

Right to Information as an Instrumental Force of Good Governance in South Asia

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ABSTRACT

In South Asia the Right to Information (RTI) is recognized as a basic human right of every human being, and is incorporated in the form of fundamental right in the Constitutions of these countries. Free and fair access to relevant information, and participation of public in Governmental decisions making, acts as a catalyst in the transformation of the governance into the ideal governance. Therefore, Right to Information is an instrumental force to control the abuse of powers on the part of the public functionaries and make their actions accountable. In this contextual perspective the Right to Information (RTI) is perceived as a linchpin of the machinery of Good Governance, responsibility, transparency and accountability. This research paper, inter-alia, highlights that Right to Information has a closest nexus with Good Governance in a country and minimize the nepotism and corruption in the society. Hence, in South Asian Countries Right to Information regime empowers the general public viz-a-viz Government actions and policies

Key Words: Right to information, Good governance, Human Rights, South Asia, Democracy

Introduction

In recent years, many countries and various sections of people have recognized the Right to Information (RTI) as a basic human right. Since the earlier few years, the RTI has achieved increasing importance in the Human Rights debate as well as the larger democratic discourse. Since a democratic government must be sensitive to the public opinion, for which information must be made available by it to the people, therefore, without sufficient information, representative democracy is undermined. RTI has also been widely acknowledged as a requisite for ensuring accountability and good governance. RTI is important because it strengthens the governance. That is why RTI has now been considered as an essential requirement of the good governance in South Asian countries. It goes without saying, that as much as citizens have the access to information there is more chances of government to respond to citizens. Since a democratic government must be sensitive to the opinion of public, the important thing is that information must be made available by it to the people. Therefore, without sufficient information, representative democracy is undermined.

Globally, more than 100 countries have enacted legislation on RTI or freedom of information. The purpose of this legislation is to give citizens a basic right to

get information and records held by administration of a state. Over the last decades many countries in South Asia did lot of work towards recognizing this right. The RTI Law in South Asian countries looking around the region, it is evident that every country in the South Asia region has either passed, or is in the process of enacting RTI legislation. In South Asian countries Pakistan was the first in passing law on RTI through the Freedom of Information Ordinance 2002. Effective use of this right in Pakistan, however, has not gained as much momentum as in the South Asian region including India, Bangladesh and Nepal who passed RTI laws in 2005, 2009 and 2011, respectively.

Literature Review

The Right to information had been made the part of Fundamental Rights in the constitution of South Asian countries. Legislation on the RTI in India began in its States in 1997, with ten State legislatures passing RTI laws. States stopped passing laws after a strong national RTI Act was enacted in 2005 replacing the comparatively weak and un-notified Freedom of Information Act of 2002.

Pakistan passed a Freedom of Information (FOI) Ordinance in 2002, and four of its Provinces have RTI laws – two of which are considered to be strong and progressive (Khyber Pukhtunkhwa and Punjab). Nepal had the Right to Information enshrined in its Constitution, and the RTI law was passed in 2007. Bangladesh passed its legislation in 2009 with a growing number of efforts to popularize the Act, and improve its implementation. The RTI law of Maldives came into effect in 2014. The National Assembly of Bhutan has also passed an RTI law, but it has not yet come into effect. In Sri Lanka, despite promises by the last Government to pass RTI legislation, the Bill was not granted passage. In Afghanistan, a draft Bill presented to the Cabinet in 2013 failed to reach the Parliament. These developments suggest that there is understandably a strong correlation between the degree of media freedom, democratic space for citizens, and the quality of RTI legislation in each country, as South Asian countries with these features have generally been more successful at enacting and implementing RTI legislation. When one looks at the impact of the RTI issue in each country, it becomes clear that legislation is important but not enough. There are a number of stakeholders who need to come together to ensure that citizens become proactive users and supporters of access to information. Despite India's very powerful RTI law, its implementation remains patchy. The law has been owned by the people, and there are an estimated 8.5 million RTI applications every year. If one were to discuss the efficiency of implementation amongst its users, there would be an overwhelming litany of complaints. This is in some ways understandable because the person providing information (Public Information Officer) often has the most to lose from that information coming in the public domain. And yet, people persist and persevere in filing applications until they obtain the desired information. This suggests that when people are given an opportunity they will seek to use information and to overcome the oppressive legacy of feudalism, and colonial

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notions of governance still prevalent in public offices and government. The enthusiastic support by people for this democratic entitlement, despite poor implementation, suggests how empowering it has been for the citizenry at large.

In some ways the RTI seems to be a very appropriate tool of empowerment in the South Asian region. It seems clear that RTI will have its ups and downs in the region, but the trajectory of governance in the region is now firmly approaching transparency, openness and democratic participation. South Asian countries where right to information (RTI) laws have been set up for a long time — India, Pakistan, Bangladesh, and Nepal, — levels of mindfulness, use, and request drove utilize right to information move for the most part, even as subjects are dynamically fragile to contamination and the nonattendance of straightforwardness in government. While there have been different attempts to propel the discussing of learning and amazing exercises between RTI supporters, consistent community affiliations, and administration specialists in the area, there has been obliged examination of the main parts which draw in or keep the powerful execution of right to information in nations in district, except for Indian territory. RTI Act, 2005 of India is generally observed as a solid law which has been for the most part utilized by nationals to get to capacities, review grievances, and uncover contamination and irregularity in organization in the programs of administration. As far as the law was set up in 2005, common community associations in India have been almost considering and checking the utilization of the law. India dependably took pride in being the biggest vote based system, however with the death of the RTI Act in 2005, it has likewise turned into a responsible, intelligent and participatory majority rule government. This privilege has launch the Indian native on a platform from where he can take load of managerial choices and activities and ensure that his advantages are secured and advanced by the Government.

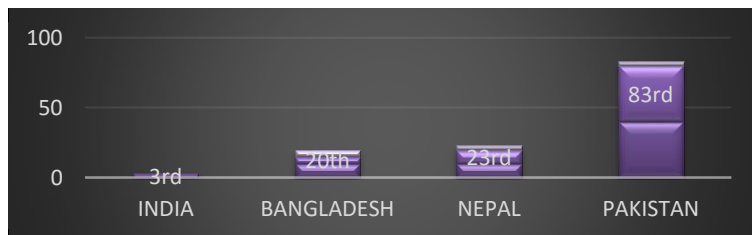
The RTI Act is a vital historic point for majority rules system of India. By this Act the native of India has been enabled more than ever. He can now address, review, survey, look at, and evaluate choices and acts of government to ensure that these are steady with the level of open interests, great administration and equality. This demonstration advances straightforwardness and responsibility in organization by making the administration more open to open examination.

Nexus between right to information and Good Governance

The access to information is cardinal to good governance administration and the entire system of administration in the nation has been vitiated attributable to absence of it. According to a paper arranged by the Human Rights Initiative, good governance has eight noteworthy factors. It is public-participation, accountability, transparency etc. It is a perfect that is hard to accomplished in its inclusiveness. In contrast to guarantee maintainable human improvement move must be made to

deal with this ideal. Access to data is a key variable for accomplishing the objectives of good governance. It promotes fairness and public responsibility. The end objective of RTI is also to achieve good governance. Actually, the basic premise behind it is that the government should be accountable and public. It should conceal nothing from the people whom it represents. Among the South Asian countries India is considered as the world's largest democratic country due to good governance and RTI laws. In India, Bangladesh and Nepal democracy is due to transparency and accountability of institutions of governance.

Global RTI ranking of South Asian countries



Jurisprudential development of RTI –Case Laws

Since the 1980s, the emergence of new democracies after the collapse of authoritarian regimes which gave guarantees of the RTI by their new constitutions. More than 100 countries have recognized Right to information (RTI) in their constitution or in specific laws.

Indian constitution has article 19(1), article 19-A of constitution of Pakistan, article 27 of constitution of Nepal and article 39(1) of the constitution of Bangladesh mentioned RTI as fundamental right. Since the past few years the Higher court i.e., Supreme court of India has consistently ruled in favour of the citizen's Right to know in a number of cases like *Raj Narain v Government of Uttar Pradesh*, In an important case it was held that;

“Recalling key components of an earlier judgment reading into the Right to Information Act a requirement that appointees to the Information Commission possess judicial qualifications, the Supreme Court of India concluded that it was ultimately for Parliament to decide whether such a requirement was appropriate.

The Freedom of Information Act 2000 of United Kingdom that makes an open "right of access" to information to public and in an important case of **Kennedy v the Charity Commission**¹ it was held that;

“The natural interpretation of the wording of section 2(2) Freedom of Expression Act 2000 was that

¹[2014] UKSC 20

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the exemption continues to apply after the end of the inquiry. The reasoning is that the words ‘for the purposes of the inquiry or arbitration’ were used by the drafters of the legislation to qualify the preceding clause and relate to the purpose for which the relevant documents were entrusted to the body or person in question – in this instance the Charity Commission. It does not relate to the purpose for which the body or person still holds the information at the time the freedom of information request was made. The key issue is why the information came to be in the Charity Commission’s custody, not why it remained in its custody.”

Freedom of information Act (FOIA) of United States which is extracted from Administrative Procedure Act also provide full agency of disclosure of information to public and in an important case of **Citizens for responsibility and ethics in Washington v. US department of homeland security and others**² it was held that;

“The United States District Court for the District of Columbia decided that the Secret Service neglected to meet its weight of exhibiting that the records were not "office records" and the principle of protected evasion is not relevant in this circumstance”

In 2010, the **18th Amendment** to the Constitution of Pakistan 1973, resulted in the addition of 19-A pertaining to Right to Information. Other than freedom of expression, this now likewise incorporates the privilege to look for, get and confer data, thoughts or sentiments ,in any form which may be available. In **Muzaffar Qadir V District Magistrate**³ it was held that;

“Freedom implies, freedom to say and publish what every citizen wants as long as rights of others are not trampled upon. Refusal of permission to bring out a newspaper is not justified.”

Precedence of the Article 19 and 19-A of constitution of Pakistan 1973

Article 19-A is about right to access of information and in an important case of **Ataullah Malik** laid down the following:

“Right to information is another corrective tool which allows public access to the working and decision making of the public authorities. It opens the working

² 527 F.Supp.2d 76 (2007)

³PLD 1975 Lah.1198

of public administration to public scrutiny. This necessitates transparent and structured exercise of discretion by the public functionaries. Article 19-A empowers the civil society of this country to seek information from public institutions and hold them answerable”.

Right to information: The international Perspective

International community recognized Freedom of Information as a norm since 1946. However, there are still many states, including democracies, where people are still denied access to information. Laws of UNDP have forced many countries including South Asian countries to pass legislation on RTI. It is considered that people's awareness on RTI directly impacts on the life of the people. Access to information was considered as a basic Human Right by the United Nation at the first session UNGA in 1946. It adopted Resolution **59(1)** which states:

“Freedom of information is a fundamental human right and ...the touchstone of all the freedom to which the UN is consecrated.”

In following global instruments on Human Rights, freedom of data was made a piece of the crucial right of Freedom of Expression, which incorporated the privilege to look for, get and bestow information. **Article 19(2) of the International Covenant on Civil and Political Rights** adopted by General Assembly in 1996 states:

“Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers either orally, in writing or in print, in the form of art or through any other media of his choice.”

Article 13 of ‘UN Convention against Corruption’ signifies

- ✓ Effective access to data for public
- ✓ Undertaking open data exercises adding to non-resilience of debasement
- ✓ Respecting, promoting and ensuring the opportunity to seek, receive, publish and disperse data concerning defilement.

Principle 10 of the 1992 Rio Declaration on Environment and Development⁴ perceived the way that entrance to data on the earth, counting data held by open experts, is the way to reasonable Development and powerful open Participation in environmental administration. **Article 10** of the European Convention on Human Rights (**ECHR**) which states as follows:

“Everyone has the right to freedom of expression. The right shall include freedom to hold opinion and to receive and impart information and ideas without

⁴1992 Rio Declaration on Environment and Development

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interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.⁵

The European Court of Human Rights court of Europe has recognized claims for a right to receive information from public functionaries in following key cases, **Leander v. Sweden**⁶ and **Gaskin v. United Kingdom**⁷ and **Guerra**, the interpretation of article 10 in these cases are;

“The right to freedom to receive information basically prohibits a Government from restricting a person from receiving information that others wish or may be willing to impart to him. Article 10 does not, in circumstances such as those of the present case, confer on the individual a right of access... nor does it embody an obligation on the Government to impart... information to the individual.”

Legislative framework on RTI in South Asia

India, Nepal, Pakistan and Bangladesh have popularity based types of administration. While in India democratic government has matured and developed democracy in Pakistan, Nepal and Bangladesh is new and as yet developing. Constitutions of these nations accommodate amazingness of Parliament. Each of the four nations is administered by justly cabinet (lead by the Prime Minister). Individuals in these nations have been given rights to participate in the functions of government. Constitution of every nation (wordings may vary) accommodate numerous key rights including the privilege of information. South Asian governments have begun to react to within and outside weights, and accept the worldwide acknowledgment of the privilege to data.

In 1982, the Supreme Court of India decided that entrance to government data was a basic piece of the basic ideal to the right to speak freely and expression in Article 19 of the Constitution. Similarly, Pakistan declared the Freedom of Information Ordinance 2002 in October 2002. The law permits any national access to open records held by public body of the central government. All the more as of late, by excellence of the 2010's eighteenth Amendment a new article 19-A is inserted in the constitution of 1973 of Pakistan, which states that; "Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law".

⁵Article 10 of the European Convention on Human Rights

⁶(1987) 9 EHRR 433, IHRL 69 (ECHR 1987)

⁷[1990] 1 FLR 167

The National Assembly of Bhutan passed a RTI Bill in February 2014. Its motivation is to check debasement by Sri Lanka's Right to Information Act No 12 of 2016 was ensured on 4 August 2016. After much level headed discussion furnishing people in general with the privilege to get to information. Similarly Bangladesh's care government passed right to information act in 2008, construct freely with respect to the Indian RTI Act, 2005. The RTI shows up in the Nepali Constitution surprisingly under Article 16. It is novel arrangement in the constitutions of a South Asian nation. A just framework is an open framework. Natives ought not be kept in dull with respect to authority exercises of open significance. A native has a privilege to know whether the nation is legitimately represented or not or whether government is continuing as per the law and perceived moral qualities and social standards.

Conclusion and Recommendations

Right to information as an instrument empowers the public with a right to access the records but subject to certain restrictions imposed by law. The most essential element of good governance is the RTI. In various countries including some countries of South Asia the existence of a culture of impunity and lack of rule of law are detrimental to the promotion of RTI and in such situation it is difficult to convince people that law would work. For an effective promotion of RTI law, media and social media are necessary because it will help in filling the gap between public officials and public. Over the past few years, South Asian countries have enacted RTI laws to ensure the right to information as a fundamental right. Although these countries passed legislation on this right, however the purpose of this law is not properly achieved due to problems in the execution process. Here are some recommendations to improve RTI laws which may prove helpful in its implementation.

Political will and commitment

Global experience recommends that basically requesting establishment which ensures locals the benefit to access data is not satisfactory to set up a competitive organization of information. Right to information laws on an extremely fundamental level change the alter of compel among subjects and the state, enabling nationals to ask for information once solidly checked by authorities and government laborers. Competitive political will, and the promises to make an understanding of rules on paper into practice on the ground, are particularly fundamental in South Asia, where pioneer customs of secret in administration are significantly ingrained. The nonattendance of a true blue obligation to straightforwardness concerning government and political pioneers is in like manner conceded to the organization, achieving the weak execution of straightforwardness laws. Regulatory duty to propelling straightforwardness should be trailed by fitting movement orchestrates including key administrations.

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Execution of rules

The general obligation with respect to execution of right to information must be given to a nodal office in the council. It will guarantee more prominent duty from the organization, as the nodal association will in like manner be a checking office for all authoritative functions.

Movements for governance reform

In India, the benefit to information has been suitably and seriously associated with the more broad chat on extraordinary organization and threatening to pollution. Interfacing RTI to basic culture change attempts in other key domains can be an effective way to deal with disentangle a by and large unimportant straightforwardly into one that truly influences organization and the lives of ordinary subjects.

Regional caucuses of parliamentarians

Remembering the ultimate objective to bring a conclusion to significant arranged penchants for secret, it is important to associate with and co-operate with members of parliament to protect right to information. At national level, normal community affiliations could work with star straightforwardness people from parliament to set up assistance from administration for right to information sanctioning.

Discussion with RTI champions

Attempts must be made to empower trade and examination among right to information winners and supporters from states in the territory. Such coordinated effort can be critical in engaging accomplices in various countries to pick up from each other's experiences, learn lessons, and change frameworks.

Sharing of experiences

Remembering the true objective to improve the supply side, yearly social affairs of the district's information installments can be held to look at problems and discuss experiences. Moreover, the sharing of country level experiences of other government accomplices, for instance, open information officers and investigative specialists can be created.

Promote awareness and use of the law

TV, Social media and print media can be solid instrument to promote consideration with respect to right to information, particularly in rural zones where

learning and information about RTI are by and by exceptionally confined. Additionally, RTI should be promoted in all educational institutions.

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