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Right to Information Act and Judicial Accountability in India

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Abstract

This research paper intricately explores the interplay between the Right to Information Act and the concept of judicial accountability in India. Enacted in 2005, the Right to Information Act (RTI Act) has played a pivotal role in promoting transparency and accountability in various governmental spheres, including judiciary. The study involves a comprehensive analysis of the RTI Act's evolutionary journey, its impact on the Indian judicial system and the challenges it encounters in ensuring judicial accountability. Employing a multidisciplinary perspective, the research seeks to shed light on both the strengths and weaknesses of the RTI Act in its role of holding the judiciary accountable while also presenting potential avenues for improvement.

Keywords: *Right to Information, Judicial Accountability, Transparency*

1 Introduction

“The RTI Act is not just about getting information. It is about changing the power relations between the government and the people. It is about empowering people to hold the government accountable and to demand good governance.”¹ The Right to information is indeed viewed by many as a fundamental pillar for strengthening participatory democracy promoting people centered development across the world. It is a tool that empowers citizens, ensures accountability, fosters transparency, and ultimately leads to more inclusive and responsive governance. By empowering citizens, RTI allows them to actively engage in the democratic process, make informed decisions, and hold elected representatives accountable. It fosters civic engagement and inclusivity by providing access to government programs and resources, thus bridging the gap between the government and the governed. RTI ensures a transparent allocation of resources, promoting equitable distribution and participatory budgeting. Moreover, it upholds principles of human rights and social justice, enabling marginalized communities to demand their rights and participate in economic and social empowerment. Environmental sustainability, conflict resolution, and peacebuilding efforts also benefit from RTI, and it encourages innovation and adaptability in the pursuit of people-centered development. In this way, RTI serves as a crucial tool in building transparent, accountable, and inclusive societies focused on the welfare and empowerment of their citizens. UNESCO conducted a worldwide survey to identify existing

¹ Aruna Roy, *The RTI Story: Power to the People* (2018th ed.).



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laws on the right to information and their adherence. The research revealed that 125 countries have established right to information laws (RTI) or similar provisions.²

The judiciary, as a fundamental organ of governance in democratic systems, plays a multifaceted role vital to the functioning of a just and orderly society. It serves as the ultimate interpreter of laws, providing guidance and interpretation of legislation passed by the legislative branch. By upholding the constitution and exercising the power of judicial review, it ensures that the actions and laws of the government adhere to the supreme law of the land. In doing so, it acts as a crucial check on the powers of the executive and legislative branches, preventing any potential overreach or violation of constitutional principles. The judiciary is also the bastion of individual rights and freedoms, protecting citizens from infringements and providing recourse in cases of rights violations. In essence, the judiciary's independence and impartiality are the cornerstones of a democratic society, safeguarding the rule of law, individual rights, and justice.

The Right to Information (RTI) and judicial accountability are essential components of a transparent and accountable governance system. Right to Information promotes transparency and empower citizens to participate actively in the democratic process. On the other hand, judicial accountability ensures that the judiciary operates independently, ethically, and remains answerable for its decisions and actions. This paper explores the relationship between RTI and judicial accountability, focusing on how the former contributes to the latter. Transparency is a cornerstone of judicial accountability. When judicial proceedings and decisions are shrouded in secrecy, the potential for corruption, abuse of power, or improper influence increases. The RTI Act addresses this issue by providing a mechanism for citizens and interested parties to access information about court proceedings, judgments, and the functioning of the judiciary. RTI allows individuals to request documents related to specific court cases, including judgments, case records, and legal opinions. This transparency ensures that the public can scrutinize the actions of the judiciary, ensuring that it operates fairly and impartially. The open nature of court proceedings and access to related information can help identify irregularities or potential issues with judicial decisions. One of the key functions of RTI in the context of judicial accountability is the prevention of judicial misconduct. Misconduct within the judiciary can have far-reaching consequences, eroding public trust in the justice system and undermining the rule of law. RTI mechanisms can be used to access information about judicial appointments, promotions, and disciplinary actions. Transparency in these areas helps ensure that judges are held accountable for their actions. RTI can shed light on the process of judicial appointments and promotions, making it possible to

² <https://sdg.iisd.org/news/unesco-finds-125-countries-provide-for-access-to-information/> (19/10/2023 11:29 a.m.)



verify that these processes are conducted fairly, without undue political influence or nepotism. This transparency ensures that qualified individuals are appointed to the judiciary, contributing to its overall integrity. Furthermore, RTI can be used to access information about disciplinary proceedings against judges. When judges are found to have engaged in misconduct, such as unethical behavior or corruption, the public has a right to know how these cases are handled. Transparency in disciplinary actions ensures that judges are not above the law and can be held accountable for their actions. Public scrutiny is a powerful tool in maintaining judicial accountability. When the public has access to information about judicial processes, it can actively participate in ensuring that the judiciary functions fairly and impartially. RTI empowers citizens and civil society to monitor court proceedings, identify issues, and demand accountability when necessary. A judiciary that operates behind closed doors is susceptible to abuse and misconduct. In contrast, transparency through RTI builds trust in the judicial system. When citizens have access to information about the operations of the judiciary, they are more likely to have confidence in the system's fairness and impartiality. Furthermore, the judiciary is a critical component of the checks and balances within a democratic system. RTI reinforces this role by enabling the public to scrutinize the judiciary, ensuring it does not overstep its boundaries or act in ways that undermine the democratic process. While RTI is essential for judicial accountability, it must be balanced with the need to protect sensitive information. Certain aspects of legal cases, ongoing investigations, and personal information related to individuals involved in legal proceedings require safeguarding to protect privacy and ensure the integrity of the judicial process. RTI Act typically have exemptions for sensitive information, such as details of ongoing investigations, attorney-client privilege, and personal data. Striking the right balance between transparency and privacy is crucial, as both are fundamental to a functioning legal system. The relationship between RTI and judicial accountability is recognized and valued on a global scale.

2 The Evolution of Right to Information and Judicial Accountability: From Historical Origins to Modern Imperatives

India's rich diversity, encompassing multiple religions, communities, and languages, underscores the importance of information and access to information in ensuring that every citizen is represented in this democratic nation³. The history of the right to information in India can be divided into two periods: the colonial era and the post-colonial era. During British rule, the Official Secrets Act of 1923 was enacted to

³ Varsha Khanwalker, *The Right to Information Act in India: Its Connotations and Implementation.*, 72 *The Indian Journal of Political Science* 387-93 (2011).



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maintain control and suppress any opposition to exploitative measures. This draconian law restricted access to information, hindering the public's ability to hold the government accountable. While the act remains in place today, its scope has been narrowed to protect privileged information that could jeopardize national unity or integrity. Following India's independence, the struggle for a free flow of information gained momentum, spearheaded by three main groups: laborers, activists, and environmentalists⁴. Laborers, often exploited by their paymasters, were denied access to attendance records and other crucial information, leaving them vulnerable to unfair treatment. The Mazdoor Kisan Shakti Sanghathan (MKSS) played a pivotal role in advocating for laborers' rights to information, sparking a grassroots movement for transparency. This movement gained momentum due to the demand for minimum wages in rural areas. Despite its rural origins, the RTI movement attracted support from various sectors, including media, lawyers, academics, bureaucrats, and legislators. Activists fighting against unlawful detention and human rights violations faced similar challenges, as government officials were reluctant to release relevant documents. Environmentalists, concerned about the impact of rapid industrialization, also sought access to information to hold the government accountable for its environmental policies. The National Campaign on the People's Right to Information (NCPRI) was formed to advocate for RTI legislation. In response, the Indian government formed a working committee led by consumer rights activist H.D. Shourie to draft RTI laws. By the 1990s, the demand for legislation guaranteeing access to information had reached a critical point. The movement gained support from professors, lawyers, advocates, and journalists, all of whom recognized the importance of an informed citizenry in a functioning democracy. The Shourie Committee's draft, introduced in 1997, included broad exemptions that allowed public authorities to withhold information under the guise of public interest. This raised concerns as it would enable authorities to delay the release of incriminating evidence. Moreover, the crucial provision stating that only information denied to parliament or the legislature could be withheld from citizens was omitted. In July 2000, the Shourie draft was revised and introduced as the Freedom of Information Bill, 2000. The Freedom of Information Act was passed in 2002, but it was superseded by the Right to Information (RTI) Act in 2005. This Act, which came into effect on October 12, 2005, grants all citizens the right to information, subject to certain provisions. Public authorities are obligated to disclose information, and Public Information Officers serve as intermediaries between information seekers and public authorities. Since 1975, the Supreme Court of India has recognized the right to information as a fundamental right under Article 19(1)(a) of the Constitution, upholding the right to

⁴ N. V. Paranjape, *Right to Information Law in India* (1st ed. 2014).



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freedom of speech and expression. In the State of U.P. v. Raj Narain⁵, the Court established the right to information as a necessary corollary of the right to freedom of speech and expression. The Court further emphasized its importance in the proper functioning of democracy in Employed Engineers Association v. State of Maharashtra⁶, reinforcing the government's duty to disclose information unless there is a compelling reason to withhold it. This duty was reaffirmed in Bhagwan Swarup v. Union of India⁷ and Dinesh Trivedi v. Union of India⁸, where the Court upheld the right to information as an essential element of a functioning democracy.

In Common Cause v. Union of India⁹ and Bennett Coleman and Company Limited v. Union of India¹⁰, the Supreme Court acknowledged the human rights dimension of the right to information. While recognizing its non-absolute nature, the Court affirmed that restrictions on the right to information must be justified in the interest of national security, public order, and morality. In Subhash Chandra Agrawal v. State of U.P.¹¹, clarified the distinction between the right to know and the right to be informed, emphasizing the proactive role of the government in disclosing information to the public. These landmark case laws have played a defining role in shaping the Right to Information in India, establishing it as a fundamental right, broadening its scope, and affirming the government's duty to disclose information to the public.

The concept of judicial accountability has a rich historical lineage dating back to ancient civilizations, where the principle of holding judges responsible for their conduct has been consistently emphasized. Early instances can be seen in Mesopotamia with the Code of Hammurabi (1792 BCE), which prescribed penalties for judicial misconduct. Similarly, in ancient Greece, the democratic system in Athens featured jury courts to curtail the authority of individual judges. Rome also incorporated accountability measures through mechanisms like the veto power of tribunes over magistrates, including judges.

The evolution of modern judicial accountability systems is closely tied to the advancement of democracy and the rule of law. As autocratic rule waned, there emerged a stronger emphasis on ensuring that all public officials, including judges, are accountable under established legal frameworks.

⁵ 1975 AIR 865

⁶ 1981 AIR SC 572

⁷ 1985 3 SCC 699

⁸ 1997 8 SCC 281

⁹ 1997 2 SCC 1

¹⁰ 2002 5 SCC 661

¹¹ 2006 3 SCC 344



In the United States, the Constitution provides several mechanisms to uphold judicial accountability. For instance, judges can be impeached by the House of Representatives and subsequently removed by the Senate. Furthermore, the principle of judicial review empowers higher courts to overturn rulings deemed unconstitutional.

While specific methods for ensuring judicial accountability vary across nations, the fundamental principle of holding judges accountable for their decisions and conduct remains indispensable in fostering trust and integrity within judicial systems worldwide.

3 Role of RTI Act in ensuring Judicial accountability

The concept of judicial accountability is intricately explored in the Supreme Court judgment "Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agarwal¹²," particularly in the context of transparency and the Right to Information (RTI) Act. In this case the Supreme Court of India held that the office of the Chief Justice of India is a "public authority" under the RTI Act. This decision underscored that transparency is an essential facet of judicial accountability, enabling public scrutiny of judicial actions without compromising the judiciary's independence. The Court emphasized that while judicial independence is paramount, it does not imply judicial impunity, and the judiciary must remain transparent and accountable to maintain public trust. The judgment delved into the RTI Act's implications, emphasizing that transparency is fundamental to judicial accountability. By categorizing the Chief Justice's office as a public authority, the Court allowed for greater openness regarding judicial functions and decisions. This move was seen as a step towards demystifying the judiciary, allowing citizens to seek information and thereby fostering an environment of trust and confidence in judicial processes. Another pivotal case in the realm of judicial accountability is "S.P. Gupta v. Union of India¹³," also known as the Judges' Transfer case. This case dealt with the disclosure of judicial correspondence between the Law Ministry and the Chief Justice of India concerning the transfer of judges. The Supreme Court held that the disclosure of such information is vital for maintaining judicial accountability and transparency, aligning with the principles of the RTI Act. The Court asserted that the public has a right to know about the functioning of the judiciary, which is an integral part of democratic governance. In this case the Court's decision highlighted the importance of public access to information about the judiciary. The judgment indicated that transparency in judicial appointments and transfers was necessary to prevent arbitrary decisions and to ensure that such decisions are made based

¹² 2019 16 SCR 424

¹³ 1993 4 SCC 441



on merit and in the best interest of justice. This case reinforced the concept that judicial accountability is essential for sustaining public confidence in the judiciary. In the judgment of "Thalappalam Service Cooperative Bank Limited v. State of Kerala¹⁴," the Supreme Court further clarified the scope of the RTI Act in relation to judicial accountability. The Court observed that while the RTI Act promotes transparency and accountability, certain exemptions, such as those related to personal information, must be respected to protect individual privacy. However, the Court also highlighted that the larger public interest could justify the disclosure of personal information if it serves the cause of transparency and accountability within public authorities, including the judiciary. The "Thalappalam" judgment addressed the delicate balance between the public's right to information and the protection of personal data. It established that the judiciary must be transparent, but this transparency should not come at the cost of infringing on personal privacy unless a significant public interest is at stake. This judgment contributed to the nuanced understanding of how the RTI Act applies to judicial institutions, ensuring that the judiciary remains accountable while safeguarding individual rights.

The interplay between the RTI Act and judicial accountability is significant, as demonstrated by these landmark cases. The RTI Act serves as a tool to promote transparency within the judiciary, allowing citizens to seek information about judicial actions and decisions. By enhancing transparency, the RTI Act ensures that the judiciary is accountable to the public, thereby fostering a more informed and engaged citizenry. This transparency is crucial for maintaining the judiciary's legitimacy and for reinforcing public trust in the judicial system. Through these cases, the judiciary has navigated the complexities of balancing transparency with the need for judicial independence and confidentiality. The decisions highlight that while transparency is essential, it must be implemented in a way that does not compromise the effectiveness and independence of the judiciary. The RTI Act, thus, plays a pivotal role in maintaining this balance, ensuring that judicial accountability is upheld without undermining the core principles of judicial independence.

4 Conclusion

"The right to information is a fundamental human right which is essential for good governance, democracy and development. It is also a key tool for fighting corruption and promoting accountability."¹⁵ The Right to Information (RTI) Act in India, while pivotal in promoting transparency and accountability across various

¹⁴ 2013 16 SCC 82

¹⁵ M.M Semwal & Sunil Khosla, *Right to Information and the Judiciary*, 69 *The Indian Journal of Political Science* 853-864 (2008).



public sectors, has several gaps and limitations that hinder judicial accountability. One significant issue is the ambiguity in the exemptions under Section 8, which include protections for national security, personal privacy, and internal deliberations. These exemptions are often vaguely defined, leading to inconsistent interpretations and applications that can be used discretionarily to withhold crucial information. Additionally, the RTI Act lacks specific provisions addressing the transparency of judicial conduct and misconduct investigations. This absence of clarity results in limited public insight into complaints, internal inquiries, and disciplinary actions involving judges, thereby obscuring accountability processes within the judiciary.

Moreover, the RTI Act does not mandate the disclosure of detailed information regarding judicial decision-making processes, such as the rationale behind appointments, transfers, and promotions, limiting public understanding of these critical areas. Another significant gap is the lack of robust protections for whistleblowers within the judiciary. Without comprehensive mechanisms to protect insiders who expose corruption or misconduct, potential whistleblowers may be deterred from coming forward with valuable information that could enhance judicial accountability.

Operational transparency within the judiciary is also insufficiently addressed. The RTI Act does not require mandatory disclosure of administrative and financial details, such as budget allocations, spending, and procurement processes. This lack of transparency can allow for the misuse of resources and hinder overall accountability. Furthermore, the RTI Act's enforcement mechanisms are relatively weak, lacking strong provisions to ensure compliance by judicial authorities. The penalties for non-compliance are minimal, and there is no independent body with adequate powers to enforce transparency within the judiciary, leading to partial or non-compliance with RTI requests. The RTI Act also does not mandate the proactive disclosure or easy accessibility of archival information, limiting access to historical judicial decisions, deliberations, and administrative records that are crucial for understanding and ensuring accountability over time. In conclusion, while the RTI Act has been instrumental in promoting transparency, its limitations in the judiciary are evident. Addressing these gaps through legislative amendments and establishing independent oversight mechanisms could significantly enhance the RTI Act's effectiveness in promoting judicial accountability. By providing clearer definitions of exemptions, specific provisions for judicial transparency, robust whistleblower protections, improved operational transparency, stronger enforcement mechanisms, and better access to historical information, the RTI Act can better serve its purpose of ensuring an accountable and transparent judiciary.