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Right to Information – India's Journey

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Right to Information – The Indian Experience

Distinguished guests, ladies and gentlemen,

2. As I stand before this August audience, my mind is drawn back to the 20th century in which I have lived substantially. Looking back I perceive it as a century that truly democratized the world. It was a century that witnessed phenomenal growth and transformation in the nature of state and society all across the globe. The gradual democratisation of the world in terms of growth of people's power and their ability to govern themselves was something unique to the 20th century. If one were to pick up a single highlight it would be the 'culture of citizenship' as it evolved around the world. In the middle of the 20th century we saw TH Marshall defining 'citizenship' as an ensemble of social and economic rights, although his perception was that of a citizen who was in need of being groomed and taken care of by the state. As a matter of fact, the historical progression of welfare state, decolonization, democratisation, gave the citizen the visibility and a sense of empowerment. These forces also fostered the growth of civil society and its concomitant organizations which have over a period acquired a distinctness and functional viability in terms of alternative governance. The twilight of the 20th century in some sense, saw the retreat and redefinition of the State from being an ameliorator and a provider to being a facilitator and a regulator. The rise of neo-liberalism and new public management in the field of governance created the space for citizens to seek more and more rights and entitlements and also become active participants in the development of their own destinies.

3. The Democratic dividend as it multiplied across the 20th century and into the 21st century, bore fruit in the evolution of an information

regime across several countries that was buttressed and supported by growth of media, a sense of public awareness in terms of Rights and entitlements, along with the information revolution that swept across the globe. Many countries have, in the process, adopted the right to information as a signature right, signifying the maturity of their citizens and encouraging them to become active participants in the governance process by seeking information from various public instrumentalities which were hitherto not directly answerable to the citizens.

4. Information right has become a global phenomenon. It has a venerable past with Sweden adopting the world's first Swedish Freedom of Press Act, in 1766, but thereafter significant advance was made with the inception of the United Nations. The UN General Assembly endorsed a Resolution in 1946:-

“Freedom of Information is a fundamental human right and the touch stone of all the freedoms to which the UN is consecrated”

The Universal Declaration of Human Rights in 1948 in terms of Article 19 therein called for enactments of public access to Government - held documents and information. The Nordic countries along with US and France adopted access to information acts in the 1960s and 70s. The erstwhile British colonies of Australia and New Zealand and Canada followed suit in the 1980s. The United Kingdom however, enacted Freedom of Information Act in 2000, which was implemented in 2005, the year in which India also enacted its Right to Information Act.

5. The Right to Information is not explicitly defined in the Constitution but is a derivative of Article 19 of the Indian Constitution that confers “right to freedom of speech & expression, to assemble

peacefully, to form Associations and Unions, to move freely, to reside and settle and to practice any profession or carry out any occupation.” It is from the Freedom of Speech and expression that the Supreme Court of India initiated the process of evolution of Right to Information through a catena of judgments. In a land mark judgement the **State of Uttar Pradesh Vs Raj Narain (1975)** – while examining the issue of probity of public functionaries, the court observed:” **In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in its bearings.”**

6. Further, in *S.P. Gupta v. Union of India*, (1982) the Apex Court observed:

The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy an exception, justified only where the strictest requirement of public interest so demands. The approach of the Court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.

7. The Supreme Court, in *R.P. Ltd. Vs Indian Express Newspapers*, while expanding the meaning of the expression “right to life and personal liberty” held that the right to know is a necessary ingredient of

participatory democracy. In the view of transnational developments, when distances are shrinking, the expression “liberty” must receive an expanded meaning. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion, it becomes necessary to receive information. Article 21 confers on all persons a right to know which includes the right to receive information. Therefore, the right to information can also be claimed as a fundamental right rather than being a statutory right under Right to Information Act of India.

8. In the context of the present RTI Act it is worth noting that in India, several entities including the citizens, civil society, Judiciary, Media & Press as well as the Govt. have, with their cumulative efforts, shaped the Right to Information Act 2005 as a landmark Legislation in the annals of Indian Democracy, which has redefined the rules of engagement between the citizen and the various Public Instrumentalities. The Preamble to the Right to Information Act, 2005 provides for setting up of a practical regime of Right To Information for citizens to secure access to information under the control of Public Authorities, in order to promote transparency and accountability in their functioning; informed citizenry and transparency of Information, which is vital to democracy as well as containing corruption and holding Government and its Instrumentalities accountable to the governed. However, it also acknowledges that the process of revelation of Information in actual practice is likely to come into conflict with other public interests including efficient operations of the govts., optimum use of limited physical resources and the preservation of confidentiality of sensitive information. It goes on to state that it is therefore necessary to harmonise these conflicting interests while preserving the paramount importance of Democratic ideals.

9. With the Supreme Court clearly laying down freedom of information as a fundamental human right, the civil society, media and various stakeholders gave fillip to the movement which finally culminated in the enactment of RTI Act of 2005. Joining the campaign for facilitating Right to Information were organisations like the National Campaign for People's Right to Information (NCPRI), Commonwealth Human Rights Initiative (CHRI), Consumer Education and Research Centre (CERC) and many others, which helped coalesce various ideas into a viable set of proposals under the proposed act. The movement in the 90s began in true earnest with the Mazdoor Kisan Shakti Sangthan (MKSS), an NGO, organising villagers in Rajasthan to seek information from public authorities over the public money spent in rural areas on government programmes and provision of minimum wages. In no time, it grew into a popular movement galvanising the rural masses towards seeking transparency in the fund transfer and usage in rural areas. Apart from civil society organisations and NGOs, due credit should also be given to the media which highlighted such movements and published stories of struggle for access to public records in parts of the country. The success of movements like the MKSS is clearly reflected in the later study by the Price Waterhouse Coopers in 2009, in which under the classification of information sought under the RTI Act, 39% of total queries were on Panchayats/Municipal Corporations/Civic Bodies and 29% were on other government ministries/department operations.

10. The campaign for Right to Information in the 90s bore fruit with a few states of India taking the initiative and enacting laws on Right to Information namely Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004).

11. The historic legislation on Right to Information finally came in force on 12th October 2005. The first RTI application in India was filed,

on the very first day of the Act's enactment, in a Police Station in Pune, a district in Maharashtra. The Act envisages maximum disclosure with minimum and well-defined exemptions which are in the nature of "reasonable restrictions". Citizens can apply in the local language of the area and seek information on a plain paper for a nominal fee. The Public Information Officers designated by various Public Authorities are required to reply within 30 days of receipt of application. "Public Authority" as defined in the Act, means any authority or a body or an institution of self government established or constituted under the constitution or a law made by Parliament/State Legislature or by any notification or anybody which is owned, controlled and substantially financed by the government. In case the citizen is not satisfied with the response of the PIO, he or she can file an appeal before the first appellate authority designated by the same public authority. The Act has put in place an appellate mechanism with the Central/State Information Commissions as the highest appellate bodies for adjudication and review of responses and functioning of Public information Officers, PIOs, along with effective Penal clauses under the RTI Act.

12. The Act though requires expeditious availability of information and gives right to appeal under section 19 of the Act, it bars the jurisdiction of a civil court with respect to any suit, prosecution or other legal proceedings. The remedy against decision of the Central Information Commission and the State Information Commissions, which is final under section 23 of the Act, still lies in the High Court and Supreme Court by way of writs under article 226 and article 32 respectively along with the provision for filing a Special Leave Petition in the Supreme Court under article 136 of the Constitution of India.

13. The RTI Act, 2005 is a completely Federal Act, the Central Information Commission adjudicates Appeals and Complaints filed by citizens against all Public Authorities under the control of Govt. of India

and simultaneously a parallel set up exists in all the states wherein respective State Information Commissions adjudicate Appeals and Complaints filed by citizens in case of Public Authorities under the control of State Governments.

14. The RTI Act, also lays down an elaborate code of Disclosure of Information under Section 4 of the Act wherein Public Authorities are required to display and update essential information on a regular basis regarding details of programmes, policies, processes and personnel, so that the public have minimum resort to the use of this Act to obtain information. This section is really the heart and soul of the Transparency regime intended to be created. Every public Authority is required to maintain and catalogue records it holds or has control over or which can be accessed from a private organisation. Such records are required to be classified and catalogued in such a manner that facilitates smooth access to these records for disclosure and dissemination of information in the public domain. Each public authority is also required to devise ways and means to make this process citizen friendly. The Central Information Commission has been revamping its official website for digitization of records, so that the information seekers and public authorities can track status of their cases and can become a part of day to day functioning. The Commission is now a part of online RTI portal and 2276 public authorities are registered on the same. Also, the Commission provides facility of video conferencing for conducting hearings in case of information seekers, who are residing in distant places. The Act, therefore, in this regard posits structural changes in the system of Governance by focusing on Record management and use of Information Technology for the same as well as for Disclosure of information.

15. The Preamble of the RTI Act in India makes it clear that the legislative intent was to fight corruption and to introduce transparency and accountability in the administration. In fact, the first report of Administrative Reforms Commission, Government of India, was entitled “Right to Information: Master Key to Good Governance”. The Reforms Commission had mentioned in this report that the poor and weaker sections of the society, by seeking information about public policies and actions would be empowered - a true impact of Good Governance. I would like to refer to Kautaliya, one of the major thinkers of India and chief advisor to King Chandragupta Maurya in the fourth century, who had said that the person who governs should understand that his happiness lies in the welfare of his subjects. Good Governance has also been defined as the glue which binds political leadership, the government machinery and the civil society. Good Governance connotes transparency, accountability amongst all stakeholders and thereby also implying an empowered citizenry. To take this argument further, Good Governance also implies allocation of resources in a manner which reflects public priorities. The citizen, therefore, by seeking information on government policies and its activities, is clearly indicating to the government its priorities and feedback, giving vital clues and suggestions for the future action programmes of the government.

16. In the initial years, after enactment of the legislation, it was therefore natural for the various stakeholders striving towards Good Governance, to observe closely whether the implementation of the Act was in step with the legislative intent. Meanwhile, there were interesting pieces of information coming out due to the RTI Regime, hitherto held in the confines of government files. On the other hand, some RTI activists in the process also faced the wrath of vested interests. RTI activists Amit Jethwa, Datta Patil, Vithil Geete, Shashidhar Mishra, were murdered for their crusade towards exposing corruption and irregularities in the

system. There was a public outcry over the killing of Satyendra Dubey, an Engineer with National Highway Authority of India, who wrote a letter to the Prime Minister's Office, giving lurid details of corruption in the construction of highway. Disclosure of such heinous acts only underscored the importance of this legislation in exposing the underbelly of corruption and the need for a law to shield the whistleblowers. This led to the introduction of Public Interest Disclosure (Protection of Informers) Bill in the Lok Sabha on August, 26, 2010, for the purpose of protecting the whistleblowers. The Bill is however, currently pending in the Rajya Sabha for discussions and further passage.

17. A number of government & non - governmental agencies instituted their own studies to assess the efficacy of the implementation of the RTI Act. This indicated the abiding interest of the various sections of the society in the progress of RTI Regime in the country after the historic legislation. The RTI Act is still an exercise of "work in progress". Look at some of the observations:-

(i) The public authorities are still not fully geared up to manage the growing need for seeking information from various quarters. They need to take a proactive interest based on the nature and quantum of citizens' queries to address the constraints in the area of infrastructure, manpower planning, etc.

(ii) Enhancing capacities for the RTI Regime within the public authorities would also include skill development programmes, upgradation of professional knowledge, improving coordination between various departments and increasing resort to IT applications. Complete digitization of records would be a step in the right direction.

(iii) A critical requirement for the RTI Regime to be truly in place is spelt out in section 4(1)(b) of the Act, which places an obligation on the public authorities to publish/put up on their website important details

about the organization, functions, duties, programmes etc. While some public authorities have been trying to implement this sincerely, others are still lagging behind.

(iv) Greater awareness of the Act is required in the rural areas for which central/state governments have to initiate measures for facilitating the rural masses in seeking access to information from public authorities. Once filing of a request is made convenient, the number of queries would substantially increase from the rural areas.

18. The Central Information Commission in its Annual Report every year makes an analysis of data received from the various public authorities in accordance with the mandate given to them under section 25(2) & 25(3) of the Act. This analysis includes the submission of reports categories wise by the public authorities, details regarding number of officials designated as Public Information Officers & First Appellate Authorities, amount collected as application fee, additional charges etc. The Commission in its Annual Report 2012-13 mentioned that “the public authorities in our country have to go a long way in proactive disclosures of information as outlined in section 4 of the Act.” It went on further, enjoining upon the public authorities to voluntarily put information in public domain for public use. Information housekeeping is a major challenge for the public authorities. Once data management practices are improved and increased computerization of record and work flow is achieved, the citizens will be able to locate most of the information on the public portals, and also see the action taken on their requests. Further, alternative channels for submission of RTI requests can also be designated in the public authorities like RTI call centres, RTI portals, citizen service centres serving as single nodal points for centralised database of all the RTI applications received and their respective responses for an effective and standardized system for analysis and research in future.

19. The Commission's analysis also includes the state of preparedness of the public authorities. Every public authority submits four quarterly returns for assessment of their performance during the year in the Annual Report. The Commission therefore has a holistic picture of the performance of the public authorities with respect to the implementation of the RTI Regime. Earlier, the Commission had taken a serious note of the incidents of attacks against RTI applicants and passed a strong resolution on 13.09.2011, which read as under:-

“The Central Information Commission expresses regret and takes note of the reported killing and assault on RTI users across the country. The Commission underlines the need to take urgent steps by respective governments for the safety and protection of the RTI users. The Commission strongly believes that it is the duty and responsibility of the respective government to safeguard life and liberty of RTI users for which purpose they should invoke the relevant penal provisions for prevention and detection of such heinous crimes.”

20. The Central Information Commission has continued with its endeavour to impress upon public authorities, the need to proactively consider citizens' request for information. Every year during the Annual Convention, some key issues related to the RTI Regime are discussed with members of the government, civil society, public authorities etc. The conclusions of the 7th Annual Convention (2012-13) of the CIC stressed upon the fact that the governments trust worthiness in the eyes of the citizen is enhanced by the willingness with which state institutions accept and adopt transparency. The RTI Act has put in hands of the citizen a powerful instrument to directly challenge the mystique of the government and to enter into its most hallowed portals. The Commission also concluded that while Right to Information has been accepted as a standard of Good Governance all over the world, it is also felt that individual's privacy is being challenged repeatedly by new technologies

and sharing of individual's personal data and information on real and virtual platforms. A fine balance has to be maintained in developing a mechanism for identifying core issues limiting conflicts and balancing respective rights.

21. We have entered the 10th year of the enactment of the historic RTI Act in India. What is clearly noticeable is the growing avalanche of information being sought from the public authorities, displaying the citizen's hunger for information. Over the years, the information being sought is becoming more precise and direct. The last nine years have truly brought about a change of relationship between the citizenry and the state. This has impelled the public authorities to come up with several initiatives. The Standing Committee on Public Enterprises (SCOPE), an apex body of central public sector undertakings in India has strongly supported the implementation of RTI Act. It has embarked upon an action plan towards the implementation of RTI Act and constituted a steering committee with members from various sectors such as power, coal, gas, manufacturing, engineering etc. SCOPE has also interacted with the Central Information Commission to resolve a number of issues relating to the RTI and held regional workshops/symposium/sensitization programmes for its information offices across the country. Such initiatives have led to better appreciation of the RTI Act amongst the Public Information Officers. An in-house assessment has also revealed that less than 50% of public authorities are meeting the requirement of the suo-motu disclosure under section 4(1)(b) of the Act which is for publication of information regarding the organization on its portals, which is a statutory requirement. The in-house analysis also came to the conclusion that most of the RTI queries were related to the grievances of the employees, clearly indicating that the internal grievance redressal system needs to be addressed in the right way so that it is deep seated.

22. The public authorities have also pointed out to some of the problems often faced by them in the implementation of the Act namely:-

- (i) Applications with multiple questions from different departments and areas.
- (ii) Repeated questions by the same applicant again & again.
- (iii) Frivolous & Vexatious applications
- (iv) Inadequate Guidance & Training of the officers.
- (v) Misuse of information by some information seekers.
- (vi) Interrogation and investigation in the name of seeking information.

Such introspection on the part of public authorities would only help implementing the RTI Regime in its true spirit. The SCOPE now plans to have an exclusive RTI Portal on their website for the benefit of the public sector undertakings which will include draft manual for proactive disclosure, important CIC/Supreme Court/High Court decisions etc.

23. In conclusion, let me state that for the RTI Regime to be truly successful, its impact has to be assessed in the rural areas. The pro-poor orientation of the RTI has to be strengthened, since, RTI can impact the life of a common villager by its judicial use in rural areas. The Price Waterhouse Cooper programme on the Poorest Areas Civil Society (PACS) in 2007 indicated that some of the issues on which their RTI queries were not answered properly and the villagers felt non-responsive attitude of the government officials were:-

- Inconsistencies in the Public Distribution System

- Inconsistencies in the construction of roads, etc., from Gram Panchayat funds.
- Non-receipt of minimum wages at Govt. works.
- The villagers not receiving the benefits of the forestation scheme.
- Irregularities in the allotment of Gram Sabha Land and selection of beneficiaries of Indira Awaas Yojna Scheme, Old Age and Widow Pensions Scheme, etc.

24. Right to Information Act is a sun shine legislation committed to achieving the ideals of a democratic system. The Act has been widely acclaimed. Some believe that the World Bank implemented the first phase of its new policy on Access to Information on 1st July 2010 drawing upon India's RTI law and US Freedom of Information law, to increase its effectiveness, efficiency and accountability. Today, the media is exposing corruption in public bodies brought to the fore by RTI queries. There is tremendous public enthusiasm as displayed by the increasingly large number of applications. A heartening feature has been the active involvement of various stakeholders in promoting the RTI Regime in the country which bodes well for the future of RTI.

25. Knowledge is power and knowledge comes from information. It is a critical resource in a democracy where public resource and institutions are to be accountable to the public. The legislative intent of the RTI in India was to strive towards bringing all information related to its functioning to the citizens without any hurdles. The objective of this will truly be realised when the citizens start getting information on their own without making resort to RTI queries. This will take some time but nevertheless, is an ideal worth pursuing with zeal and energy. In the end, let us not forget that Democracy is a journey and despite all its imperfections, it nonetheless remains the most perfect method to realise and harness the will and wisdom of the multitude.