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**SC VERDICTS & AMENDMENTS OF 2019: HAS THE RTI
TURNED INTO A TOOTHLESS TIGER?**

“What is really needed to make democracy function is not knowledge of facts, but right education.” - Mahatma Gandhi

Introduction:

The Right to Information Act or the RTI Act was enacted in India in the year 2005. The Parliament of India passed this law on June 15, 2005, and it officially came into force from October 12, 2005. This act sets out the procedures and rules or a set course of action regarding the right to information of citizens, which we were lacking before this act came into force. The RTI Act replaced the former Freedom of Information Act, 2002. Right to Information is the legal right of each and every Indian citizen. This act prescribes a particular procedure in order to access any information that a citizen wants, which helps this act to consolidate the Fundamental Right of ‘freedom of speech’, which has been guaranteed to every Indian citizen by the Constitution of India. RTI is an implied Fundamental Right, since it is implicit in the Right to Freedom of Speech and Expression given under Article 19 of the Constitution of India. The Right to Information Act aims to empower the citizens of the country, make our democracy stronger, suppress corruption and to promote transparency and accountability in the working system of every public authority.

Applicability of the RTI Act:

This act is applicable to the whole of India covering all the constitutional authorities including executive, legislative and judiciary; any institution or body constituted or established by order or notification of appropriate government which includes bodies owned, substantially-financed or controlled by government. However, private bodies do not directly fall within the ambit of the Act. Two major bodies, which are Central Information Commission

(CIC) and State Information Commissions are mainly responsible for governing the RTI in India. The Right to Information empowers the citizens to seek for such information which is useful to them by just paying a very nominal amount. The RTI Act basically is a powerful tool at the disposal of the citizens of the country as any citizen may request information from a public authority which mandates the authority to reply to the request expeditiously or within thirty days. If the information involves or concerns the life and liberty of a person, it is necessary to provide the information within 48 hours of making the request.

The citizens of the country form the basis of a democracy. It is very important that the process of accessing any records remains transparent and has minimum hassles since it is a tool to empower citizens and to maintain as well as strengthen our democracy. Every day the courts take a number of decisions that are of high significance to the citizens as it affects their daily lives in many ways. The citizens need to be aware of such decisions and in course of their self-awareness if they need access to any particular court record or decision, it should be encouraged and promoted, rather than restricting them and expecting them to follow such things blindly. Transparency of the judiciary is a necessity. For example, commercial lawsuits can be great sources to learn how the commercial transactions in our country take place. The parties involved in such lawsuits reveal a lot of information which is highly relevant and significant for stakeholders like citizens, investors, shareholders, etc.

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Recent SC Verdict:

In the recent verdict given by Supreme Court on March 4, 2020 in the case of *Chief Information Commissioner v. High Court of Gujarat and anr.*¹, Supreme Court ruled that citizens or any third person can no longer access the court records under the RTI Act. Any information on the judicial side is now to be obtained only through the mechanism provided under the provisions and rules laid down by the respective High Courts and RTI Act shall no longer be of any use in this particular field. When earlier a RTI could be requested in order to receive any such information that may be of any use to a citizen, which was a step to promote judicial transparency is now restricted by a number of guidelines, provisions and rules which simply slows down the procedure thereby reducing efficiency on part of the administration. In addition to this, the High Courts in most places allow only the parties of a case to access the court records of that particular case. There is a great chance that any third person may not be

¹ Civil Appeal No(s).1966-1967 of 2020 (Arising out of SLP(C) No.5840 of 2015)

able to access these records at all, even if it is of great importance to that person. While filing an RTI, the person requesting it was not required to specify the reason for his request at any point of time thereby totally minimising the scope of any sort of administrative discretion; but as per the new provisions, any particular High Court may provide access to court records to a third party only if they are able to justify their need for the record and if the High Court may find their need convincing enough to give such access.

Changes Encountered after the Verdict:

In order to request an RTI, the online portal of RTI can be used or a post can be sent with the fee which is very nominal through a postal order. The procedure is quite simple and facilitates majority of the citizens to file an RTI by themselves, thereby not using any help from outside and also gives them an option in choosing the course of action according to their convenience. The objective of the procedure is to maintain the simplicity minimise inconveniences. But the judgement turns the tables as now to access court records, the provisions laid down by High Courts and Supreme Court require the physical presence of the person in order to file an application for requesting such a record with the Registry. It also includes a hearing before a Judge, where the person requesting the record is required to specify the reason for accessing the record. If the person is able to convince the Judge that the requirement of the record is absolutely necessary, only then he may be able to get such access. It is totally the discretion of the Judge whether to provide the record or not. This requisite in the procedure only leads to the emerging of logistical constraints. Presently in our country, it is extremely difficult for ordinary litigant to even enter the court premises since a number of hurdles come in his way. In such a scenario, it is logistically and practically impossible for a citizen to file an application with the Registry and then follow the due procedure of the hearing which has to be done after immense preparation. In addition to this, the court has been given complete discretion whether the record may be provided to the applicant or not, based on the relevance of the record to that requester. There is a great possibility that the record may be of great importance to the applicant which the court may not see as a reason to provide the record, thereby denying his request. This is nothing but an obstacle in maintaining and promoting judicial transparency.

Problems Arising Because of the Verdict:

This verdict also hinged on Section 22 of the RTI Act, which states, “**Act to have an overriding effect-** *The provisions of this Act shall have an effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law from the time being in force or in any instrument having effect by virtue of any other law other than this Act.*” It had been observed at the time of drafting the Right to Information Act that this particular act might later conflict with other laws. The makers of this act wanted to ensure that no legislation overrides this provision, which is why they clearly stated and which can be interpreted that this Act shall override any other law or provision to the extent of inconsistency of the law or provision with the act. Despite this section, in this verdict the exact opposite of the interpretation has been held. The court in this case, cited an obscure service law precedent which claims that a *non-obstante* clause, which here would be Section 22 of the RTI Act, cannot overrule a special law. However, this precedent was not applicable to the facts of this particular case. In addition to this precedent, the court also added that this particular section (Section 22), could not be interpreted in a way that implied repealing any other laws since it had been clarified earlier that the RTI Act is only repealing Freedom to Information Act, 2002, the main reason for repealing which was that the Freedom to Information Act had the exact same objective as the Right to Information Act. Sections like Section 22, specifically, *non-obstante* clauses play the role of identifying the different conflicts arising between different laws. This simply leads to discouraging and crushing the spirit of the RTI Act.

At this point of time the question of the confidentiality of the records arises which is completely justified. But the mere reason that maintaining the confidentiality of court records is not enough to justify this huge limitation on accessing such records. It is a clear and well recognised principle that all the judicial proceedings shall take place in the open court unless they are prohibited to do so by law for reasonable purposes. When on one hand the court bans citizens from accessing court records under Right to Information, on the other hand it is completely legal for a person to sit in court and take notes during an ongoing pleading while a lawyer is narrating the contents of his pleading. This is clearly a step which is increasing the level of difficulty in accessing such records in a much simpler and practically feasible manner.

Inconsistency of Laws:

It has been explicitly stated that wherever the situation of the RTI Act being inconsistent with any other law arises, the provisions of the RTI Act shall have an overriding

effect on the other law. This verdict clearly defies this provision. The act clearly overrides the new requirements laid down for seeking the information related to court records. This also implies that the act shall override the High Court Rules to the extent of inconsistency in requiring the specified reasons for accessing the information with an application. The judgement has nowhere referred to Article 225 of the Constitution of India. Article 225 of the Indian Constitution states, *“Jurisdiction of existing High Courts- Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court including any power to make rules of Court and to regulate the sittings of the court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.”* This article plays a very significant role as it clarifies that the rules of the court are subject to provisions of valid law made by the Parliament. This implies that the scope of the rules of Gujarat High Court is limited by provisions of the RTI Act. If RTI includes the records of court proceedings in its bounds of ‘information’, then the action of asking for a justified reason to access the records stands completely pointless. Article 225 of the Constitution of India does not permit the rules of the court to require the requesters seeking access to court records to be justified with any reasons. Here as well, the RTI Act shall override such rules.

Inference Drawn:

This verdict has led to the raise of numerous concerns. It is being feared that this judgement is a very bold step which might promote a number of other such authorities to adopt similar rules and thereby suppress the Right to Information Act. However, this is an unlikely consequence, the judgement plays a small role in increasing the threats posed to our democracy. It further makes the RTI Act a toothless tiger and increases the opacity of the judiciary rather than making it transparent. The judiciary is not directly liable or answerable to the public unlike the executive and legislature. The judiciary can neither be voted into power, nor out of it. The only thing that it is accountable for lies in the judgements it delivers. In a democracy, where the court’s decision is seen as final and binding and which influences the people’s lives in many ways, it is a necessity that the public is able to keep in touch with its actions and that too with the minimum amount of difficulties. People look up to the judiciary’s actions and decisions in order to be acquainted with the legal reasoning and ideologies behind

any decision. The maximum the citizens get to be a part of the country's working system, the better it is for a democracy.

“Let us never forget that government is ourselves and not an alien power over us. The ultimate rulers of our democracy are not a president and senators and congressmen and government officials, but the voters of the country.”- Franklin D. Roosevelt

