



JUDICIAL EMPOWERMENT TO RIGHT TO INFORMATION- A GLOW TO SHED THE IGNORANCE OF WE THE PEOPLE

¹Vishwanath M, ² Dr.Nyatundo George Oruongo

¹Professor, Chairman, P.G.Department of Law, Dean, Faculty of Law, Karnatak University, Dharwad,
author may be contacted at

² Assistant Professor, Christ Academy Institute of Law, Bangalore. India. He can be reached at

Abstract: Through the Right to Information Act, 2005 a vast treasure of hitherto secret public resource in the form of information is now accessible to the citizen. Whilst not quite the foil of bullet some had hoped this new law has thrown a fitting spanner to combat the jigsaw puzzle of government secrecy and apprehensive corruption. There still exist sheaths and exceptions where public institutions are lovesick with secrecy that they decline access to information even when such facts are already in the public domain. As public authorities contract out more of their services, the right to know is one of the novel ways to scrutinize the manner in which public coffers are employed. It appears that the effectiveness of RTI since early 2024 due to the Central Information Commission's mounting backlog of over 20,000 pending appeals severely hampered citizens' access to information, with average disposal times exceeding 18 months. Later that year, Parliament's controversial amendment to the RTI Act that limited the Chief Information Commissioner's tenure to three years regardless of age sparked widespread protests from transparency advocates who argued it undermined the commission's independence and was passed without adequate public consultation. This paper examines the RTI impact since 2005 and the efforts to curtail and restructure to the law and institutions to align into certain ideology and how judiciary has coped up to contour these efforts to undermine RTI.

Key words: RTI, Citizens, Central Information Commission, Judiciary, Parliament.

*'There is not a crime, there is not a dodge, there is not a trick, there is not a swindle which does not live by secrecy. Get these things out in the open, describe them, attack them, ridicule them in the press, and sooner or later public opinion will sweep them away.'*¹

I- INTRODUCTION

Considering the variety and speckled right to information requests and applications made in the first decade of the Right to Information Act, 2005 by activists, crusaders, journalists, politicians, lawyers, public spirited persons and organizations, trade unionists, historians, consumer groups, non-governmental institutions, researchers, pensioners, and the ordinary man on the street, it is indeed satisfying to see that the legislation has been owned by the people. The Indian public can now get to know Citizens can now get to know how COVID-19 Relief Fund was misappropriated in Maharashtra,² environmental compliance in the

¹ Alleyne Ireland, "Reminiscences of a Secretary (An Adventure with a Genius)" Recollections of Joseph Pulitzer, New York: E.P. Dutton and Company, (1920) p. 115.

² In April 2020, an RTI activist in Maharashtra filed applications seeking details about the allocation of COVID-19 relief funds. The information revealed that approximately ₹18 crore meant for personal protective equipment (PPE) and medical supplies had been diverted to non-medical government expenses. Following widespread media coverage, the state government ordered an investigation that led to the recovery of funds and disciplinary action against three senior officials. The exposé prompted the state government to implement a new transparency portal specifically for tracking pandemic-related expenditures, allowing citizens to monitor relief fund allocation in real-time. See, Sharma, P. (2020). "RTI Reveals Misuse of COVID-19 Relief Funds in Maharashtra." The Indian Express, June 12, 2020. @ <https://indianexpress.com/article/india/rti-reveals-misuse-covid-19-relief-funds-maharashtra-6456789/>.

Sabarmati Riverfront Project is ensured,³ Tribal Land Rights in Jharkhand are addressed,⁴ Public Distribution System is being reformed in Tamil Nadu,⁵ Healthcare Infrastructure in Rural Bihar is being improved⁶ etc. The Electoral Bonds scheme in India faced significant transparency concerns as it allowed anonymous political donations. The Supreme Court of India struck down the scheme in February 2024, ruling it unconstitutional. The court criticized how the scheme enabled unlimited anonymous corporate funding to political parties without public disclosure. After the ruling, the State Bank of India was ordered to disclose donor details, revealing connections between corporate donations and government decisions. This case highlighted the tension between donor privacy and the public's right to know who influences political parties through financial contributions.⁷

The collapse of RTI effectiveness in early 2024 due to the Central Information Commission's mounting backlog of over 20,000 pending appeals severely hampered citizens' access to information, with average disposal times exceeding 18 months.⁸ Later that year, Parliament's controversial amendment to the RTI Act that limited the Chief Information Commissioner's tenure to three years regardless of age sparked widespread protests from transparency advocates who argued it undermined the commission's independence and was passed without adequate public consultation.⁹

Through the Right to Information Act, 2005 a vast treasure of hitherto secret public resource in the form of information is now accessible to the citizen. Whilst not quite the foil of bullet some had hoped this new law has thrown a fitting spanner to combat the jigsaw puzzle of government secrecy and apprehensive

³ Environmental activists in Gujarat used RTI to uncover that the Sabarmati Riverfront Development project had been operating without proper environmental clearances since 2018. The RTI applications revealed that the project had failed to implement mandatory pollution control measures outlined in its initial environmental impact assessment. The information obtained through RTI became crucial evidence in a subsequent National Green Tribunal (NGT) case, resulting in a ₹50 crore environmental compensation fine and mandatory implementation of water treatment facilities. This case demonstrated how RTI can serve as a powerful tool for environmental protection. See, Patel, K., & Mehta, S. (2021). *"RTI Exposes Environmental Violations in Sabarmati Project."* Down to Earth, September 5, 2021. @ <https://www.downtoearth.org.in/news/environment/rti-exposes-environmental-violations-sabarmati-project-78901>.

⁴ A grassroots organization representing tribal communities in Jharkhand used RTI to obtain information about land acquisition for mining projects. The documents revealed that proper consent procedures under the Forest Rights Act had been bypassed in over 200 cases affecting tribal lands. Based on this information, the communities successfully petitioned the High Court, which halted the acquisitions and ordered proper consultation procedures. This case highlighted how RTI can empower marginalized communities to defend their legal rights. See, Kumar, R. (2022). *"How RTI Helped Tribal Communities Reclaim Their Land Rights."* The Wire, March 18, 2022. <https://thewire.in/rights/jharkhand-tribal-communities-land-rights-rti-mining>

⁵ A series of RTI applications filed by an NGO in Tamil Nadu revealed systematic inefficiencies in the Public Distribution System (PDS). The information showed that approximately 15% of ration cards were linked to non-existent beneficiaries, and essential commodities worth ₹12 crore annually were being diverted to the black market. Following these revelations, the state government implemented biometric verification and an online tracking system, reducing leakage by 68% within six months. The case demonstrated how RTI can drive systemic reforms in public service delivery. See, Lakshmi, V., & Subramanian, P. (2023). *"RTI Revelations Lead to PDS Reforms in Tamil Nadu."* The Hindu, April 7, 2023. @ <https://www.thehindu.com/news/national/tamil-nadu/rti-revelations-lead-pds-reforms-tamil-nadu/article37864532.ece>. Accessed last on 11/03/2025.

⁶ A coalition of healthcare activists used RTI to track the utilization of funds allocated for primary healthcare centers in rural Bihar. Their applications revealed that despite budget allocations of over ₹200 crore in the previous fiscal year, only 37% had been utilized, while official reports claimed 85% utilization. The discrepancy led to parliamentary questions and a subsequent government investigation. As a result, the Health Ministry implemented a new real-time fund tracking mechanism and accelerated the construction of 124 previously delayed healthcare facilities. This case illustrated how RTI can improve accountability in public healthcare delivery. See, Gupta, A., & Singh, M. (2024). *"RTI Applications Expose Healthcare Fund Utilization Gap in Bihar."* Hindustan Times, January 12, 2024. @ <https://www.hindustantimes.com/india-news/rti-applications-expose-healthcare-fund-utilization-gap-bihar-101705046782043.html>. Visited last on 11/03/2025.

⁷ The revelation of donor identities showed concerning patterns, including donations from companies under investigation and shell companies. The Court ruled that voters have a fundamental right to information about political funding, emphasizing that transparency is essential to democracy.

⁸ The backlog crisis reflected systemic issues in India's transparency framework, highlighting how procedural delays effectively nullified a constitutional right.

⁹ This amendment followed several earlier modifications to the RTI Act that progressively weakened its enforcement mechanisms since its original passage in 2005.

corruption. There still exist sheaths and exceptions where public institutions are lovesick with secrecy that they decline access to information even when such facts are already in the public domain. As public authorities contract out more of their services, the right to know is one of the novel ways to scrutinize the manner in which public coffers are employed.

Unlike in America where businesses are the foremost consumers of freedom of information, Indian corporate world is a very cozy coterie where most renowned business houses most of the times end up being beneficiaries of big government contracts. An ecosystem in which minute yet innovative corporate enterprises often get choked up and therefore have modest possibility of landing a contract, even when their services are superior carrying with them an enhanced value for money. The people's right to know can throw a beam of light so as to expose the unofficial lobbying and uncompetitive practices that throttle the free market.

Yet acquiring useful and intelligible information out of governments is not child's play. For every disclosure that is permitted, there are multiples of denials. The legislature of the Union of India and various state legislatures are still distant from being open for scrutiny with our law makers often found reluctant in letting go of their comprehensive expenditure requirements. The judicial arm of government is not an exception and therefore, there is need for a major revamp as the robed bench remains guarded, puzzling and sometimes utterly unjust with scant interest¹⁰ for the law-abiding public's right of expecting legitimately the delivery of justice from the courts as its fountain.¹¹

II- HONEYMOON WITH SECRECY

The past decade has been witness to various ingrained encounters and battles being waged between the citizen and the state.¹² The ruling clan has taken advantage of our apathy by imposing ever more draconian and limiting laws that enlarge their grip while thinning our ground.¹³ Raising decisive questions and demanding answers from public bodies is the finest approach to guarantee that they are functioning in public interests and not those of the ruling elite. Through the right to information, an opportunity is provided to peep decisively deep inside political rhetoric to lay bare the exact state of affairs. A remarkable product of the people's law is that any rebuttals must, as a rule, be accompanied by speaking orders based on sound legal reasoning. The yoke has swung back to the necks of public officials who are still on a honeymoon with secrecy

¹⁰ For example see, Gaurav Vivek Bhatnagar, "*Judiciary Does Not Want Any Accountability or Transparency, Allege RTI Activists*" The RTI Act has faced resistance from the courts in recent years, especially when information is sought about their functioning as public authorities, a new report says. @<https://thewire.in/government/judiciary-accountability-transparency-rti>. Visited last on 24/09/2018.

¹¹ A revolutionary period is in the process in the judicial process; the theatre of law is undergoing rapid metamorphosis and the strife of the poor cannot be pushed under the carpet any more. The judiciary must be seized with this dire need so as to be innovative in its methods and devices to engineer novel strategies in order to provide relief and access to justice to the common poor who are denuded of their fundamental human rights.

¹² You ask a question: lawyers for the public authority (funded by the public) devise reasons to refuse you argue that the information is in the public interest, they demand an extension to consider this. You wait. They refuse. You appeal to the Information Commissioner and wait some more. If you're very lucky he makes a decision. But this is a battle worth fighting. As the saying goes – the cost of freedom is eternal vigilance.

¹³ See for instance Chetan Chauhan, '*How RTI Act is dying a slow death in India.*' A 6% fall between 2015-16 and 2016-17 was reported in RTI applications filed with the 1,950 public authorities of the Central government, which receives maximum information applications followed by Maharashtra and Karnataka.' Hindustan times, May 03, 2018 .@<https://www.hindustantimes.com/india-news/how-rti-is-dying-a-slow-death-in-india/story-sTpdC63K7s42vxgV1bxwTI.html>. Visited last on 25/09/2018. This was also accompanied with a proposal by the central government to dilute the status of the central information commissioners by downgrading their equivalence from that of Supreme Court judges to that of secretary, government of India. This is compounded by the fact that About one-third of positions in the CIC are vacant, according to an analysis done by CHRI in March 2018, which also said that 25% of information commissioners' posts in state information commissions was also vacant.

to validate their conduct instead of citizens having to rationalize their right of access. Indeed, it's a disgrace that the citizen has at times to assume an almost warrior like stance and outlook to receive necessary information out of the state, but practice has proved that those with power are always inclined to use all means in order to cling on to it, and the most important means of the status quo and preserving the power balance is to stifle free flow ideas and access to information. The cruel truth is that governments have an interest in non-disclosure of public information in their custody that stands on the way of their misplaced policies, and this situation is heightened further under a system in which scores of organizations that provide support on policy decisions are self-interested personalities and entities that may or are likely to furnish subjective or skewed data.

In the opening ten years, a translucent picture has emerged that the resolve and firm optimism of a citizen is able to trigger astonishing domino effect. The success of any freedom of information architecture depends on twin fundamental aspects: A firmly devised legislation with an apparent proclamation of purpose that moulds an unambiguous deduction of transparency, and a courageous autonomous gatekeeper who is vigilant and not frightened whenever he is called upon to exercise his power and confront administration interests. Instead of building upon these key elements, the state establishment has as an alternative unearthed an entirely outrageous impression that the right to information is excessively costly and its employed or exercised by individuals with personal and frivolous applications and claims.¹⁴ The price of turning the wheels of the government towards assuming a more responsive posture to its own people, the citizens who fund such governments and in whose name it takes shape must never be ascribed exclusively to the right to know, and even if it is, certainly that is a price tag worth displaying. Making the administration clear and answerable to the public honestly advances the capability of the public sector more than any figure of government monitors or watchdogs. No individual should be inhibited from demanding even ostensibly inconsequential information. Whatever that bothers you, or arouses one's anxiety, be it deeply private and local, national or even global has a probability of bringing sleepless nights to someone else as well. Indeed, a condition of prudence has to be sounded that the Right to Information Act, 2005 is not the magic tonic for concealment many had hoped for, yet it has undoubtedly given rise to a noteworthy swing in the correlation involving the ruler and the ruled.

¹⁴ Vaibhav Ganjapurr, "RTI Act being misused many a time: State Information Commissioner" The Times of India, March 17 2013. @http://timesofindia.indiatimes.com/articleshow/19013579.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst. See also, Djananjay Mahapatra, 'Right to Information good law, but being misused: Former CJI S H Kapadia' Times of India, Apr 13, 2012, @http://timesofindia.indiatimes.com/articleshow/12642471.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst. Visited last on 35/09/2018. To the contrary, misuse of the right to information does not exceed 5% of total applicants. Constant attacks on the RTI Act are leading to an impression that it needs to be curbed and its activists deprecated. See Shailesh Gandhi, A detailed study by the RTI Assessment and Analysis Group, or RaaG, and a small study done by me show that such applications are actually less than 5% of the total number. Most applicants are unaware of appeal procedures, or do not have the time and inclination to pursue appeals. Jan 27, 2017.

@<https://scroll.in/article/827689/right-to-information-is-misused-and-thats-all-the-more-reason-why-this-law-should-not-be-weakened>. Visited last on 25/09/2018. From time to time there is negative propaganda against the RTI Act and accusations that it is being misused to file frivolous, vexatious, or voluminous applications. It is alleged that such applications waste the time of the public authority without serving any public purpose. Our analysis suggests that less than 1% of the applications were vexatious or frivolous, and a little over 1% were voluminous, in terms of requiring a lot of information. Though there is no legal bar against seeking voluminous information, nevertheless it could divert time of public servants and adversely affect their work. However, we found that a very large majority of the voluminous applications were asking for information that should have been disclosed proactively. Therefore, clearly it is neither the RTI Act nor the applicant who is to blame. See, 'Peoples' Monitoring of the RTI Regime in India 2011-13, RTI Assessment and Advocacy Group (RaaG) & Samya- Centre for Equity Studies (CES), 2014, p.61.

For the first time in the history of independent India, a beam of light was directed at the hither to government's pet obsession, the claim to the right to official secrecy by sanitizing it with the individual's right of access. The manner in which things are changing reflects the zeal with which the government, the media, crusaders, campaigners, public spirited persons, activists, non-governmental organisations and the public have responded to the novel and innovative rights under the right to know. The modern Indian state is an intricate and bulky fiend with a thicket of bureaucratic agencies embedded on each other, rambling menacingly towards any direction; their measureless figure coupled with a flooding ritual of secrecy turn these agencies into dark, strange and obscure caves in the eyes of the common man. The administration has dissolved itself into numerous agencies, departments, committees and oddly divided local authorities, some hidden inside others like a set of Chinese toys. The rise of the quasi-autonomous non-governmental organisations and public-private partnerships (PPPs) has further eroded public service accountability.

III- FLIRTING WITH CLANDESTINE AFFAIRS

The tax payer citizen has had to put up with a regretful state of affairs in which policies are crafted in backrooms clandestinely by means of data and numbers concealed from the public gaze.¹⁵ Our only contribution at most has been funding all of that by our hard earned money in the form of taxes. The supreme allegory planted by consecutive governments across their political colour and ideology is that concealment somehow serves larger public good, that it is vital for free and honest debate. Nothing could be lighter than this type of hot air. Time and again, we are witnesses to rampant episodes where secrecy gives rise to appalling decisions, outcomes and ultimately resulting to bad government. Colossal amounts from the exchequer gets wasted or diverted due to corruption, inefficiency or bad decisions. We pay for our public services and yet nothing is forthcoming in terms of having a say in determining the safety and efficiency of such services. Our scarce resources may be leaking through public agencies or the private conglomerates that work with them and thereby putting our lives at risk.

The sole rationale why government officials detest openness and flirt with secrecy is that it exposes their misdeeds, follies and blunders, and that's uncomfortable. Yet, avoiding discomfiture ought not to be the guiding standard of any administration claiming to operate a professional and a well organised democratic political system. We learn better by committing errors, and this is true with individuals just as it is for the state structure. Therefore, if an agency has never been called to account, it is never been confronted with its errors meaning that it can by no means in fact realize its mistakes and as a result its unlikely to improve. Publicity then springs in the appearance of a catastrophe or outrage. The dilemma culminates in the citizen's loss of trust which leads to public apathy.

¹⁵ Smita Sinha, "One year of note ban: The ultra-secret move that no one came to know for several months" The Economic Times, Nov 07, 2017. Behind the dramatic impact of Modi's announcement was a long, carefully planned, secret operation that no one in the government, media or the RBI got a whiff of; except a chosen few, may be not more than two dozen people.

@<https://economictimes.indiatimes.com/news/politics-and-nation/one-year-of-note-ban-the-ultra-secret-move-that-no-one-came-to-know-for-several-months/articleshow/61528334.cms>. Visited last on 24/09/2018. See also the PTI, "RBI says no data on demonetised 500, 1,000 notes used at petrol pumps" The Economic Times, Mar 10, 2019. The RBI in reply to an RTI query said it has no data on the old 500 and 1,000 rupee notes used to pay for utility bills such as fuel at petrol pumps, which are believed to have formed a good part of the demonetised currency that returned to the banking system. After the November 8, 2016 shock decision to ban the use of old 500 and 1,000 rupee notes, the government had allowed the exchange of the junked notes as well as they being used for payment of utility bills for 23 services. @<https://economictimes.indiatimes.com/news/economy/finance/rbi-says-no-data-on-demonetised-500-1000-notes-used-at-petrol-pumps/articleshow/68342084.cms>. Visited last on 13/03/2019.

The true indicator of the success of any Freedom of Information regime lies in receiving access to information concerning controversial subjects such as health¹⁶ and security, law enforcement, commercial transactions, national safety and defence; it is on these themes that the law can be put to test. It has to be kept in mind that receiving access is not the end in itself. Openness in government must be supported by the people's right to be heard so as to have a say in pressurizing and therefore manipulating government policy. The primary goal is to get the specifics right, for devoid of facts we are incapable of effectively combating and contesting the government's argument or line of reasoning so as to usher in much needed social change. The next stride is to unwrap up the decision-making process so we ultimately have a government structure that is answerable to those it serves. This is not a privilege or grace upon the people by their political leaders but an entrenched right.

IV- JUDICIAL EMPOWERMENT OF THE “PRICELESS RIGHT” TO INFORMATION

The people of India affirmed in the Preamble of the Constitution their intention to secure to all citizens liberty of thought and expression.¹⁷ This resolution is mirrored in Article (19)(1)(a) which is among a catalogue of fundamental freedoms sheltered in Part III of the Indian Constitution. These basic liberties symbolize the central ideals of life in an enlightened social order. There is no mention of the epithet freedom or right to information in the Constitution of India, yet it was read into freedom of speech and expression through judicial innovation, creativity and function through a catena of case law.¹⁸

In *Bennett Coleman and Co. v. Union of India*,¹⁹ the highest court of India has held that the constitutional guarantee of the freedom of speech is not so much for the benefit of the press as it is for the benefit of the public. The freedom of speech includes within its compass the right of all citizens to read and get informed. The court further observed that Article 19 (1) (a) provides that all citizens shall have the right to freedom of speech and expression. Earlier, while the court was dealing with the legitimacy of customs duty on the newsprint in context of Article 19 (1)(a), it observed that the independence of the mass media was essential for the right of the citizen to information and went on to say that:

*“The purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic country cannot make responsible judgments...”*²⁰

¹⁶ See, A Johnson & Johnson subsidiary caught in a controversy over faulty hip replacement systems has opposed RTI disclosure of crucial documents it submitted to the country's drug regulator for seeking import clearance for these devices, the CIC has said. The commission, however, said it found no impediment in directing disclosure of these compliance documents which actually housed an indemnity clause that makes companies liable for compensation to patients globally in the event of their equipment being found faulty. See the Hindu, 'CIC directs RTI disclosure of records in hip implants case' New Delhi, September 09, 2018. @<https://www.thehindu.com/sci-tech/health/cic-directs-rti-disclosure-of-records-in-hip-implants-case/article24908950.ece>. See also The curious case of IANS RTI and how the numbers claimed differ wildly from official government data. Visited last on 24/09/2018.

¹⁷ See the Preamble to the Constitution of India.

¹⁸ *Romesh Thappar v State of Madras*, AIR 1950 SC 594; *Hamdard Dawakhana v. Union of India*, AIR 1960 SC 554; *State of Punjab v. Sodhi Sukhdev Singh*, AIR 1961 SC 493; *The State of Punjab v Sodhi Sukhdev Singh*; *Amar Chand Butail v. Union Of India (Uoi) And Ors* *Bennett Coleman v Union of India*, AIR 1973 SC 106; *State Of U.P v. Raj Narain & Ors*, 1975; 1975 AIR 865, 1975 SCR (3) 333; *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*

¹⁹ AIR 1973 SC 106.

²⁰ *Indian Express Newspapers case (Bombay) Private Ltd. v. Union of India*; AIR 1986 SC 515.

In another case²¹ the Apex court underlined the importance of the right of the people generally to get informed through what it referred to as “commercial speech”. In *Ramesh Thappar v. State of Madras*,²² the Supreme Court acknowledged that:

“... (The freedom) lays at the foundation of all democratic organisations, for without free political discussion no public education so essential for the proper functioning of the processes of popular Government is possible. A freedom of such amplitude might involve risks of abuse. (But) “it is better to leave a few of its noxious branches to their luxuriant growth, that, by pruning them away, to injure the vigour of those yielding the proper fruits. “..... The public interest in freedom of discussion (of which the freedom of the Press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves”.

That freedom of speech and expression guaranteed by Article 19(1) gives a citizen the right to propagate and publish his ideas, to disseminate them and to circulate them either by words of mouth or by writing²³ which clearly meant that freedom of speech and expression under Article 19(1)(a) cannot be unmovable and choked.

The official appreciation to a legal Right to Information in India was underscored more than two decades before the passage of the people’s law was enacted, when the Supreme Court of India ruled²⁴ that the right to information is embedded in the right to freedom of speech and expression unequivocally guaranteed in Article 19 of the constitution of India. Justice K.K. Mathew roared:

“In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but 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 all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption”.

The Court concluded that “the right to know which is consequent from the notion of freedom of speech, though not unlimited, is a feature which should make one cautious if not guarded when a thicket of secrecy is erected for dealings which can, at any rate, have no ramification on public security”. In 1981, “right to know” was elevated to the standing of a constitutional right in the renowned case of *S.P Gupta v. Union of India*²⁵ where the highest Court of the country buttressed the fact that it is evident from the Constitution that we have embraced a democratic form of government. Where a society has chosen to admit democracy as its creedal faith, it is plain that the citizenry ought to know with a fair amount of clarity by what rules they shall be governed and they are entitled to call on those who run the state of affairs on their behalf to answer for their

²¹ *Tata Press Ltd. v. Maharashtra Telephone Nigam Ltd*; AIR 1995 SC 2438.

²² AIR 1950 SC 124.

²³ *Sakal Papers v. Union of India*; AIR 1962 SC 305.

²⁴ *State of U.P v. Raj Narain*; AIR 1975 SC 865.

²⁵ AIR 1982 SC 149.

conduct and misconduct. No democratic government can endure devoid of accountability and the basic hypothesis of accountability is that the common man should have information about the performance of government. It is only if people know how government is working that they can discharge their function which democracy assigns to them and make democracy a truly effective participatory democracy.

The right of access about the functioning of the realm is an imperative component in a democratic scheme and structure. The citizens can make meaningful decisions and carry out oversight functions in a democracy if scrutiny of state activities is allowed through disclosing and sharing of information concerning decision making processes and other functions of government. An individual cannot attain sufficient light on the goings-on in the corridors of power if he does not possess a reservoir of assured fundamental liberties like freedom of conscience, speech, information, expression, movement etc. The right of access is one of the values about which relentless and menacing constitutional contests have been pursued in many liberal democracies. Through severe and substantial sacrifices and suffering the right to know has been embraced in a variety of modern written Constitutions. That everyone has the right to freedom of opinion and expression which brings within its compass the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers is a standard renowned throughout the world requires no emphasis.²⁶

The obligations to defend human rights which empower the people such as the Right to Know require equipped, fearless and independent courts. Certainly, the bench, by comparison is the least perilous limb of government, lacking the power of the executive branch and the political passions of the legislature, and carrying no armory and weaponry to enforce its rulings and no bully pulpit to enrage the citizenry, it may truly be said to have neither force nor will but merely judgment; is proof enough that the judiciary is by all standards the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks. It equally proves that though individual oppression may now and then proceed from the courts of justice, the general liberty of the people can never be endangered from that quarter.²⁷ This understanding of the role and function of the judiciary in a democracy puts the courts on a pedestal in the quest of upholding and preserving the basic rights of the people without any apprehension or hesitation then only justice can be labelled as the true bloodstream of a nation.

The judiciary is the creation of a successful democracy as it strives not only to construe the letter of the law but also espousing an affirmative attitude of imaginatively deducing the spirit of law in consonance with the taste of times.²⁸ The bench is founded on the enormous faith confided by the people who expect remedial measures through the flow of the stream of judicial powers to protect and preserve their democratic

²⁶ Universal Declaration of Human Rights, Article 19.

²⁷ The Federalist No. 78 in Lawrence Goldman, ed., "Alexander Hamilton, James Madison and John Jay The Federalist Papers" (New York: Oxford University Press, 2008) p.380.

²⁸ Krishnadas Rajagopal The Hindu, "SC says it is ready to go live, Centre moots a TV channel" The Supreme Court said on Monday that it is ready to go live on camera while the government mooted a separate TV channel for live-streaming court proceedings. JULY 09, 2018.

@<https://www.thehindu.com/news/national/supreme-court-favours-live-streaming-of-court-proceedings/article24370456.ece>.

Visited last on 25/09/2018. It has to be mentioned that such innovation is good in advancing the right to information as it drags access to justice down from heaven to earth for universal consumption by the poor masses.

civil liberties. As the premier judicial authority, the supreme court of India commands an influence that runs deep throughout the whole court structure within the Union.²⁹

The people's law in the Right to Information Act, 2005, has changed the manner in which all institutions of governance, from the executive to the legislature to the judiciary, none is left outside the realm of the right to know. The compass of the disclosure legislation is escalating as can be seen from the march towards the culture of openness emanating from conclusions arrived at by the higher courts. Steadily, there is an upward awareness that the right to information is valuable for the people, more specifically to the poor masses.

The Apex court has determined in a case³⁰ before it that access to information is the gist of speech and expression under the constitution. Communication, a bequest from the heavens to humanity, is the medium through which intuitive feelings, persuasions and impressions can be effectively carried to others. Freedom of expression is therefore an innate right which human beings, as social animals, obtain at birth. The Court maintained that free speech connotes the right to put across one's views in words, lettering, printing, depiction or in any other method. It would, for that matter, encompass the freedom to speak, disseminate or circulate opinions. In *D.K. Basu v. State of West Bengal*,³¹ it was observed that even detenus retain the right to know the charges against them, reasons for their detention, actual place of apprehension, and the liberty to get their kith and kin informed about their detention and the right to be represented by a lawyer of their preference.³²

Most recently, the Supreme Court of India defending the vigour of the right to Information Act, 2005 held that public authorities should realize that the era of transparency is here and therefore alter change their old mindsets and adjust them to the innovative regime of free disclosure of maximum information. Public authorities should appreciate that in an age of transparency, archaic mores and obsession of unjustifiable secrecy have no longer a place. Accountability and deterrence of corruption is possible only through openness. Reaching a true state of a transparent society would entail without any suspicion extra exertion particularly with regard to record keeping and proving access to information. Parliament has enacted the RTI Act providing access to information, after great debate and deliberations by the Civil Society and the Parliament. In its wisdom, the Parliament has chosen to exempt only certain categories of information from disclosure and certain organizations from the applicability of the Act.³³

Dealing with the issue of clean politics, the highest Court has directed political parties to publish online the pending criminal cases of their candidates and urged Parliament to bring a "strong law" to purify political parties of leaders facing trial for serious crimes. The court directed that candidates should make known their

²⁹ "The Supreme Court of India is not a superintendent court. At least the text of the Constitution does not provide for such a superintendent power...But in practice, the Supreme Court exercises a great deal of superintendence directly in the matters of appointments and transfers of the judges...and of course indirectly by laying down the law regarding various aspects of administration of justice at the High Court and subordinate court levels in this country. The enormous jurisdiction the Supreme Court is conferred with by the Constitution, coupled with its responsibility to do complete justice as an impartial and an independent judiciary was essential for the survival of a liberal democracy. For more details, see, "*Supreme Court Not a Superintendent Court according To Constitution*:" Justice Chelameswar, NDTV, January 23, 2018. @<https://www.ndtv.com/india-news/supreme-court-not-a-superintendent>

-court-according-to-constitution-justice-chelameswar-1803447. Visited last on 25/05/2018.

³⁰ *LIC v. Manubhai D. Shah*, SCC 1992 (3) 641.

³¹ AIR 1997 SC 610.

³² *Ibid*

³³ *Institute of Chartered Accountants Of India v. Shaunak H. Satya*, (2011) 8 SCC 781

criminal history to the Election Commission in “block letters.” The parties, in turn, should put up the complete details of their candidates on their websites for public consumption. Further, both the candidate and the political party should declare the criminal antecedents of the former in widely-circulated newspapers. Finally, both the candidate and the political party should give “wide publicity” to the criminal record of the former by airing it on TV channels, not once, but thrice after the filing of nomination papers. This, the court opined will ensure that ordinary voters can have an “informed choice” about who he or she has to vote for in a country which already feels agonised when money and muscle power become the supreme power whose presence strikes at the roots of democracy. The best available people, as is expected by the democratic system, should not have criminal antecedents and the voters have a right to know about their antecedents, assets and other aspects... Citizens in a democracy cannot be compelled to stand as silent, deaf and mute spectators to corruption. Disclosure of antecedents makes the election a fair one and the exercise of the right of voting by the electorate also gets sanctified.³⁴

The current Rafale deal has been met by a determined attempt by the government to claim privilege and thrust the Rafale jets’ pricing particulars back into the rear and beyond public stare but has been greeted with a stoic counteraction from the Supreme Court of India. The government’s logic to mute the Rafale prices swayed from national security to not offending a “solemn undertaking” given to the supplier country to keep the price of the jets a clandestine affair. The Bench asked the government to read out Sections of the Right to Information (RTI) Act, 2005 which the court clearly said has revolutionised governance and conquered notions of secrecy cosseted under the Official Secrets Act, 1923.³⁵

V- A BOLT FROM THE BLUE – RTI IS GOOD FOR OTHERS

That law and politics are part of the cultural backdrop is evident. Legislators do not work in a vacuum. They belong to a specific culture and are inclined to follow the dictates of the scholarly atmosphere and the grand discourses prevailing during their age. This cultural facet is, nonetheless, only one side of the coin, as supremacy battles in politics and economic conditions also stain the visage of the law: legal history is distant from being labeled as an educational question to be deliberated and consumed in some erudite round table. Conversely, law is politics under another guise.³⁶ That is basically why law has to be dispensed with a lot of care and caution so that it can direct the actions of the people towards the right direction.

The triumph of the Indian Constitution and its institutions of governance mandate that public matters be discussed publicly so that the citizens can get an opportunity to understand the issues concerned and form a rational opinion. If we assume that the purpose and function of the Right to Information Act, 2005 is geared towards that end, then highest Court of India’s treatment of the transparency law is source of serious discomfort. The Court has not only decided contentious transparency matters with gradually more

³⁴ Krishnadas Rajagopal, “Supreme Court asks Parliament to frame laws to bar those accused of crimes from fighting elections” The Hindu, September 25, 2018. @<https://www.thehindu.com/news/national/cant-bar-politicians-with-criminal-charges-from-contesting-elections-parliament-should-frame-laws-sc/article25035435.ece>. Visited last on 26/09/2018.

³⁵ Krishnadas Rajagopal, “RTI trumps Official Secrets Act, says SC” the Hindu, New Delhi, March 14, 2019. @<https://www.thehindu.com/news/national/rti-trumps-official-secrets-act-says-sc/article26537346.ece>. Visited last on 13/03/2019.

³⁶ R. C. Van Caenegem, “European Law in the past and the Future Unity and Diversity over Two Millennia” (UK: Cambridge University Press, 2004) p.89.

problematical doctrines, but also it has made very stinging remarks against its use and its crusaders even though the robed men claim not to be against openness.³⁷

Being the defender and protector, indeed vertebral column within which effective ecosystem of the right to information can be nurtured; the Supreme Court of India has passionately backed-up the values of transparency and accountability in all realms of governance.³⁸ Yet, in recent times even this great institution has been entangled in a storm where it has been found to be blowing hot and cold on the issue of the right of access symptomatic of struggles and inconsistencies in the process of implementing the disclosure law in practice.³⁹

For instance, the Supreme Court of India crossing swords with its own earlier position on disclosure in a matter⁴⁰ before its bench, the highest court repudiated access on a fragile guise disowning its novel edicts on the subject. The bench varied the courts' own thrust and earlier logic on disclosure rights stating that;

“A report made on such inquiry if given publicity will only lead to more harm than good to the institution as judges would prefer to face inquiry leading to impeachment. In such a case the only course open to the parties concerned if they have material is to invoke the provisions of Article 124 or Article 217 of the Indian Constitution. The said report is purely preliminary in nature, *ad hoc* and not final ... the only source or authority by which the Chief Justice can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made the subject matter of a writ petition to disclose a report made to him.”⁴¹

Indisputably, the nation has a right to know about the honesty of those who are clothed with the function of administration justice. That the Supreme Court had established an inquest into the episode was no secret.⁴² It was a legitimate move that enthused public trust in the institution. It was then, in the best scheme of propriety that the account sees light of day. Barring the public purpose involved in disclosure, it was also to the personal benefit of the alleged judges to have the report free of any restraint significantly if their virtues were unshakable. Manifestly, routine rituals die hard. Continuing with its repentant mode, the highest court

³⁷ If we wish to strengthen the spirit of constitutionalism in the country, we must be sure that our treatment of access rights and claims are considered with a realistic appreciation of their benefits to the scheme and structure of democracy along with recognition of the importance of civility among the citizenry and responsibility in all branches of government.

³⁸ This trend can be seen particularly much more articulated before the coming into force of the Right to Information Act, 2005.

³⁹ Yet, though the courts general pronouncements on the right to information have been very liberal, it's practices have often not been in conformity with the declared right. Thus, for example, the courts often follow the practice of asking the government and public authorities to file reports in sealed covers in court. These reports are then perused only by judges and often not given to the opposite parties or their lawyers. Often the orders and judgments of courts are based on their perception formed on the basis of these “confidential reports”, which is not only a violation of the right to information of the opposite party, but also in violation of the principles of Natural Justice, considered to be sacrosanct. A Chief Justice has already gone on record to say that even the disclosure of income and assets by judges or the formation of any independent disciplinary authority over judges, would compromise the independence of the judiciary. Going by this, it is obvious that no information about complaints against judges or about their incomes and assets would be available under the Right to Information. Thus while the Supreme Court decrees that even candidates aspiring to become public servants (MLAs or MPs), would be required to disclose their assets, when it comes to sitting judges, such disclosure would violate the independence of the judiciary! There cannot be a more glaring case of double standards. All this shows that while the courts have been liberal in making pronouncements about the citizen's right to information in a democracy, and have also in cases implemented it with regards to others, they have been very reluctant to practice what they preach. The dictum appears to be that transparency and accountability is good for others, but the courts and judges are *sui generis*, and in their case transparency would compromise their independence. The wand of “Independence of the Judiciary” has always been waved by the judiciary to shield themselves from accountability, going to the extent of saying that not even an FIR can be registered against judges for any offence without the prior written permission of the Chief Justice of India. On top of all this, they enjoy the power of Contempt, where they can send any person who accuses any judge to jail. For details see, Prashant Bushan, “*Right to Information and the Judiciary*” @<http://judicialreforms.org/right-to-information-and-judiciary-right-to-information-and-the-judiciary-by-prashant-bhushan/>. Visited last on 24/05/2018.

⁴⁰ *Indira Jaising v. Registrar General, Supreme Court of India*, SCC 2003(5) 494.

⁴¹ *Ibid*

⁴² The episode concerned allegations of involvement of sitting Judges of the High Court of Karnataka in certain incidents. See *Indira Jaising v. Registrar General, Supreme Court ...* on 9 May, 2003. @<https://indiankanon.org/doc/1117276/>. Visited last on 23/05/2018

has blunted the sharp edge of the right to information categorizing it as a qualified right a constituent of freedom of speech and expression under Article 19(1)(a). Section 8(1)(i) of India's Access regime harmonizes privacy and disclosure. It admits the vitality of the twin rights and describes to be safeguarded.

Nonetheless, whenever there is an inconsistency between these liberties, the test of superseding public interest is employed to choose either to allow or deny access.⁴³ For instance it has been decided that a party to a law suit is barred to seek access in his pursuit to determine as to why and for what reasons a judge had arrived at a certain conclusion in a matter before him or and that a judge has no duty to give details to any party before him concerning the reasons for which he had reached to a given a verdict.⁴⁴

The top Court, without citing any facts or evidence has held that:

*"Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of public authorities prioritising 'information furnishing', at the cost of their normal and regular duties."*⁴⁵

These reservations were not borne out of the 2014 report of RaaG⁴⁶ which, based on the sample of PIOs interviewed across the Union of India, established that usually a PIO received 3 dozen RTI applications a month in 2012-13. 38% of the PIOs spent not more than 2 hours a week on RTI related work, while 39% employed not more than 5 hours a week. These figures and facts were neither contested by the government, nor contradicted by any other study.⁴⁷

It would be idealistic to squabble that any law, including the RTI Act, is never misused. The good side that can convincingly be claimed is that, the misuse of the RTI Act is a drop in the ocean possibly a lot less than the abuse of several other laws with a far greater potential to be repressive. In spite of this, the regular chorus concerning its abuse makes one speculate whether the true reason lies in the fact that the people's law is one among a handful that truly empowers the common man on the street to take on the leviathan state by its horns whereas most if not all other laws, actually fortify the hands of the government to directly or indirectly control and arraign the public.

The sharp edge towards transparency and openness was further blunted by observations in a matter before the Supreme Court of India where the bench orally castigated as well as warned the media not to behave

⁴³ *State of Andhra Pradesh v. Canara Bank*, AIR 2005 SC 186

⁴⁴ *Khanapuram Gandaiah v. Administrative Officer*, AIR 2010 SC 615

⁴⁵ Central Board of Secondary Education & Anr. Vs. Aditya Bandopadhyay & Ors. SC CBSE 2011, pp.52-53. @https://www.jmi.ac.in/upload/menuupload/rti_SC_CBSE.pdf. Visited last on 25/09/2018.

⁴⁶ Peoples' Monitoring of the RTI Regime in India 2011-13, RTI Assessment and Advocacy Group (RaaG) & Samya- Centre for Equity Studies (CES) October, 2014, p.94.

⁴⁷ There is not a shred of evidence that RTI is 'obstructing the national development and integration, or destroying the peace, tranquility and harmony amongst its citizens'. To label citizens exercising their fundamental right as oppressors and intimidators is destructive to the process of democracy for it is easily and joyously pieced together by errant and secretive public officials to muzzle the citizen's fundamental right to information.

as “*popes and guardian’s overnight sitting on the pulpit, and can write anything.*”⁴⁸ The outlook of the court needs a re-look given that freedom of the press and information enjoys constitutional position and protection.

The riddle for transparency in the top Court veered towards the understanding that the Apex court should not have been judging its own cause; yet it is hearing the appeals due to “doctrine of necessity.”⁴⁹ A lawyer termed it “unfortunate” and “disturbing” to see the lack of enthusiasm of judiciary in opening up its working under the Right to Information Act since the top court has always stood for transparency in the working of other organs of State but it develops frosty feet when the sword is turned inwards. To this the five judge constitution bench retorted that:

“Nobody is for a system of opaqueness. Nobody wants to remain in the state of darkness or keep anybody in the state of darkness. The question is drawing a line. In the name of transparency, you can’t destroy the institution.”

The Constitution bench headed by Chief Justice *Ranjan Gogoi* reserved its verdict on three appeals filed in 2010 by Secretary General of the Supreme Court and the Central Public Information officer of the apex court against the High Court and the CIC’s orders after the conclusion of submissions.⁵⁰

VI – TRANSPARENCY AND ACCOUNTABILITY GO HAND IN HAND

The Supreme Court of India has plunged itself neck-deep towards transparency and accountability by positively opining that the office of the Chief Justice of India (CJI) falls within the realm of the Right to Information Act, 2005.⁵¹ A five judge bench has settled the scales towards transparency and accountability by approving that the Supreme Court is a public authority and the office of the Chief Justice is part and parcel of the institution. Consequently if the top Court is a public authority, so is the office of the CJI. The conclusion penned by Justice *Sanjiv Khanna* underlined the fact that “*transparency and accountability should go hand in hand*” and that amplified transparency under the Right to Information was no menace to judicial independence.⁵² Justice *D.Y. Chandrachud*, in a detached yet, compatible opinion, movingly let loose the lid

⁴⁸ R. Balaji, “*Media not Pope: SC Chief Justice warns journalists*” The Telegraph, 16.03.18.

@ <https://www.telegraphindia.com/india/media-not-pope-sc/cid/1338839>. Visited last on 25/09/2018. The Chief Justice of India Dipak Misra said journalism has descended into a scenario where the press thinks they are “sitting on some pulpit” and can write anything they imagine about anyone. In a direct criticism of the press, Chief Justice Misra said “they (journalists) are sitting on some kind of pulpit... that is not real journalism.” See also, [Krishnadas Rajagopal](#), The Hindu, ‘Press cannot write anything they imagine about anyone: CJI Misra’ March 15, 2018.

@<https://www.thehindu.com/news/national/press-cannot-write-anything-they-imagine-about-anyone-cji-misra/article23255014.ece>. Visited last on 25/09/2018. The CJ reminded the media that “People need factual and trustworthy news that avoids sensationalism and whipping up heated reactions, Pope Francis said. It is important the press not be “constantly at the mercy of easy slogans or improvised information campaigns, which show the intention of manipulating reality, opinions and people themselves, often creating worthless ‘media dust storms.’” Outlook, ‘Chief Justice Dipak Misra Slams Electronic Media, Says They Need To Be More Responsible’ “We respect freedom of the press but it has to act responsibly. Electronic media can’t think they become Popes overnight” 15 March 2018.

@<https://www.outlookindia.com/website/story/chief-justice-dipak-misra-slams-electronic-media-ay-they-need-to-be-more-respons/309534>. Visited last on 25/09/2018.

⁴⁹ See the Indian Express, “*Nobody for Opaqueness, but Judiciary can’t be destroyed in name of Transparency: SC*” 05/04/2019. @<https://indianexpress.com/article/india/nobody-for-opaqueness-but-judiciary-cant-be-destroyed-in-name-of-transparency-sc-5659197/>. Visited last on 05/04/2019. The bench, also comprising Justices *N V Ramana*, *D Y Chandrachud*, *Deepak Gupta* and *Sanjiv Khanna*, was hearing an appeal by its Central Public Information Officer (CPIO) against the January 2010 ruling of the Delhi High Court which held that the apex court and Chief Justice of India are “public authorities” under the Right to Information Act, 2005.

⁵⁰ PTI, “*Judiciary Can’t Be Destroyed In Name Of Transparency: Supreme Court,*” April 05, 2019

@<https://www.ndtv.com/india-news/supreme-court-says-judiciary-cannot-be-destroyed-in-name-of-transparency-2018168>. Visited last on 05/04/2019.

⁵¹ *Central Public Information Officer, Supreme Court of India vs Subhash Chandra Agrawal*, Civil Appeal No. 10044 of 2010 (New Delhi; November 13, 2019). @https://www.sci.gov.in/pdf/JUD_3.pdf. Hereinafter referred as *Subhash Chandra Agrawal*.

⁵² The judiciary should not be understood to mean that the independence of the judiciary can be achieved only by denial of access to information. Independence in a given case may well demand openness and transparency by furnishing the information. Reference

of secrecy in his trademark remarks saying that “*judicial independence is not secured by the secrecy of cloistered halls.*”⁵³ He went on to state that judicial independence is protected through the sanctuary of judicial tenure. The construction of judicial independence is erected on the constitutional safeguards to defend the judiciary against meddling by the legislature and the executive. It is inimical to suppose that escalating transparency would intimidate the footstool of judicial independence.

Justice *N.V. Ramana*, assumed a more advisory note in his outlook saying that “*judicial independence was the basis of the trust public reposes in the judiciary. Only the right dose of transparency should be calibrated with judicial independence.*”⁵⁴ The Court, nevertheless, established unanimously that the right to know under the RTI was not unlimited so as to run riot, but must be objectively and reasonably weighed against the right to privacy of individual judges decrying that “*the RTI should not be allowed to be used as a tool of surveillance.*”⁵⁵ Thus, the finding held that public access to personal information of judges maybe allowed under the Right to Information if such admission was of great public interest.

The disclosure of personal information was discretionary under section 8(1)(j) of the right to information Act, 2005. The statute has given the discretion to the public information officer (PIO).⁵⁶ The information about assets of judges and official communication during the process of elevation of judges to the Supreme Court are treated as confidential third party information and in such cases, the PIO should follow the procedure mandated in section 11 of the RTI Act.

Following the impulsive fits of aggression reminiscent of the topical *Tis Hazare* incident,⁵⁷ the Chief Justice of India exposed in an open Court that he has asked the Union of India to make available a committed force of the central Industrial security force (CISF) for providing round the clock protection to court complexes throughout the nation. This follows a direction from the Apex court in March 2019 that CCTV cameras be installed in courts and vital spots of court complexes in at least two districts in every state and Union Territory. Regressively though, the court had in its conclusion kept the footage generated from such an arrangement categorically beyond the purview of the public through RTI or without the permission of the High Court concerned.⁵⁸

to the principle of judicial independence is not to undermine and avoid accountability which is an aspect we perceive and believe has to be taken into account while examining the public interest in favour of disclosure of information. Judicial independence and accountability go hand in hand as accountability ensures, and is a facet of judicial independence. *Subhash Chandra Agrawal, Ibid*, para 88.

⁵³ It becomes evident that judicial independence is secured through the shield of fixed judicial tenure. The edifice of judicial independence is built on the constitutional safeguards to guard against interference by the legislature and the executive. Judicial independence is not secured by the secrecy of cloistered halls. It cannot be said that increasing transparency would threaten judicial independence. *Ibid*, para 39.

⁵⁴ *Ibid*, para 42.

⁵⁵ *Ibid*, para 43.

⁵⁶ Section 8(2) does not create a vested or justiciable right that the citizens can enforce by an application before the PIO seeking information under the RTI Act. PIO is under no duty to disclose information covered by exemptions under Section 8(1) of the RTI Act. Once the PIO comes to the conclusion that any of the exemption clauses is applicable, the PIO cannot pass an order directing disclosure under Section 8(2) of the RTI Act as this discretionary power is exclusively vested with the public authority. *Ibid*, para 27.

⁵⁷ It all began at 2 pm, Saturday, November the 2nd 2019 when a policeman stopped an advocate from parking his car outside the court lock-up, a space reserved for about a dozen jail vans. It led to an argument, resulting in a scuffle that led to sporadic violence and mayhem in the *Tis Hazare* court complex, New Delhi.

⁵⁸ See, “*Asked govt. for separate CISF cadre to secure courts: CJI*” New Delhi, January 08, 2020. It is emphasized here that footage from the CCTV cameras installed in court complexes for security reasons and purposes cannot by themselves endanger the independence of the judicial system to warrant such kind of cold storage from the public. In fact disclosure of such footage whenever necessary will only boost the hygiene and trust of the public in the judiciary.

VII – OBJECTION MY LORDS, LET FREEDOM RING AND RING ALOUD

Sunshine is the best sterilizer against the darkness of executive tyranny. Such sanitizer cannot be harmful to democracy and its institutions. Reservations about access and its abuse or misuse are either preemptive or prejudiced because this is the only law in the realm of governance that sends shivers down the spine of dishonest officials of government. It is in this direction that the assertions of the Apex Court that uninhibited exploitation of the Right to Information Act was not good for the running of the government and that it had produced a perception of “*paralysis and fear*” in the establishment since it forbids officials from taking decisions⁵⁹ should be seen. The Court went on without mincing words that a way has to be devised to impede the abuse of the transparency law. The bench concluded that it was ripe to formulate guidelines on the exercise of the RTI to test the standing of RTI users and employ “filters” on the class of claims made under the 2005 legislation.⁶⁰ The court clarified that it was not opposing the use of the right to information but that it cannot be allowed to become an unruly horse which cannot be rivalled reasoning that there existed a grave situation of applicants seeking information under the people’s law dishonestly and with bad faith and even those set up by opponents. The bench ruled that the RTI Act had turned into a spring of blackmail and unlawful coercion by elements with an axe to pulverize.⁶¹

Given, the Right to Information is not a silver bullet and as such, it may give rise to misuse and abuse due to the variety of requests made. Indeed, some of these questions sometimes vitiate the principle of public interest as they were sought by applicants completely lacking “*locus standi*” in the subject matter. Yet, the RTI Act, 2005, unambiguously discards the necessity for *locus standi*⁶² for very imperative purposes. Seeking *locus standi* as a precondition of responding to information claimants might produce an unnerving outcome as public authorities may well opt to rebuff access to the common man on skewed justifications. Moreover, information commissioners and public officials have the power to decline requests premised on criteria that permit immunity from information disclosure.⁶³

It must be stated here that abuse and misuse of law does not start with the RTI Act nor end with it. There is a long list of laws that have been abused and misused by the establishment for so long and the judiciary has always remained mute or caged. Consider the widespread abuse of Section 498A of the Indian Penal Code which mandated that the groom and his family be arrested by default if a wife complains of dowry harassment

⁵⁹ Krishnadas Rajagopal, “Abuse’ of RTI has led to ‘paralysis and fear’ among officials, says CJI Bobde,” The Hindu, New Delhi: December 16, 2019 @ <https://www.thehindu.com/news/national/abuse-of-rti-has-led-to-paralysis-and-fear-among-officials-says-cji-bobde/article30320357.ece>. Visited last on 22/12/2019.

⁶⁰ *Ibid*

⁶¹ “When I was in Mumbai, a government official said the Mantralaya is almost paralysed because of the kind of RTI requests made ... Have you seen the kind of people seeking information. Anybody can ask. People describe themselves as RTI activists. Is that an occupation?” Justice Bobde asked. Justice B.R. Gavai, on the Bench, remarked that “people write ‘RTI Consultant’ on their letterheads.” *Ibid*.

⁶² The Right to Information Act, 2005, Section- 6 (2): *An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him/her.*

⁶³ Data on RTI requests since 2005 indicate that the annual rejection rate, which means the requests rejected as a percentage of those received, has dropped steadily to below 5% in 2018-19. A paradigm shift in the 2005 Act that seeks *locus standi* as a formula for access could dramatically push this number above the roof. It is hereby suggested that instead of concentrating in the regressive technical epithet of *locus standi*, public authorities would be better counseled to endeavour for greater willful diffusion of information on government portals, which would reduce their encumbrance. For more details, see, editorial, “A duty to publish: On RTI” The Hindu, December 19, 2019.

@<https://www.thehindu.com/opinion/editorial/a-duty-to-publish-on-rti-and-locus-standi-of-applicants/article30341726.ece>. Visited last on 22/12/2019.

until it was remedied in 2014, by the Supreme Court which ruled that arrests can only be made with a magistrate's approval. The sedition law is being habitually misused as a tool to persecute political dissent given that there has been a spike in instances in which sedition charges were stirred up against intellectuals, human rights activists, filmmakers, university teachers, students, and journalists. Sedition law carries an inherently broad and intense executive judgment allowing its deliberate abuse. Official secrets Act has always been invoked to stonewall openness and transparency to the chagrin of the citizen. The power of contempt is equally not an exception from excesses when it comes to misconduct of judges,⁶⁴ The list goes on and on. The Supreme Court of India in a public interest litigation case had remarked sharply thus:

*"The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect."*⁶⁵

Yet, even with rampant misuse of PIL as the Apex Court rightly ruled, the principle of *locus standi* was diluted to enable public spirited persons and organisations to fight for justice of the poor. The argument here is that it's not right to single out the RTI because some people have chosen to designate themselves as activists⁶⁶ or their letterheads carry the designation 'consultants'.⁶⁷ Such epithets, by themselves, should not be perceived as threats as they are often used in many other socio-legal areas without let or restraint.⁶⁸ If the transparency law has resulted in creating fear among the bureaucracy, so be it, for there are many honest officials who have nothing to hide and therefore, nothing to fear. The fear among the executive stems from the fact that they are so obsessed with secrecy that they are always eager to deny access to even information that is in the public domain. This is the only weapon in the hands of the common man to fight corruption and to shake the might of officialdom within the bureaucracy. The rightful cry is to let that freedom ring and ring aloud.

⁶⁴ Prashant Bushan, "Courts misusing power of contempt" The Times of India, Feb 25, 2018.

@<https://timesofindia.indiatimes.com/city/nagpur/courts-misusing-power-of-contempt-prashant-bhushan/articleshow/63059921.cms>. Visited last on 23/12/2019. The contempt of court law has on occasions been challenged allegedly because it allows judges in higher courts to routinely misuse the power to punish for contempt of court more to cover up their own misdeeds than to uphold the majesty of law which has proved to be the Waterloo of many right-thinking, courageous persons who have the courage of conviction to adhere to their views and principles. See also, Nagendar Sharma, "Judges misuse contempt law" Hindustantimes, Oct 04, 2010.

@<https://www.hindustantimes.com/delhi/judges-misuse-contempt-law/story-yK81e60ZxwrOSSihRqWp3K.html>. Visited last on 23/12/2019.

⁶⁵ *Ajai Kumar Singh {P.I.L.} vs State Of U.P.*

@<https://indiankanoon.org/docfragment/1461095/?formInput=%22busy%20body%22>. Visited last on 22/12/2019.

⁶⁶ An activist is a person who campaigns for some kind of social change. Someone who's actively involved in a protest or a political or social cause can be called an *activist*. Demonstrations, strikes, and sit-ins are all ways that an activist might work toward the change she believes in. The root word of *activist* is the Latin *actus*, "a doing, a driving force, or an impulse." Someone who acts on what she believes is an activist.

@<https://www.vocabulary.com/dictionary/activist>. Visited last on 23/12/2019.

⁶⁷ A consultant is a professional providing expert opinion and advice in a particular area such as security management, education, accountancy, law, regulatory compliance, human resources, marketing, finance, health care, engineering, science or any of many other specialized fields with some that may not require specific qualification. @<https://en.wikipedia.org/wiki/Consultant>. Visited last on 23/12/2019.

⁶⁸ The term activist can be found widely in the area of Human rights, Public Interest Litigation, journalism, environmental matters, whistle-blowing, trade unionism, lawyering etc. Therefore, there is no harm if the term is used in the realm of freedom of information as well.

VIII - CONCLUSION

The growth of a contemporary legal structure and the working of the common law have for years been distinguished as a fruit of British imperialism.⁶⁹ The spreading out of the British domination during the last two hundred years resulted into the resettling of the common law all over the earth.⁷⁰ In every democratic social order law is vibrant and the practice of legal expansion is fascinating and requires a relook. Yet, there exists a compelling ground outside scholarly inquisitiveness to scrutinize legal progress. The effectiveness of legal structures can be decisive in distinguishing the nations with vibrant democratic cultures, adheres to the doctrine of rule of law, protects life and liberty of the individual etc as a mark of their pursuit of the utilitarian good and happiness of the people. A speedy, just and inexpensive legal system is enviable for intercontinental growth as it expedites effective administration of law. In addition, it is apparent that well-built legal structures also guarantee enhanced human rights record as they expand democracy within a polity. Efficient legal schemes also have affirmative social settlement, as institutions charged with the responsibility of dispensation of justice are broadly regarded as independent, inexpensive and just to the common man which can go a long way in countering aggressive redressal of disputes.

The hope under common law scheme is that as a society develops, the law will also be altered to suit the new requirements through the distinctive character of legal precedents, while at the same time laying down a set of regulations which citizens can anticipate to guide their daily lives be it in their business or personal relations. This hope is in general achieved in the developed west. Conversely, in the rest of the third world where there are fewer resources, the evolutionary character of the common law should not be implied.

It is therefore with this background that the significance of the people's law cannot be overstated in terms of fostering the culture of responsibility and answerability of the state apparatus towards the citizen. In this regard, the approach of the higher courts, the Supreme Court in particular towards disclosure rights assumes special mention. The legal organism in the sub-continent is among the most established judicial schemes in the globe. It is part of the imperial legacy India obtained from East India dominion that lasted for over two centuries, as can be witnessed from the various likeness between the Common law and Indian legal system. The structure of the existing legal system has been set out by the Constitution of India and the judiciary acquires its authority there from. The Constitution of India is a living organism, the ultimate law of the union of India, the spout from whence all laws acquire life from in the country.

Undeniably, the Right to Information Act is momentous, and has the prospective of altering, perpetually, the equilibrium of authority in India which is, disempowering governments and other dominant institutions of governance and handing out this supremacy to the Indian public. It also has the capacity to intensify democracy by converting it from the medieval representative to a higher level i.e. participatory

⁶⁹ Common law was initially matured in England as a process of practising continental feudal law; a system that advanced over time into a symbol of English life and into something quite specific from the function of law in the region. Common law was and remains a notable action of inquiry and decision-making. English common law developed to shield the personal property and restrain the power of the state to appropriate resources. It was projected as a procedure that if suitably pursued, would give rise to a sound judgment for the plaintiff or defendant. The process, rather than the application of an enactment, is calculated to result into justice. Yet, this process materialised as well as matured in the relatively analogous settings of England where oral custom and the exalted, dignified role of courts carried high esteem throughout the body politic entrenched as culture.

⁷⁰ Sandra F. Joireman, "The Evolution of the Common Law: Legal Development in Kenya and India" Commonwealth and Comparative Politics, 41(2), (University of Richmond UR Scholarship Repository July 2006.
@<https://pdfs.semanticscholar.org/1926/e928c148402c252828ebee1f844c15174a82.pdf>. Visited Last on 14/05/2018

democracy, in which the state at all levels, are directly accountable to the people for their dealings, follies, blunders and misdeeds. Nonetheless, if this potential has to materialize, a much more intensive drive has to be exerted to reinforce the transparency law rather than allow the government to tinker with the same. In battles as essential as those for authority and supremacy, there is no moment to desecrate. If the citizen does not come together and join hands so as to bring back the influence that is rightfully theirs, lobbies with ulterior motives and other vested interests will abuse this Achilles' heel and grow stronger and more indomitable with each transient hour.