow the rules properly, are all flaws.⁹ In **Slovenia**, this Act regulates the method for ensuring that everyone has free access to and re-use of public information held by state and municipal governments, public agencies, public funds, and other public law organisations, as well as public authority holders and public service contractors. The information directory of the entities referred to in the first

⁹ Abhishek Jain & Aarushi Jain, 'Promoting Right to Information Through E- Governance-A Case of E-Soochna and other Initiatives in H.P.' (2009) 55 (1) The Indian journal of Public Administration, 38

paragraph of this Article should be based on data from the Republic of Slovenia's Business Register, which is published and updated on the internet by the Ministry for Public Administration of Slovenia. The purpose of this Act is to guarantee that the bodies' activity is transparent and accessible to the public, as well as to allow natural and legal entities to exercise their right to access information maintained by public authorities. To fulfill the goal of this Act, the bodies must make every effort to keep the public informed about their activities.¹⁰ In **India**, according to our findings, less than 1% of the applications were vexatious or frivolous, and slightly more than 1% were voluminous (requiring a lot of information) (see Table below). Despite the fact that there is no legal prohibition against obtaining extensive information, it might distract public officials' time and negatively impact their work. However, we discovered that the vast majority of the many applications requested information that should have been provided in advance. As a result, neither the RTI Act nor the petitioner may be held responsible. Regrettably, complaints, concerns, and calls for help continued to be filed under the pretense of RTI applications, with 7 percent of the total submissions falling under these categories.

Table 5.6: COMPARATIVE ANALYSIS OF APPLICATIONS - CONSOLIDATED STATE AND NATIONAL DATA							
<i>Problematic Applications</i>							
2011-13							
	AP	ASS	DEL	RAJ	CEN	Average	BIH
	Percentage						
Vexatious	0%	0%	1%	0%	0%	0%	0%
Frivolous	1%	0%	0%	0%	0%	0%	0%
Unclear	0%	0%	0%	1%	0%	0%	3%
Voluminous	1%	2%	3%	1%	0%	1%	1%
Infringement of privacy	0%	1%	0%	1%	1%	1%	0%
Long time span	1%	1%	2%	1%	2%	1%	4%
Complaint - not RTI	4%	0%	2%	1%	2%	2%	0%
Grievance - not RTI	2%	0%	3%	3%	2%	2%	1%
Asking for help - not RTI	2%	4%	2%	6%	3%	3%	4%
Others	0%	0%	0%	0%	1%	0%	1%

¹⁰ N V Paranjape, *Right to information law in India* (Lexis Nexis, 2014) 170; Elited Kumar, 'Use and Misuse of right to Information Act, 2005' (*Elited Kumar*, 21 November 2015) <<https://elitedkumar.wordpress.com/?s=Use+and+Misuse+of+right+to+Information+Act%2C+2005>> accessed 30 May 2022

CRITICAL ANALYSIS

The Indian public's resourcefulness is on display when it comes to exploiting the RTI Act in novel ways. Despite the fact that the Act is primarily about seeking information, and given that it is frequently far more effective than other available remedies for inaction or delay, the people of India have perfected methods for not only filing complaints but also getting them addressed, all under the guise of seeking information. Even though most RTI applications are serious and deal with important issues, it's refreshing to see that even among the universal despair, frustration, and helplessness that characterises a large number of the applicants, there are some who seem to have kept their sense of humour, which makes us wonder what these applicants are up to. For example, in one situation, the applicant notifies the addressee that the village in which he lives is not part of any village development program or project. He wants to know what steps he needs to follow to finish the job. He has three options: dharna (squatting protest), hunger strike, or self-immolation. He also wants a copy of the official's suggestions¹ in this respect. ¹¹ Applications that are problematic there has been some negative advertising against the RTI Act, including claims that it is being used to file frivolous¹², vexatious, or voluminous applications¹³. Such applications, it is said, waste the time of public officials while serving no public benefit. According to our findings, less than 1% of the applications are successful.¹⁴ Despite the fact that there is no legal prohibition against obtaining extensive information, it might distract public officials' time and negatively impact their work. However, we discovered that the vast majority of the many applications requested information that should have been provided in advance. As a result, neither the RTI Act nor the petitioner may be held responsible. Regrettably, complaints, concerns, and calls for help continued to be filed under the pretense of RTI applications, with 7 percent of the total

¹¹ Nikita, 'Misuse of Right to Information Act: Causes and Case Analysis' (2021) 27 *Supremo Amicus*, 352 <<https://supremoamicus.org/wp-content/uploads/2021/12/Nikita.pdf>> accessed 30 May 2022

¹² Joel M. Androphy & Keith A. Byers, 'Federal Contempt of Court' (*Berg & Androphy*) <<https://www.bafirm.com/publication/federal-contempt-of-court/>> accessed 30 May 2022

¹³ Haider Mehdi, 'Right to Information Act 2005: Its Uses and Abuses in Indian Context' (2017) 11 (1) *The Asian Man* <<http://dspace.stellamariscollege.edu.in:8080/xmlui/bitstream/handle/123456789/8764/RTI.pdf?sequence=1&isAllowed=y>> accessed 30 May 2022

¹⁴ Caesar Roy (n 8)

submissions falling under these categories. Technically, these may have been disregarded as non-legitimate RTI requests.¹⁵ The fact that individuals continue to file them under the RTI Act, along with the fact that many of the illicit RTI applications are also disguised complaints, grievances, and pleas for assistance, suggests that existing routes of public interaction with the government aren't working very well. It also appears that individuals still believe in the RTI Act's capacity to get the government to listen when everything else has failed.¹⁶ CIC examines Additional Exemptions under the 2005 Right to Information Act. So far, we've looked at the Central Information Commission's exclusions under the Right to Information Act of 2005. However, the Commissions occasionally encounter instances where applicants seeking information request ambiguous and voluminous information, as well as non-specific information, which tends to stifle the efficiency and effectiveness of government agencies by requiring them to perform unnecessary tasks. Furthermore, applicants frequently misunderstand the purpose of the Right to Information Act of 2005.

Analysis of Supreme Court High Court Decisions Overturning CIC Decisions The Hon'ble Supreme Court and High Court diverging from the rulings of the Central Information Commission and overruling its mandate or decision will be discussed in this chapter. Because the Supreme Court and the High Court are the last authority to decide and issue a final judgement on a subject, the Ld. Hon'ble Courts may remand or dispose of matters, and the decisions of the Information Commissions may be overridden. Concerning the same, there are a number of issues to consider. In the case of *All India Institute of Medical Sciences v Vikrant Bhunia*,¹⁷ the appellant requested certified copies of all Super specialty Exam question papers. The Information Officer had rejected it and refused to provide it, arguing that the question papers were part of the Question bank and were required to be repeated. As a result, releasing such question papers might cause more public harm. They further claimed that question papers were their intellectual property, that they were part of a confidential document, and that releasing them would jeopardise their selection process. As a result, it was claimed that the question papers from the entrance test for super-specialty courses could not be made

¹⁵ *Ibid*

¹⁶ Dr. Punya Shailaja et. al. (n 1)

¹⁷ *All India Institute of Medical Sciences v Vikrant Bhunia* (2011) LPA No. 487/2011

public. The CIC required the appellant to submit such information in its ruling, and stated that question papers could not be considered "intellectual property."

CONCLUSION

The "Right to Information) Act" was enacted to make the government more accountable, and transparent, and to assist people in achieving social justice; however, the goal has only been partially achieved due to system failure, including impediments, CIC non-compliance orders, and misuse of RTI by seeking frivolous information or using it as a vindictive tool. It should also not be utilized to harass or intimidate law enforcement officers who are simply attempting to do their jobs. After doing an extensive investigation, it has been determined that there have been multiple instances of misuse of the RTI Act, 2005, which must be addressed promptly, or else this good instrument for the general public would become a tool for evil and destruction. As a result, it might be claimed that RTI Act misuse should be dealt with in a number of ways."¹⁸ The passage of the Right to Information Act in 2005 signaled the start of a new era in the growth of democracy. It has sparked a number of arguments among rationalists, as well as affected ordinary people. Unfortunately, the Act is not fully utilised as it should be. The Right to Information Act of 2005 has been abused multiple times. As previously stated, applications have been turned down on several occasions for asking for un-useful and sensitive information. The Act has undoubtedly been implemented by the government, but individuals are unaware of its primary contents and functions... Residents should be informed about the Act's principal purpose so that it does not become an instrument for obstructing the country's national development, as well as the peace and serenity among its citizens. Apart from the aforementioned flaws, the RTI Act is a helpful piece of legislation that, if closed, may strengthen the Act even more. Citizens must also become more watchful and accountable, exercising their right to know about the distribution of public funds, election candidates, political parties, private institutions, schools, and universities, among other things. This would

¹⁸ Lovekesh Jain, *The Information Gleaner* (New Century Publication 2010) 3

eliminate corrupt behaviours throughout society's many strata. People will be able to make better decisions about politics and elections if they are properly informed.¹⁹

SUGGESTIONS

The following is the amount of the application fee under the RTI Rules of 2012: According to the existing situation, an individual can register an RTI for a minimal fee of Rs. 10, and those living below the poverty level are excluded.

- Any increase in the Application Fee will not affect the majority of applicants unless it is increased significantly and even then, it will only limit them to filing hundreds of RTIs, leaving the purpose of curbing RTI abuse unsolved and that if it is increased, it will only affect the lower classes, thus defeating the Act's ultimate purpose.
- Penalties under Section 20 of the RTI Act, 2005: It is one of the most important Sections in the RTI Act 2005, since it holds CPIOs or SPIOs accountable for not acting in compliance with the Act, and therefore a penalty of up to Rs.25,000 is levied, as mentioned in Section 20 of the RTI Act, 2005.
- Restriction on the number of RTIs: This is related to the first point, where I discovered that raising the Application Fee would have no effect, and thus the solution, in my opinion, is some sort of restriction on the number of RTIs and applicant can file, as I have seen highly educated people file multiple RTIs (hundreds in some cases) just to harass public officials to satisfy their personal grudge.
- It is necessary to make identity proof required. The practice of filing RTI applications in someone else's name or in the names of non-existent persons has become common. A document of identification verification should be needed with every RTI petition.

¹⁹ David Banisar, 'The Right to Information and Privacy: Balancing Rights and Managing Conflicts' (*SSRN E-Journal*, 19 March 2011) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1786473 accessed 30 May 2022