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'Right To Information' in the Digital Age: A Comparative Analysis

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ABSTRACT

The Right to Information (RTI) is a fundamental human right that guarantees the public the right to access information held by public authorities. There has been a profound impact of the digital age on RTI, making it easier for citizens to access information and also enabling governments to share information more widely. This research paper explores the evolving landscape of RTI in the digital age. It explores the concept of RTI and its importance as a fundamental human right followed by the impacts of the digital age on RTI and its mechanisms. It studies RTI laws in selected countries and presents a comparative analysis to identify some common elements on which the laws of different countries are based. It also emphasizes the interaction between RTI and privacy concerns in the digital context. Subsequently, this study makes recommendations for improvising and optimizing the RTI mechanism in the digital era. The study highlights the important role of RTI in the era of digitalization to promote transparency, accountability and citizen engagement. The study calls for collaborative efforts to adapt and strengthen RTI mechanisms. Such efforts will effectively deal with the challenges and opportunities offered by the digital revolution. It will ensure that this right remains a cornerstone of democratic governance globally.

Keywords: RTI, Digitalization, Privacy, Human Rights, Public Welfare.

I. INTRODUCTION

In the 21st century, society has become a knowledge society where confidentiality in government is not possible, as confidentiality is considered a barrier in democracy. The citizens' ability to scrutinize governmental policies and actions has become a cornerstone of democratic governance. Central to this paradigm shift is the Right to Information (RTI), a vital mechanism that empowers individuals with access to government-held information, fostering their active participation in the democratic process beyond the confines of periodic elections. RTI is not merely a statutory tool but also an indicator of a nation's progress and development. At both national and international levels, significant efforts are being made for its legal regulation and implementation.

In India, Article 19(1)(a) of the Constitution provides for freedom of speech and expression

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which includes RTI, since a person cannot form an informed opinion without sufficient knowledge. The Honorable Supreme Court has recognized that Article 19(1)(a) embodies the fundamental right to information concerning matters of public interest. To codify and safeguard this right, the Indian Parliament enacted the Right to Information Act, 2005.

This research paper embarks on a comprehensive exploration of the Right to Information, both in its national and global dimensions. It highlights the transformative impact of the Digital Age on the exercise of this right globally. By examining the intersection of RTI and privacy, it delves into the evolving challenges posed by the digital landscape. This paper seeks to shed light on the multifaceted facets of this vital democratic tool. Furthermore, it offers recommendations for enhancing RTI mechanisms in the Digital Age, reaffirming the continuing importance of transparency, accountability and informed citizenship in the fabric of democracy.

II. RTI AND INTERNATIONAL INSTRUMENTS

RTI is the best example of legal activism and undoubtedly it is one of the most advanced instruments for accountability and good governance. Almost 132 countries have recognized the RTI, and thus it has received international acknowledgement.

This right first evolved in Sweden through the Freedom of the Press Act, 1766. This Act required the declaration of government, court, and parliamentary materials upon request. Later, this was included in their Constitution. A provision regarding the declaration of budget information by making it accessible under Article 14 of the Declaration of Human and Civil Rights² of 1789 in France was included. This was referred to as people's right to know any information. The United Nations embraced the Universal Declaration of Human Rights in 1948³, which provides a foundational base of human rights, incorporating the freedoms of expression, assembly, information, media and religion. Everybody has the right to freedom of expression, as well as the ability to seek out and disseminate information and ideas of all kinds, as per the International Covenant on Civil and Political Rights, 1966⁴. Further, Article 13 of the United Nations Convention on the Rights of the Child, 1989,⁵ lays down that children also have the right to freedom of expression which extends to the freedom to receive and pass on any type of information. Other than these, the American Convention on Human Rights, 1969⁶, the

²Déclaration des droits de l'Homme et du citoyen de 1789

³United Nations General Assembly Resolution 217A

⁴Adopted and opened for signature, ratification and accession by the General Assembly, resolution 2200 A (XXI), A/RES/21/2200, 16 December 1966

⁵General Assembly resolution 44/25

⁶also known as the Pact of San José

European Convention on Human Rights, 1950⁷ and the African Charter of Human and Peoples' Rights, 1981⁸, also recognize RTI.

III. RTI IN THE DIGITAL AGE AND ITS IMPACT

With the quick advancements in digital technology such as the internet, social media and online databases, the digital era is in action where everything is evolving including the way information is exchanged, accessed and distributed. Businesses and governments have shifted their regular activities to digital platforms, from performing transactions to accessing public information. This helps in enhancing their conduct and enables them to become more efficient and technologically advanced.

Digital data transfer can enhance the efficacy, usefulness and transparency of public information. However, technology poses few challenges related to the accuracy, reliability, protection and privacy of digital data. Governments around the world have recognized the need to adapt to this digital age and have taken e-government initiatives to incorporate RTI mechanisms. To boost transparency, governments are digitizing and opening up access to public information, fostering greater accountability.

Digital data transmission means the sharing of digitally stored data using digital networks and devices, which consist of text, audio, video, images, and graphics, using the internet, email, messaging apps, cloud computing or other emerging digital technologies. It boosts the speed, quantity and availability of information of data transfer.

Data digitalization through cloud computing and digital storage has made government records more accessible, searchable and specifically more confidential through encryption and security technologies. Furthermore, digital archives safeguard historical records from physical damage or loss. These developments have transformed information recording and, consequently influencing RTI practices. They have expanded the scope of accessible information, allowing individuals to request and obtain data in electronic formats, facilitating better information exchange and increased public participation in decision-making processes.

Media and social media play crucial roles in social auditing by informing the public about government actions. In this digital age, as the transmission of information has become quick and easy, it poses significant threats to national security. Social media has become streamlined enabling people to share RTI reports, issues, or information globally in minutes. However, social media can disseminate both accurate and inaccurate information and algorithms that

⁷formally the Convention for the Protection of Human Rights and Fundamental Freedoms

⁸No. 26363; s. Concluded at Nairobi on 27 June 1981

prioritize speed over content accuracy can create cognitive biases in users. Governments have attempted to regulate information dissemination on social media, sometimes arbitrarily. A well-defined regulatory framework is needed to ensure that accurate information reaches the public. Data visualization and analytics are crucial tools for transforming complex government data into easily understandable formats. Data visualization represents data visually, while data analytics analyze data sets through specialized software to draw insights. These tools and techniques simplify information examination and facilitate informed decision-making.

IV. RTI LAWS IN VARIOUS COUNTRIES IN THE DIGITAL AGE

Sweden first recognized the RTI, later, many countries recognized this right and incorporated it as a right under their legal system to promote good governance and establish fair democracy. The RTI laws with their application in the digital age of a few countries are contrasted below:

1. United States: The Freedom of Information Act, 1966⁹

It grants people, irrespective of their citizenship, the right to access information that is kept by public authorities, such as government agencies, including administrative, judiciary and military departments, governmental entities and private businesses that carry out public functions. It has been amended in various instances; with special emphasis on the amendment of 1996 after the Electronic Freedom of Information Act was enacted. The Act also provides for 9 exceptions when data cannot be disclosed including security of the state, personal privacy and law enforcement.

Application in the digital age: This Act considers digital documents important and mandates federal agencies to hand over the records in digital form upon request. Online portals have also been created to promote access to information. These measures have increased transparency, accountability, accessibility and efficiency in getting government information. By supporting electronic access, incorporating electronic records and resolving new issues relating to digital privacy, the Freedom of Information Act of 1966 successfully adapted to the digital age.

2. United Kingdom: Freedom of Information Act, 2000¹⁰

People have the right to access information from public entities, such as government agencies, local governments and the police, under the Act. It was enacted to make government authorities more transparent, accountable and responsible. The public authorities include health services local and other government authorities and departments.

⁹5 U.S.C. § 552

¹⁰2000 c. 36

Application in the digital age: The Act has effectively embraced the digital age by promoting digital accessibility, encouraging online requests and facilitating proactive publication of information. The government is also carrying out open data initiatives by supplying large and complex datasets online for public access in understandable formats to make the procedure more user-friendly, valuable and practical. However, it also faces challenges related to digital data, including data security, protection of sensitive information and the need to balance transparency with privacy concerns.

3. South Africa: Promotion of Access To Information Act, 2000¹¹

The Constitution of South Africa under Section 32 incorporates the right to access the information, ensuring its broad application. The extent of this section is not merely restricted to such information retained by the state but also extends to personal information available to other people to protect the rights and interests of the citizens. The protection of privately held information is an unusual characteristic of this provision. The 2000 Act was legislated to implement Section 32 of the Constitution. The grants the right to access information to the citizens, both from public bodies and the private entities that perform public functions.

Application in the digital age: This Act identifies the significance of electronic data and its storage, making such information accessible digitally. The applicant can make an application online. The government is also carrying measures to make information more open and accessible through its disclosure on online platforms to adapt effectively to the digital era. The government has acknowledged the importance of data archives for historical records and embraced open data initiatives. It is also determined to ensure privacy and security in the digital realm. This adaptability underscores its commitment to transparency and accountability in contemporary governance.

4. Brazil: Access To Information Law, 2011 (Lei De Acesso À Informação)

The information available to all public bodies and private bodies that receive public funding can be accessed by the citizens as their right. The Federal Constitution incorporates the right to obtain information by anyone in the interest of their personal or public concerns from public entities under Article 5, XXXIII. Article 22 also offers the right to full access to public documents. The Act of 2011 was legislated in consonance with these provisions of the Constitution to govern the right, provide for the procedure and prescribe the time limit for disclosure of the data by the State. The information available to all public bodies and private

¹¹Act 2 of 2000

entities that receiving public funding can be claimed by the citizens as their right.

Application in the digital age: The Act, adapted effectively to the digital age, made provisions for recognizing digital data and access in digital form. The Brazilian government has built online platforms enabling seamless processes from filing a request to tracking its final disposal, enhancing usability and efficiency through a user-friendly interface.

5. Canada: Access To Information Act, 1983

The Act allows right to gather data from government files except personal information by citizens, permanent residents and individuals present in Canada. The Act also lays exceptions, such as to this right when disclosure cannot be made by the concerned authorities. The personal data and general data have been differentiated by the Act.

Application in the digital age: The data can be stored and is accessible online; requests can be made online and disposed of electronically. The government agencies have digitized records, making them more accessible online. However, concerns over delays in responding to requests and extensive redactions of digital documents persist. Efforts have been made to streamline the process by allowing online submissions and enhancing transparency through the proactive disclosure mechanisms.

6. Mexico: Federal Law of Transparency and Access To Public Government Information, 2002

An amendment was made in 1977 in the Mexican Constitution to incorporate the right of information, to make the data held by the government agencies accessible for the citizens. The Act of 2002 was legislated to implement this amendment.

Application in the digital age: The Act has recognized digital records held by the government and its authorities in addition to application of electronic request by the citizens. Government is also taking significant steps to make records accessible online for public through digital platforms and websites. Mexico's embrace of digital tools has empowered citizens and reinforced the law's objectives in an increasingly interconnected world.

V. RTI IN INDIA

The RTI was recognized by the judiciary as part of Article 19¹² under various circumstances. The Right to Information Act, 2005¹³ was enacted by the Indian Parliament to promote transparency and accountability in the working of every public authority.

¹² Constitution of India, 1950

¹³ ACT NO. 22 OF 2005

This Act empowers citizens to access government information held by central and state governments, as well as government-owned organizations. Citizens can request information in writing, in Hindi, English or regional languages, and various forms, including electronically. The Act allows citizens to request information without stating a reason and enables them to lodge complaints for non-disclosure. Some sensitive information is exempted from disclosure to protect national security and privacy. The Act has enhanced transparency and accountability in governance, but it faces challenges such as exploitation of the provisions, lack of awareness and confidentiality concerns.

Application in the digital age: In the technological era, citizens can request, track and monitor the status of requests, authenticate by digital signatures and get the information in electronic form. The government has developed online portals for filing RTI applications, thereby minimizing paperwork, reducing administrative workload and effectively disposing of the request. Technological advancements also help in digitally archiving documents and replies associated with RTI applications. Additionally, citizens and analysts can use data visualization and analysis tools to analyze, observe and interpret critical data concerned with government and its performance. Appeals and RTI-related grievances can be made through electronic platforms. This digital mechanism promotes public awareness via online platforms such as social media, websites, and online advertisements.

VI. COMPARATIVE ANALYSIS

The analysis and comparison of the above laws show some prima facie similarities in the application of national laws of different countries in the technologically advanced world. These common elements are as follows:

- **Electronic records:** Across nations, RTI laws were enacted before the beginning of the digital age. However, now the nations have recognized and adapted the technological advancements in their RTI laws. Governments acknowledge that digital technologies are used to manage government data, making electronic information requests common. This shift signifies the normalization of digital records, streamlining information handling and exchange for both authorities and citizens.
- **RTI application in digital form:** The national governments have allowed citizens to file the RTI application online or through email. This makes the system quick, easy, effective, more accessible and user-friendly.
- **Specialized online portals and tracking:** Governments have simplified the RTI application process through dedicated online portals. Such portals reduce paperwork and

administrative obstacles by enhancing efficiency. Governments are launching specialized online portals for filing RTI applications, tracking their status in real-time and obtaining information. This enhances transparency and public trust in the disposal of the application by the concerned authorities.

- **Online Data Initiatives:** Open data refers to government information and datasets available to the public for various purposes. These initiatives, aligned with transparency and accountability principles, promote access to electronic government information while safeguarding sensitive data. This approach encourages citizen engagement and collaboration.
- **Prescribed Timeframes:** Many countries prescribe deadlines for government authorities to dispose of RTI applications, ensuring speedy information delivery and efficiency in the Digital Age.
- **Digital Accessibility:** Technology has enhanced accessibility to government datasets making information readily available with just a click. The RTI portals are user-friendly, easily accessible from anywhere globally, in multiple languages, promoting social inclusion, information access, justice and good governance.
- **Appeals:** Governments have made effective governance systems to manage appeals electronically to promote transparency.

The list of these elements is not exhaustive. These elements show the adaptation of technology by nations, openness, accountability of state instrumentalities, effectiveness in RTI and public participation in this digital era.

VII. RTI VIS-À-VIS RIGHT TO PRIVACY

The conflict is also evident in comparing different RTI laws regarding RTI and the right to privacy. It is difficult to prioritize one right over the other. Different nations have different approaches to harmonizing these two, which can be summarized as follows:

- **India:** India has acknowledged both rights leading to conflict between balancing these rights. It is addressed by the Digital Personal Data Protection Act, 2023¹⁴. Section 44(3) of the 2023 Act amends Section 8(1)(j) of the RTI Act, 2005. Section 8(1)(j) is an exception that personal information which has (i) no relationship to public activity; (ii) information requested has no relationship to any public interest; or (iii) information requested can lead to infringement of privacy of an individual unless such disclosure is

¹⁴(NO. 22 OF 2023)

justified in larger public interest. The DPDP Act seeks to take away these exceptions of disclosure of information i.e. the amendment seeks to exempt all personal information. However, this is largely criticized because it will weaken the RTI Act, restrict transparency, and promote corruption.

- **US:** The US laws do not explicitly recognize the right to privacy but the courts have acknowledged it by legal interpretations by measuring RTI against an individual's right to privacy.
- **European Union:** The General Data Protection Regulation (GDPR) regulates and creates between the processing of personal data in the EU and RTI.
- **South Africa:** The Constitution has a provision for the right to privacy. The courts try their best to harmonize the public interest against privacy issues.
- **Brazil:** The Brazilian Constitution recognizes both the rights. However, its RTI law focuses on the requirement to prioritize the privacy rights of individuals while granting information.
- **Canada:** Canada has comprehensive laws to protect privacy including the Personal Information Protection and Electronic Documents Act (PIPEDA). The RTI laws exempt disclosure of such data that can infringe on an individual's privacy and harmonization between them has been recognized.
- **Mexico:** Individual's right to privacy has been recognized by the Mexican Constitution. However, the right to access information can be extended only to a certain level where an individual's privacy is not affected.

In a nutshell, all the above countries consider both rights to be fundamental but the scope of RTI cannot extend beyond the right to privacy of individuals. Both these rights are harmonized by the courts while deciding a case according to the specifics of each case.

VIII. PROPOSALS FOR IMPROVEMENTS TO THE RTI IN THE DIGITAL AGE AND CONCLUSION

The legal system regarding RTI in the digital age needs various improvements to transform according to the dynamic technological advancements to nurture transparency and accountability in governmental activities. The following are some suggestions for improving RTI in the digital age:

- **Policy Reformation:** RTI laws need reformation, as they were legislated before technological modernization. Reforms should prioritize promoting the electronic filing

of requests, tracking the status and disclosing information digitally. User-friendly and standard online portals should be streamlined to make them accessible for everyone to consider different levels of digital literacy among individuals.

- **Application and Enforcement Mechanism:** There is a need for open data initiatives and amendments to RTI laws, fostering digital literacy among public servants and citizens. Specific departments should be designated for managing electronic information requests, ensuring responses and enhancing accountability through regular data transfer process audits. Additionally, implementing online feedback mechanisms enables citizens to report grievances in RTI request processing. These measures collectively strengthen the application and enforcement of RTI laws in the digital realm.
- **Easy Accessibility:** Efficient RTI request filing and tracking should be enabled through user-friendly mobile apps and websites, ensuring easy access anytime, anywhere. Government portals should facilitate accessibility standards for the retrieval of accurate information, promoting transparency.
- **Digital security and Privacy:** Digital signatures for verification and strengthening data encryption are essential steps to ensure digital security and privacy. Cyber security measures and data privacy guidelines can be followed for data protection and building trust in online RTI platforms.
- **Development of Tools and Systems:** Applicants should be provided with data analytics tools for simplifying complex government datasets and discovering trends. To safeguard sensitive information during public disclosure, automatic redaction tools must be used. A proper system for the management of digital records should be initiated to ensure the availability of electronic records.
- **International Collaboration and Public Participation:** Governments can collaborate with international institutions and other countries to exchange best practices for the implementation of digital RTI mechanisms. Feedback can be given by individuals, activists and civil society organizations to formulate new policies and changes can be made accordingly.

In conclusion, this research paper focuses on the balance between RTI laws and their transformation in the digital age globally. The evolving nature of technology has created both opportunities and challenges for nations in granting RTI to its citizens. A combination of democratic ideals and technical innovation is the RTI in the Digital Age.

The comparative analysis in this research paper has shown that there are a few common

elements on which RTI laws of different countries are based. There is consistency across the globe in the transformation of RTI laws and regulations. Online portals, online request filing, digital replies, open data initiatives, data visualization, digital signatures and improved data protection are all considered to be indicators of RTI's acceptance in the digital age.

The analysis of the RTI laws in the digital age shows their importance in making the government more transparent and accountable. However, RTI in the digital age comes with its own set of challenges. Harmonizing RTI and privacy protection is still a complicated process. Digitization has issues related to data protection, digital literacy and accessibility to digital infrastructure. The adaptation of RTI in the digital age improves the overall efficacy of process, transparency and accessibility for citizens, by ensuring good governance.
