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# SUPREMACY OF THE RTI ACT

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**CENTRAL INFORMATION COMMISSION**

**SUMMER INTERNSHIP RESEARCH PROJECT**

**2019**



**SUBMITTED BY –**

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## **ACKNOWLEDGEMENT**

I would like to express my heartiest gratitude towards Hon'ble Information Commissioner, Shri Bimal Julka whose help, guidance and support allowed me to witness the practical application of the RTI Act, 2005 through hearings and enhanced discussions.

I am extremely grateful to the Legal Consultants- Mr. Aditya and Ms. Bhumika who furthered my understanding of RTI Act and clarified every important facet of the Act and the procedure thereunder. I will strive to use the gained skills and knowledge in the best possible way.

Special gratitude to the registry staff- Mr. K L Das, Ms. Sonali, Mr. Deepak and Mrs. Sunita for their support and cooperation. Each member of the team not only provided a thoughtful and insightful working of the commission but also the right ambience to work and learn. The time spent at CIC as an intern provided a wealth of experience and learning, which I feel privileged to have and shall be indebted to all who have helped me during the internship.

Sincerely,

Shivangi Verma

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A detailed illustration in the background of the index table. It shows a clenched fist holding a megaphone. The megaphone has the letters 'RTI' written on its side. The fist is breaking through a heavy metal chain, with several links of the chain broken and falling away. The background is filled with small, scattered pieces of paper or debris, suggesting a scene of protest or the breaking of barriers.

## **LIST OF ABBREVIATIONS**

RTI -Right To Information.

CIC -Central Information Commissioner.

SC -Supreme Court.

HC -High Court.

Ltd. -Limited

Co. -Company

Ors. -Others

Anr. -Another

Vs. -Versus

sec. –Section

Art.- Article



## **ABSTRACT**

Right to Information is a basic human right of every human being. The renowned French philosopher Michel Foucault once opined, power is derived from knowledge and information is the basic component of knowledge. Information makes men wise and it is competent enough to cope up with the modern world. So, it is the duty of government to inform citizens about day to day happening whatever within the government. The transformation from governance to good governance is possible, if there is possibility of increasing participation of people in governance and free access of information. The right to information is implicitly guaranteed by the Constitution, with a view to set out a practical regime for securing information, to make government accountable, responsible, efficient and transparent, the Indian Parliament enacted the Right to Information Act, 2005 and thus gave a powerful tool to the citizens to get information from the Government as a matter of right. This law is very comprehensive and covers almost all matters of governance and has the widest possible reach, being applicable to Government at all levels- Union, State and Local as well as recipients of government grants. This paper tries to highlight the overriding effects of RTI act to information act as how it gives primacy to public interest and transparency over the 'secrets' even if the organisations were totally exempted from the RTI.

## **INTRODUCTION**

Information is an inalienable and natural right of every human being. In a democratic country each person has the right to freedom of opinion and expression. This right includes right of holding public opinion and to seek, receive and impart information and ideas from the public authorities. The available and appropriate information helps citizen to live a dignified life in a civilized society. The citizen's right to information is increasingly being recognized as an important mechanism to promote openness, transparency and accountability in government administration. People are the sole part in a representative form of government. So it is necessary that they must have to know all the functioning of government activities to frame a practical regime of good governance in administrative process. It is a powerful instrument to protect the fundamental rights of people.

According to section 2 (j) "Right to Information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to:

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

The basic object of the Right to Information Act-

1. To bring Transparency & Accountability in the working of every public authority.
2. The right of any citizen of India to request access to information and the corresponding duty of Govt. to meet the request.
3. A responsibility on all sections.

4. A responsibility of the Govt.
5. The duty of Govt. to pro-actively make available key information to all.
6. To curtail corruption and to hold Govt. & their instrumentalities accountable to the governed.
7. To ensure informed citizenry and transparency in governance.
8. To ensure less expensive and time bound information.
9. Matters connected to Public Authority or incidental thereto.

Corruption and criminalization is the nerve of Indian bureaucracy today. As a taxpayer, each person should have the right to know the functioning of government machinery. In addition to this, in a democratic country, citizen can be regarded asset only when citizen develop the skill to gain access to information of all kinds and to put such information to effective use. Without intellectual freedom the success of democratic governance cannot be imagined. Information is now the sole of every government. The need for transparency and efficiency in the governance become more important to achieve the goal of good governance.

Article 19 of the Constitution of India and Universal Declaration of Human Rights, 1948 also recognize the Right to information, which states that everyone has a right to freedom of opinion and expression. This right includes freedom to hold opinion without interference and to seek, receive and impart information through any media. The Right to information is a basic human right derived from Art 19(1) (a) of the constitution of India. It states, —All the citizens have the right to the freedom of speech and expression and Art 21 deals with right to life of citizens. In **Bennette Coleman vs. Union of India**,<sup>1</sup> SC ruled that the right to freedom of speech and expression guaranteed by Art. 19(1) (a) included the right to information.

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<sup>1</sup> 1973

## **ANALYSIS OF SECTION 22**

SECTION 22 , “ *Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.* ”

Section 22 of the RTI Act has an overriding effect over other laws in case there are inconsistencies. Public Authorities on occasion chose to believe that if the existing laws and rules laid down a different procedure for achieving a similar outcome, then existing procedures must be given precedence, despite sec 22, even though there might be discrepancies b/w them .However, Sec 22 of the RTI Act does not contemplate to override those legislations, which aims to ensure access to information.

The non-obstante clause under section 22 of the RTI Act does not mean an implied repeal over all statutes, but only an overriding provision in case of an inherent inconsistency. It further states that other than this Act, the other statutory provisions which are inconsistent with the RTI Act, would not operate within the campus, ambit and sphere where the RTI Act operates.

In case of **The Registrar Supreme Court of India Versus R S Misra** <sup>2</sup> ,

*“if any information can be accessed through the mechanism provided under another statute, then the provision of the RTI Act cannot be resorted to as there is absence of the very basis for invoking the provisions of the RTI Act, namely, lack of transparency, the provisions of the RTI Act are not to be resorted to if the same are actuated to achieve transparency.”*

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<sup>2</sup> W.P.(C)3530/2011

SECTION 8(2) “Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.”<sup>3</sup>

**How Official Secrets Act can be misused by the Government to hide facts from the people of the nation:**

Section 8 of RTI Act exempts certain items from being disclosed through an RTI. Section 22 only covers overriding of provisions of Official Secrets Act, 1923 that are inconsistent with those of RTI Act, the documents classified under OSA are not covered.

Based on the level of sensitivity of the information and the implications of its disclosure for national security, the official documents in India are classified as:

 Top Secret

It is for information whose unauthorised disclosure may cause “exceptionally grave damage” to national security or national interest. This category is reserved for the nation’s closest secrets.

 Secret

It is for information whose disclosure may result in “serious damage” to national security or national interest, or serious embarrassment to the government. It is generally used for “highly important matters”. Normally it is the highest classification used.

 Confidential

It is for information that might cause “damage” to national security, be prejudicial to national interest, might embarrass the government.

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<sup>3</sup> RTI Act, 2005

 Restricted

It is applied to information meant only for official use and is not to be published or communicated to any person except for official purposes. Documents which are not classified are regarded as “Unclassified”.

In case of **CBSE and Anr. Vs. Aditya Bandopadhyay and Ors.**<sup>4</sup> ,

*“18. In these cases, the High Court has rightly denied the prayer for re-evaluation of answer books sought by the candidates in view of the bar contained in the rules and regulations of the examining bodies. It is also not a relief available under the RTI Act. Therefore the question whether re-evaluation should be permitted or not, does not arise for our consideration. What arises for consideration is the question whether the examinee is entitled to inspect his evaluated answer-books or take certified copies thereof. This right is claimed by the students, not with reference to the rules or bye-laws of examining bodies, but under the RTI Act which enables them and entitles them to have access to the answer-books as ‘information’ and inspect them and take certified copies thereof. Section 22 of RTI Act provides that the provisions of the said Act will have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore the provisions of the RTI Act will prevail over the provisions of the bye-laws/rules of the examining bodies in regard to examinations. As a result, unless the examining body is able to demonstrate that the answer-books fall under the exempted category of information described in clause (e) of section 8(1) of RTI Act, the examining body will be bound to provide access to an examinee to inspect and take copies of his evaluated answer-books, even if such*

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<sup>4</sup> SPL (C) NO. 75262/2009

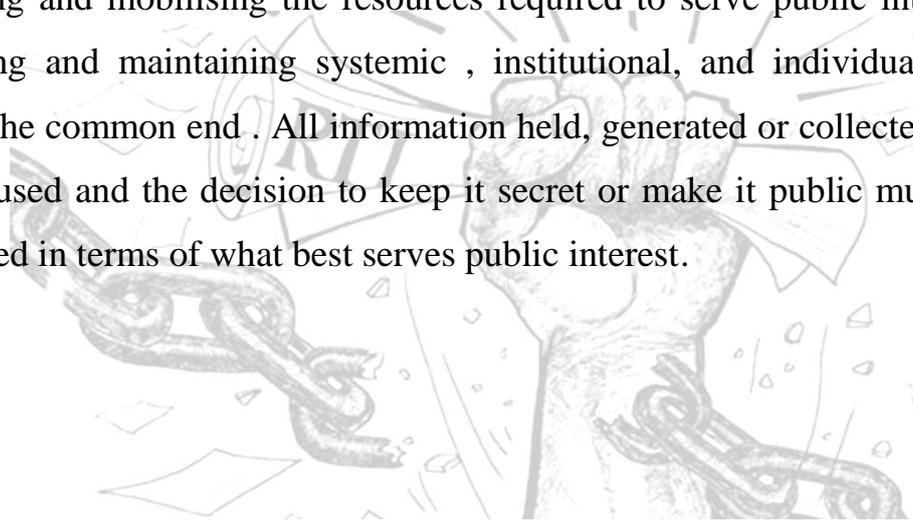
*inspection or taking copies is barred under the rules/bye-laws of the examining body governing the examinations. ”*

In **SC RBI 2005**, SC held that the RTI Act overrules all other acts, including the RBI Act or the Banking Regulation Act, in so far as access to information is concerned. Thereby, the SC rejected the contention that the RBI Act, being an earlier act, overrode the RTI Act.

*“43. The submissions of the RBI that exceptions be carved out of the RTI Act regime in order to accommodate provisions of the RBI Act and Banking Regulation Act is clearly misconceived. The RTI Act, 2005 clearly contains a clear provision (Section 22) by virtue of which it overrides all other acts including official secrets act. Thus, notwithstanding anything to the contrary contained in any other law like RBI Act or Banking Regulation Act, the RTI Act, 2005 shall prevail in so far as transparency and access to information is concerned. Moreover, the RTI Act, 2005 being a later law, specifically brought in to transparency and to transform the way official business is conducted, would have to override all earlier practices and laws in order to achieve its objective. The only exception to access to information is contained in RTI Act itself in section 8. ”*

## CONCLUSION

Thus, the basic purpose of the Right to Information Act, 2005 is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governments accountable to the governed. The primary and sole responsibility of the government is to serve and further public interest. Their main challenge includes identifying what is in public interest, balancing between the interest of various segments of the public, determining what is the best method by which people interest can be served, identifying and mobilising the resources required to serve public interest, and developing and maintaining systemic , institutional, and individual capacity towards the common end . All information held, generated or collected by govt. must be used and the decision to keep it secret or make it public must also be determined in terms of what best serves public interest.



## **BIBLIOGRAPHY**

- ✚ The Right To Information Act,2005
- ✚ Manupatra.com
- ✚ Indiankanoon.com
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