

RTI AND ITS IMPACT ON TRANSPARENCY OF THE JUDICIAL SYSTEM AND ADMINISTRATION IN INDIA AND THE ANALYSIS OF RTI WITH DPDP ACT, 2023

Bondu Vaagdevi*

ABSTRACT

The overarching objective of the RTI Act is to enhance transparency and answerability among government by ensuring that people have fair access to information and giving them the chance to claim their right to know about all governmental operations, decisions, and actions. In addition to giving people the chance to exercise their right to information, it also gives them an outline through which they can take part in the democratic process. Right to Information promotes transparency and forges ties between the people of the nation and the government, making it essential to the effort of our country's growth. The right to information is an arsenal for good governance that increases citizens' confidence and security in the concerned government, which contributes to the effective operation of democracy. In order to determine the efficacy and challenges of the RTI Act implementation in the criminal justice system, particularly in light of the Code of Criminal Procedure, analysis is required. The essay digs into the provisions of the RTI Act and the Code of Criminal Procedure to assess how RTI might influence criminal proceedings. It examines the range of data made available by the RTI Act with an emphasis on the harmony between preserving privacy and promoting transparency in criminal cases.^{1 2 3 4 5}

*BA LLB, SECOND YEAR, SRI PADMAVATHI MAHILA VISVAVIDYALAYAM, TIRUPATI.

¹ Gopi M, 'Right to Information Act in India (An Overview)' (2016) 4(2) Journal of Political Sciences & Public Affairs <<http://dx.doi.org/10.4172/2332-0761.1000207>> accessed 27 August 2023

² Mandvi Shukla, 'RTI has strengthened transparency in administration' (*Edu Law*, 23 March 2023)

<<https://portal.theedulaw.com/SingleNotes?title=rti-has-strengthened-transparency-in-administration#:~:text=With%20the%20enactment%20of%20the,government%20decision%2Dmaking%20more%20open>> accessed 27 August 2023

³ Sana Malik, 'Impact of RTI on Indian Administration' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-10556-impact-of-rti-on-indian-administration.html#:~:text=It%20can%20be%20said%20that,a%20democratic%20form%20of%20government>> accessed 27 August 2023

⁴ Vice President's Secretariat, 'RTI is a Powerful tool that Strengthens Democracy and Promotes good Governance by Enhancing People's Participation: Vice President Inaugurates New Building of Uttar Pradesh Information Commission' (Press Information Bureau 146976, 2016) para 21

⁵ Abeer Rakesh Wasnik, 'RTI IN CODE OF CRIMINAL PROCEDURE, 1973' (*Legal Vidhiya*, 06 July 2023) <<https://legalvidhiya.com/rti-in-code-of-criminal-procedure-1973/>> accessed 27 August 2023

Keywords: Right To Information Act, Transparency, Answerability, Right To Information, Good Governance, Democracy, Code Of Criminal Procedure, Privacy.

INTRODUCTION

In order to develop transparency in administration and enhance the responsibility of carrying out its operations in a better accountable way, India, a country of democracy that is the government of, for, and by the people, encourages among its citizens the right to be informed about and keep an eye on the affairs of the government. In this regard, the Right to Information Act, 2005's main objective is to obtain information from the relevant authorities in order to reveal wrongdoings or to improve the ability to challenge anti-people policies on the basis of legitimate arguments.⁶

EVOLUTION OF RTI ACT IN INDIA

Aruna Roy launched the Right to Information movement in Rajasthan in the early 1990s. The Mazdoor Kisan Shakti Sangathan (MKSS) was able to gather information and apply it to combat local corruption and exploitation through protest and agitation. A new piece of law, the Right to Information Act (2005), was passed by the Parliament in 2005. The former Freedom of Information Act, 2002, which was therefore ineffective, is replaced by this new Act. All citizens now have the right to access information, and all public agencies are compelled to disclose that information as a result of the new legislation. It makes an effort to promote transparency and accountability in how all public authorities undertake their operations.^{7 8 9}

RTI ACT AND TRANSPARENCY OF JUDICIAL SYSTEM IN INDIA

Recently, there was debate over including government representatives in the collegium system that chooses judges in order to increase transparency and accountability. The former law minister Kiren Rijiju wrote a letter to the chief justice of India in this regard, and the Apex

⁶ Ayush Tiwari, 'Right to Information Act, 2005' (*ipleaders*, 05 November 2022)

<https://blog.ipleaders.in/right-to-information-act-2005/#Evolution_of_the_concept_of_the_Right_to_Information> accessed 28 August 2023

⁷ Gopi M, 'Right to Information Act in India (An Overview)' (2016) 4(2) *Journal of Political Sciences & Public Affairs* <<http://dx.doi.org/10.4172/2332-0761.1000207>> accessed 28 August 2023

⁸ Stuti, 'Evolution and Development of Right to Information Act in India' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-323-evolution-and-development-of-the-right-to-information-act-in-india.html>> accessed 28 August 2023

⁹ Ayush Tiwari, 'Right to Information Act, 2005' (*ipleaders*, 05 November 2022) <https://blog.ipleaders.in/right-to-information-act-2005/#Evolution_of_the_concept_of_the_Right_to_Information> accessed 28 August 2023

court of India vehemently upheld the collegium system as the law of the land and emphasized that it must be adhered to completely. The Supreme Court went on to state that the collegium system cannot be abolished as the law because some sections have expressed disappointment with the manner the collegium operates.¹⁰

ACCESS TO JUDICIAL RECORDS UNDER THE RTI ACT

The Supreme Court of India recently inhibited the public from obtaining access to court records under the Right to Information (RTI) Act in its ruling in the matter of Chief Information Commissioner v. High Court of Gujarat.¹¹ Instead, the court ruled that access to such information is only permitted in accordance with the guidelines established by each High Court pursuant to Article 225 of the Constitution.¹²¹³ ¹⁴

A GOOD STEP TOWARDS PROMOTING TRANSPARENCY AND TOWARDS THE EXTENSION OF OPEN JUSTICE THROUGH LIVE STREAMING OF CASES

As the courts operated online and were inaccessible to the public during the pandemic, the need for live streaming of court hearings was brought to light. The Supreme Court of India has pushed for live telecasting of judicial proceedings in Swapnil Tripathi v Supreme Court of India¹⁵ in an effort to increase transparency inside the courtroom followed by some exceptions. The guidelines and regulations for live streaming of court cases in specific High Courts are administrative matters within the control and purview of the respective High Courts, and the Central Government has no direct involvement in these matters. As of 17.07.2023, the High Courts of Gujarat, Guwahati, Orissa, Karnataka, Jharkhand, Patna, and Madhya Pradesh have begun live-streaming of court proceedings.¹⁶

¹⁰ Arvind Gunasekar, 'To Infuse Transparency: Centre Wants Seat In Judges' Appointments Body' (*Ndtv*, 16 January 2023) <<https://www.ndtv.com/india-news/supreme-court-collegium-include-our-representatives-law-minister-kiren-rijju-writes-to-chief-justice-of-india-dy-chandrachud-say-sources-3695647>> accessed 28 August 2023

¹¹ *Chief Information Commissioner v High Court of Gujarat and Anr* (C) App No 1966-1967/2020

¹² Constitution of India 1950, art 225

¹³ Prashant Reddy T, 'Ruling against judicial transparency' (*the hindu*, 12 March 2020) <<https://www.thehindu.com/opinion/op-ed/ruling-against-judicial-transparency/article31043522.ece>> accessed 29 August 2023

¹⁴ Sahaja, 'Access to judicial records under RTI and judicial transparency' (*ipleaders*, 13 August 2021) <<https://blog.ipleaders.in/access-judicial-records-rti-judicial-transparency/#:~:text=The%20Supreme%20Court%2C%20in%20a,records%20under%20the%20RTI%20Act>> accessed 29 August 2023

¹⁵ *Swapnil Tripathi v Union of India* WP (C) 1232/2017

¹⁶ Ministry of Law and Justice, 'LIVE STREAMING OF COURT PROCEEDINGS' (Press Information Bureau Delhi 1941269, 20 July 2023) para 1-2

RAJPARA SAUMIL KANUBHAI V STATE OF GUJARAT¹⁷

The Gujarat Information Commission was requested to stream its hearings live in order to increase "transparency in the procedure adopted by them," according to a PIL petition submitted by two RTI activists, Saumil Rajpara and Dipesh Joshi. Observing that "Live streaming is a matter of policy and requires infrastructure," the High Court of Gujarat rejected the argument. The bench added that by giving any kind of positive mandamus, the live broadcasting can't be enforced and said that there is no reason that has been advanced that would call for the Court to intervene in any way. Additionally, it stated that "Live-streaming the proceedings cannot be expected from every tribunal and forum."¹⁸

SUPREME COURT RULING ON MAKING THE CHARGE SHEET PUBLIC**The Case of Saurav Das v Union of India:¹⁹**

The emphasis placed on all the provisions and the decision in the case of the Youth Bar Association of India,²⁰ where the Court ordered that the copies of the FIRs should be published on police websites or websites of State Government within 24 hours of their registration, were found completely misinterpreted, led the Court to determine that the petitioner was not entitled to the relief sought in the petition under Section 173 of the Code of Criminal Procedure²¹ and the court felt that if the relief sought in the current petition is granted, it will be contradictory to the Code of Criminal Procedure and may violate the rights of the accused victim, and investigative agency. It was claimed that the direction provided in the case of the Youth Bar Association of India was given taking the accused's best interests into consideration and that it could not be applied to the case of the charge sheet as well. The chargesheet and any accompanying documents are not considered public documents under Section 74 of the

¹⁷ *Rajpara Saumil Kanubhai v State of Gujarat* (2023) Livelaw Guj 126

¹⁸ Sparsh Upadhyay, 'Can't Live Stream Everything, It is about The Infrastructure: Gujarat HC dismisses PIL for Live-Streaming of GIC Proceedings' (*Live Law*, 02 August 2023) <<https://www.livelaw.in/high-court/gujarat-high-court/gujarat-high-court-weekly-round-up-august-21-august-27-2023-236326?infinitescroll=1>> accessed 28 August 2023

¹⁹ *Saurav Das v Union of India and Ors* WP (C) 1126/2022

²⁰ *Youth Bar Association of India v Union of India and Ors* WP (CrI) 68/2016

²¹ Code of Criminal Procedure 1973, s 173

Evidence Act.²² Furthermore, it stated that copies of the chargesheet and any relevant supporting documents are not covered by Section 4(1)(b)²³ of the RTI Act.^{24,25}

DISCLOSURE OF PERSONAL INFORMATION UNDER THE RTI ACT

Section 8(1) of the RTI Act provides for exemptions to the disclosure of information and disclosure of personal information is dealt with under Section 8(1)(j) of the RTI Act.²⁶

In the case of *Gujarat University v M. Sridhar Acharyulu*,²⁷ the High Court of Gujarat overturned the Central Information Commission's (CIC) 2016 order directing the Gujarat University to provide information regarding degrees in the name of the PM to the Delhi Chief Minister and a fine of 25,000 was imposed on Chief Minister of Delhi. It ruled that the Prime Minister's educational credentials are exempted from disclosure under the terms of Section 8(1)(e)²⁸ and Section 8(1)(j) of the RTI Act in the absence of any greater public interest. It was also stated that a person's educational background falls within the category of personal information, and such disclosure is exempted unless it has no greater public interest.^{29,30}

Journal of Legal Research and Juridical Sciences

The verdict of the State Information Commission was quashed by the High Court of Karnataka in the case of *A S Mallikarjunaswamy v State Information Commissioner*,³¹ which specified that the denial of RTI application under Section 8(1)(j) was not applicable in this case, and the court also emphasised the need for employees to have accessibility to the entire service records

²² Indian Evidence Act 1872, s 74

²³ Right to Information Act 2005, s 4(1)(b)

²⁴ Prachi Bhardwaj, 'Right to Information| Chargesheets and final reports not equivalent to FIRs; can't be published on State Websites for public access: Supreme Court' (*SCC Online*, 23 January 2023) <<https://www.sconline.com/blog/post/2023/01/23/chargesheet-fir-sright-to-information-state-website-free-access-supreme-court-section-173-crpc-criminal-trial-legal-research-updates-news/>> accessed 29 August 2023

²⁵ Abraham Thomas, 'Not a public document: Supreme Court refuses to make charge sheets public' (*Hindustan Times*, 21 January 2023) <<https://www.hindustantimes.com/cities/delhi-news/not-a-public-document-supreme-court-refuses-to-make-charge-sheets-public-101674239751535.html>> accessed 29 August 2023

²⁶ Right to Information Act 2005, s 8(1)(j)

²⁷ *Gujarat University v M Sridhar Acharyulu and Ors* (C) App No 5675/2016

²⁸ Right to Information Act 2005, s 8(1)(e)

²⁹ Sparsh Upadhyay, 'No 'Public Interest Involved In Disclosure Of PM's Degree Details; Arvind Kejriwal Made Mockery Of RTI Act's Intent: Gujarat High Court' (*Live Law*, 31 March 2023) <<https://www.livelaw.in/news-updates/gujarat-high-court-no-public-interest-disclosure-pm-narendra-modi-degree-arvind-kejriwal-mockery-rti-act-intent-225283>> accessed 29 August 2023

³⁰ Venkatesh Nayak and B.K. Chandrashekar, 'Gujarat HC's Judgment in Modi Degree Case Undermines the RTI Act' (*The Wire*, 13 April 2023) <<https://thewire.in/law/gujarat-hcs-judgment-in-modi-degree-case-undermines-the-rti-act>> accessed 29 August 2023

³¹ *A S Mallikarjunaswamy v State Information Commissioner and Ors* WP 23695/2022

of the co-employees carrying out the work under the same company when it is associated with the matters involving seniority and promotion.^{32 33 34 35}

RTI AND CODE OF CRIMINAL PROCEDURE, 1973³⁶

Generally, When the RTI Act, which aims to ensure transparency in government operations, and the Code of Criminal Procedure, which specifies a procedure for dealing with criminal proceedings, cross paths, concerns about the scope and restrictions of accessing information related to criminal proceedings under RTI arise. Although the Code of Criminal Procedure, 1973 largely addresses the procedural aspects of criminal law, it also includes regulations pertaining to the disclosure of information under the RTI Act. When a request for the disclosure of information relating to criminal proceedings is made, the provisions of the Code of Criminal Procedure 1973 come into the picture.

The following are the provisions of the Code of Criminal Procedure used in the context of Right to Information:

1. In connection with the RTI Act, Section 91 of the Code of Criminal Procedure 1973,³⁷ which gives police officers and the court the authority to demand the production of any document or other item that may be required to conduct a probe and issue summons or a written order to the person in whose possession such document is believed to be, can also be used to allow citizens to request for information of criminal proceedings that falls out of the purview of exceptions listed in Section 8³⁸ of the RTI Act.

³² 'Employee entitled to service details of other employees under RTI Act to fight service case : Karnataka High Court' (*Bar and Bench*, 29 August 2023) <<https://www.barandbench.com/news/employee-entitled-service-details-employees-rti-act-fight-service-case-karnatakahighcourt>> accessed 31 August 2023

³³ Shreya Sharma, 'Karnataka High Court Rules RTI Allows Employees To Obtain Colleague's Service Records For Service Legal Proceedings' (*Prime Legal*, 30 August 2023) <<https://primelegal.in/2023/08/30/karnataka-high-court-rules-rti-allows-employees-to-obtain-colleagues-service-records-for-service-legal-proceedings/>> accessed 31 August 2023

³⁴ Mustafa Plumber, 'Employee Can Access Colleague's Service Records Under RTI Act To Pursue Service Litigation : Karnataka High Court' (*Live Law*, 29 August 2023) <<https://www.livelaw.in/high-court/karnataka-high-court/karnataka-high-court-ruling-service-records-details-section-8-right-to-information-act-236510>> accessed 31 August 2023

³⁵ 'Service particulars of colleagues to be furnished for dispute arises relating to confirmation, seniority, promotion' (*RTI fi*, 30 August 2023) <<https://www.rtifoundationofindia.com/service-particulars-colleagues-be-furnished-disput>> accessed 31 August 2023

³⁶ Abeer Rakesh Wasnik, 'RTI IN CODE OF CRIMINAL PROCEDURE, 1973' (*Legal Vidhiya*, 06 July 2023) <<https://legalvidhiya.com/rti-in-code-of-criminal-procedure-1973/>> accessed 30 August 2023

³⁷ Code of Criminal Procedure 1973, s 93

³⁸ Right to Information Act 2005, s 8

2. The information maintained by intelligence and security institutions has been exempted by the Union Government of India under Section 24 of the RTI Act,³⁹ implying that such material cannot be accessed even if it is associated with criminal proceedings.

ANALYSIS OF AMENDMENT MADE TO SECTION 8 OF THE RTI ACT THROUGH SECTION 44(3) OF THE DIGITAL PERSONAL DATA PROTECTION ACT

Previous to the amendment Section 8(1)(j) of the RTI Act was read as *“information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”*⁴⁰

A request for disclosure of digital personal information may now be rejected after the change made to Section 8(1)(j) of the RTI Act by Section 44(3) of the DPDP Act,⁴¹ which immunises the authorities from being held accountable for not disclosing information even when such information has the greater public interest. Similarly, a prior version of the RTI Act's Section 22 provided that it superseded any legislation that was in conflict with it. However, once the DPDP Act has been drafted, the RTI Act will no longer supersede the provisions of the DPDP Act, 2023 as Section 38(2) of the DPDP Act, reads as *“In the event of any conflict between a provision of this Act and a provision of any other law for the time being in force, the provision of this Act shall prevail to the extent of such conflict”*^{42 43 44 45}

³⁹ Right to Information Act 2005, s 24

⁴⁰ Right to Information Act 2005, s 8(1)(j)

⁴¹ Digital Personal Data Protection Act 2023, s 44(3)

⁴² Digital Personal Data Protection Act 2023, s 38(2)

⁴³ ‘Can Section 8(2) of the RTI Act overcome the Section 44(3) of the DPDP Act?’ (RTI*fi*, 14 August 2023)

<[⁴⁴ ‘Data protection bill seeks to make regressive amendments to RTI Act: NCPRI’ \(Hindustan Times, 04 August 2023\) <<https://www.hindustantimes.com/india-news/ncpri-disappointed-over-dpdp-bill-calls-proposed-amendments-regressive-raises-concerns-over-privacy-and-rti-101691136173655-amp.html>> accessed 30 August 2023](https://www.rtifoundationofindia.com/can-section-82-rti-act-overcome-section-443-dpdp-a#:~:text=of%20such%20information%3A-.Provided%20that%20the%20information%20which%20cannot%20be%20denied%20to%20the.section%208(1)(j)> accessed 30 August 2023</p></div><div data-bbox=)

⁴⁵ Lt General K J Singh, ‘The need to harmonise RTI law and data protection legislation’ (The Times of India, 21 August 2023) <<https://timesofindia.indiatimes.com/blogs/generals-jottings/the-need-to-harmonise-rti-law-and-data-protection-legislation/>> accessed 30 August 2023

RTI AND TRANSPARENCY OF ADMINISTRATION IN INDIA

The Right to Information Act's formulation has had a significant influence on national administration. RTI is particularly important in encouraging openness because it gives the public the right to access information about how the government works, which in turn holds officials responsible for their actions. RTI discourages corruption and the misuse of power within the government by enabling officials to function with more openness. RTI enhances good governance by enabling individuals to participate in governmental decision-making, improving the efficacy and efficiency of the administration. The authorities are also required to deliver the requested information with more precision and care as part of good governance.

Through the RTI Act, in addition to claiming for information, the people can also claim redressal within time as specified under the RTI Act, by approaching the officer who is senior in rank to Central Public Information Officer or State Public Information Officer. According to the Karnataka High Court,⁴⁶ a Public Information Officer is not permitted to file an appeal under the Right to Information Act against a decision issued by the Appellate Authority. Only those who have sought the disclosure of information have been given the authority to file an appeal disputing a decision made by the appellate authority.⁴⁷

CONCLUSION

Overall, passing India's Right to Information Act of 2005 was an important decision since it established a solid legal foundation for access to information, promoted accountability and transparency in the working of public officials, discouraged corruption, and stimulated democratic government.⁴⁸ By altering Section 8(1)(j) of the RTI Act through Section 44(3) of the DPDP Act, although intended to protect personal information, the DPDP Act reduces openness on how the government and other entities operate.

⁴⁶ *Central Public Information Officer/Deputy Director General, Doordarshan Kendra v Central Information Commission and Anr* WP 2346/2011

⁴⁷ Mustafa Plumber, 'RTI Act | Public Information Officer Cannot Challenge Appellate Authority's Order Directing It To Disclose Information: Karnataka High Court' (*Live Law*, 01 May 2023) <https://www.livelaw.in/high-court/karnataka-high-court/karnataka-high-court-rules-rti-act-public-information-officer-appeal-limitations-227643?infinite_scroll=1> accessed 31 August 2023

⁴⁸ 'The day RTI Act was enacted : Why it remains a landmark decision' (*The Times of India*, 15 June 2023) <<https://timesofindia.indiatimes.com/india/the-day-rti-act-was-enacted-why-it-remains-a-landmark-decision/articleshow/101014142.cms?from=mdr>> accessed 30 August 2023