

Right to Information and Good Governance.
Professor. Doctor. Sairam Bhat
Department of Law
National Law School of India University, Bengaluru
Lecture No. 19
Salient Features of the RTI Act - I

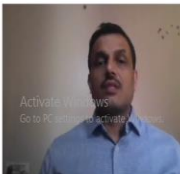

Ladies and gentlemen welcome to the next module that will deal with the salient features of the Right to Information Act 2005. As we know this law, though enacted in the year 2005 is a very small legislation having 31 sections, it was designed to be small and simple, so that it can be easily comprehended by a common man. And it can be used by the common man and he can actually get the entitlement to information under this legislation.

And hence it avoids complications, complexities of legal terminology that is normally part of other legislations. And hence it is a very simple and well drafted legislation if you may say so.

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Basic

- The Right to Information Act provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authority. Moreover, this Act seeks to provide a workable and balanced formula which makes available information that ought to be public and at the same time protects certain information which must remain confidential in order to protect legitimate governmental functions.



Now, some of the salient features is the Right to Information act can be discussed for the fact that the purpose this was to ensure the informed citizenry. And I think an informed citizenry plays a very vital function in a democratic society. What informed citizenry would do is to check corruption and rule the government accountable to the governor. In fact, the purpose of the right to information is stated to serve two fold purposes. What are these two fold purposes?

First is that, under the Right to Information Act 2005, it was the idea to actually bring about an

effective legal system to bring the Right to Know into effect. As we have seen under chapter of constitution and RTI, the Right to Information or the Right to Know was constitutionally enshrined under Article 19(1)(a).

Now, to exercise this right one would actually have to go to the judiciary or file a written petition. There was no mechanism before the RTI act 2005 through which a citizen can actually directly go to the public authority and seek this information. And hence you would notice that though the right to know was part of the constitutional right, though this was a fundamental right that the citizens were entitled to, the mechanisms to exercise these rights were not proclaimed and not there. And hence what did the right to information act 2005 attempt to do is to first define what the right to information is.

To define what is information, to define the role of public authorities, to follow the kind of duties that were required, to know the limitation of this right which was probably before in the constitution. The limitation under article 19(2). However, the limitation in the RTI Act is probably something that is kept in section 8 as well. I think these were some of, you know, the factors that the RTI has enabled and hence the first purpose of that the Act entitles us is the purpose of putting the right to know into practice. And putting a system in place to exercise this right to do

So, effectuating the right to know under 19(1)(a) of the constitution is a purpose that RTI act tends to achieve. Second, I think through some of the cases that we saw in the constitution right to know jurisprudence we were mostly concerned with the state, trying to share information either to the press or probably giving information to the detentues. And hence to bring about greater access to information among public institution is the purpose that the right to information act tends to go about achieving.

And hence in order to maximize disclosure and minimize exemptions, I think the RTI Act is a very fine piece of legislation and it allows citizen's clarity of thought about what is available and what is not going to be made available. The Right to Information Act provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authority. This is, I think, a purpose that the RTI wants to achieve. One is to look at the practical regime, the regime about the right of the citizens has to be defined. The duty of the public authority also has to be defined.

So, I would say right to information act there are two parties, one is on the demand side where the

citizens demand for information. The other is the supply side in which the public authority through the PIO is supposed to supply that information. So, this demand and supply has to be met and they have to be bridged and RTI actually lays down the article regime on the demand and the supply side.

Probably on the demand side if there is excessive demand probably RTI act will have to moderate it. On the supply side if there are any shortfalls I think the RTI also has to rectify if there are any defects in the supply side as well. Moreover, this act seeks to provide a workable and balanced formula which makes available information that ought to be public. And at the same time protects certain information which will remain confidential in order to protect the legitimate government functions. As we have seen in the constitution no freedom, no right is an absolute right. There are reasonable restrictions on every right and every freedom.

However, under the statute, under the Act of 2005, though the basic purpose is to look at the openness, the basic purpose is to look at transparency, the basic purpose is to make information available to the citizen and at the same time you have to balance the interest of the government in not try to disclose certain information which maybe prejudicial to the national interest or to the interest of any third party as the case may be.

So, to set out that practical regime of what can be shared and what cannot be shared? I think the RTI Act is a very important legislation that lays the rules of the game especially in terms of information seeking vis-à-vis the government.

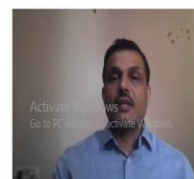
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Preamble

- The Preamble of the Act spells the purpose of the RTI Act as under:
 - a) for **setting out the practical regime** (to provide systematic and concrete mechanism to implement the concept of right to know) of right to information for citizens;
 - b) to secure access to information under the control of public authorities;
 - c) to **promote transparency and accountability in the working of every public authority**;
 - d) to ensure informed citizenry and transparency in governance;
 - e) to **curtail corruption and to hold Government and their instrumentalities accountable to the governed**;
 - f) to harmonize conflicting public interests in disclosure and exemptions;
 - g) constitution of a Central Information Commission and State Information Commission and for matters connected therewith or incidental thereto.



The Preamble of the Right to Information Act is the starting point for us to discuss the salient features of the right to information act. And when you look at the Preamble, very often than not we think Preamble is not part of the statute, it is probably the opening statement, it is also probably the statement of object and reasons. Probably many of us think that the Preamble is a visionary document but not something that needs to be interpreted within the act or within the statute itself. Now Preamble is often an integral part of the statute.

Whenever there is any confusion or dilemma about the meaning or interpretation of the provisions of the law or provisions of the main statute, it shall be tested on the touchstone of the Preamble. Just as the basic features of the constitution are unalterable and form the basis of interpretation of law, the Preamble of an Act should be understood to arrive at the objectives of the Act. And hence, the Preamble actually lays the path through which the provisions of the act have to be understood, have to be interpreted, have to be implemented.

It is also suggested that what the Act was intended to deal with, if the language used by the parliament is ambiguous, the court is permitted to look into the Preamble for construing the provisions of the Act. And hence if there are any difficulty in understanding any provision of any legislation, the courts usually look at the Preamble, look at the object and purpose of the legislation to bring a far more greater clarity on the provision of the law and to look at its effective implementation.

So, the Preamble being the vision document actually helps in implementation of those provisions which were not clear, which have more than one interpretation and which maybe construed as hindering the very effective implementation of that registration. And hence, the help of the Preamble is often taken and very often they not be considered Preamble to be an integral part of the statute. Like the Preamble in the constitution is the integral part of the constitution, the Preamble of any other statutory legislation is also integral to the same statute.

The Preamble of the RTI Act spells the following purpose; first it has the purpose of setting out the practical regime which means to provide systematic and concrete mechanism to implement the concept of the right to know. Before 2005, probably it was in the concept. It was something that is unenumerated under article 19(1)(a). It was something that the courts read into the constitution. And

hence, it was subjective to the litigants who were seeking the intervention in the court. And it was not having any broad application also along.

And hence I think the Preamble very clearly states that the purpose of the Right to Information Act is to set out that practical regime to provide for the systematic, concrete mechanism to implement the concept of the right to know, to the right to information, to the citizens of this country. Second, I think the Preamble's purpose is to secure access to information under the control of public authorities. Very clearly, the right to information is against public authorities only and hence to secure that kind of an access what is the process to seek that information?

What is, how are you going to be given that access? It is very important and critical. Is it only sharing of information or is it some kind of an instruction that can also be carried upon? So, the process of accessing the information is something that the RTI Act also lays down. And I think that is a very important mechanism that has been implemented under this legislation. Three, I think it is very important that the purpose of the Right to Information Act is to promote transparency and accountability in the working of every public authority. This is undoubtedly the most important cause for enacting RTI Act and I think it is one of the purposes that the RTI act finally tends to achieve.

An open government, transparent government, an accountable government is a need of the day. And in a democracy it is the duty of every public authority to actually show that kind of transparency and accountability that is necessary in its functioning so that citizens gain the confidence of these organizations and they know that the tax payers' money is rightly utilized. And finally, transparency and accountability only will probably help cleanse the system, reduce corruption, and probably make a better society or developed society.

I think promoting transparency and accountability, promoting an attitudinal change is something that RTI has attempted to achieve. And it is a significant contribution and the Preamble actually states that in very clear terms. The fourth purpose that the Preamble spells out is to ensure that and inform the citizenry. I think, what does information do? An information actually helps a citizen gain that kind of information that is necessary for him to exercise his right to franchise. It supplies the citizen with the sense of information to know that the government is working and working for his benefit.

It is bringing about informed citizenry whereby the society trusts the government and does not

distrust the government of the day. And hence, the informed citizenry is one that gets access to government information even without asking for it. So, proactive disclosure of information is something that the RTI Act attempts to achieve. And it informs the citizens about the way the public authority is functioning and the way the money is actually utilized so that there is a sense of accountability that is ensured in governance as one. Obviously, if the first 4 are effectively done, this would curtail corruption and hold the government and its instrumentalities accountable.

So, curtailing corruption is one of the mechanisms and you can only curtail corruption if there is an open government. You can only curtail corruption if the citizen have the right to ask the pertinent questions about what the public authority is doing. How is the public authority functioning and how is the tax payers' money being rightly utilized? I think the indirect effect of RTI, please note RTI is not anti-corruption. I think the prevention of corruption and the provisions of Indian Penal code, the Money Laundering Act, so on and so forth probably are legislations that curtail corruption directly.

However, RTI Act has an indirect impact on corruption. It has a kind of an indirect effect in trying its best in bringing about an open system which will probably then help to bring down corruption in this country and probably through that we may move up in the transparency index. And we may also move up in the happiness index as the case maybe. If corruption has you know curtailed I am sure growth is something that you can ensure and the growth would entitle equal development model in this country for all citizens. And equality of development is something that we are all entitled to. We do not expect and that is what the constitution in Article 39 clearly says.

That wealth should not be concentrated in the hands of few. I think equal distribution of wealth is what the constitution aspires for. Also the Preamble tries to harmonize conflicting public interests in disclosure and exemptions. Which means that there has to be some kind of consistency about what information should not be made available and what information is necessary in terms of public disclosure. And I think this is where you notice that the Preamble very clearly says that there are competing claims between public interest to disclose and also the public interest of exemptions. I think there needs to be a balance between what can be shared and what should not be shared.

I think section 8 of the Right to Information Act has very clearly spelt out those kinds of information that shall not be shared. Section 9 also adds to provisions of section 8, and it very clearly depicts the fact that certain information is not part of the RTI regime at all. Finally, I think while we are talking of setting out the practical regime, the Right to Information Act has created a quasi judicial body, a body that will adjudicate grievances that arise from the right to information

act. It is empowered and with that empowerment you will notice we have constituted a central information commission and state information commission to deal with matters connected with an incidental that arise from this legislation.

And hence, any kind of grievance that arises from the Right to Information Act need not go to either to the civil courts, need not go to any other tribunal. It will be going to a specialized tribunal that will decide and adjudicate upon these matters. And they will be called as the information commissions. You will notice that in certain other countries such kinds of commissions are called the transparency commission as well. So, the purpose of this publishing the information commission is to ensure transparency to ensure accountability, to ensure that the right to know is being protected to balance the interest of disclosure as against exemption and to bring about a system which can curtail corruption and secure informed citizenry in this country.

With all these purposes I think the establishment of the information commission is probably one of the most significant aspects that the Preamble spells out as the purpose of enacting the Right to Information Act.

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The Preamble of the RTI Act provides that

- 1) whereas the **Constitution of India has established democratic Republic**; and
- 2) whereas **democracy requires an informed citizenry and transparency of information** which are vital to its functioning and also to **curtail corruption and to hold Governments and their instrumentalities accountable** to the governed; and
- 3) whereas **revelation of information in actual practice is likely to conflict with other public interests** including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of **confidentiality of sensitive information**; and
- 4) whereas it is **necessary to harmonise (coordinate) these conflicting interests** while preserving the paramountcy of the democratic ideal;
- 5) Now, therefore, it is **expedient (necessary) to provide for furnishing certain information to citizens who desire to have it.**



The Preamble of the RTI Act provides that whereas the constitution of India has established a democratic republic and whereas democracy requires an informed citizenry and transparency of information, which are vital to its functioning and also to curtail corruption and to hold governments and its instrumentalities accountable to govern and whereas the revelation of information in actual practice is likely to conflict with the other public interests including efficient operation to the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information.

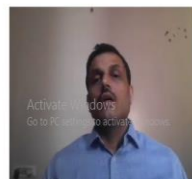
The Preamble also says whereas it is necessary to harmonize, that means to coordinate these conflicting interests while preserving the paramountcy of the democratic ideal. Now therefore, it is expedient, necessary to provide for furnishing certain information to citizens who desire to have them. So, I think you will notice these are some of the methods, words that are used in the Preamble. And this is how the Preamble of RTI looks into. In terms of principles that the Preamble enshrines in the Right to Information Act.

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Importance of Preamble in interpretation of Statute



- The Supreme Court held in *Bhatia International v. Bulk Trading S.A. & Another*, AIR 2002 SC 1432:2002 (2) SCR 411, that in interpreting a statute, a construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. In selecting out of different interpretations **the Court will adopt that which is just reasonable and sensible** rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice.



If you notice the importance of Preamble in the interpretation of statute. So till now what has been discussed as Preamble of the RTI. What is its relevance? What is its importance? What has been said in the last two slides be ever important in the interpretation or understanding of RTI. I think the answer to that is affirmative and absolute yes. Now to note that you should look into this case called Bhatia International versus Bulk Trading. It is a Supreme Court judgment of 2002 wherein the Supreme Court says something like this.

It says that in interpreting the statute, a construction that results in hardship, serious inconvenience, injustice, absurdity, anomaly or which leads to inconsistency or uncertainty and friction in the system with the statute purports to regulate has to be rejected. And preference should be given to the construction which avoids such results. If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions.

In selecting out of different interpretations the court will adopt that which is reasonable and sensible rather than that which is none of those things. As it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. In Bhatia international it was very clearly stated that if the construction of any statute results in inconvenience, injustice or inconsistency or uncertainty or friction, then you should avoid such kind of interpretation and while you avoid such an interpretations the objectives lead down in Preamble must be of guiding head.

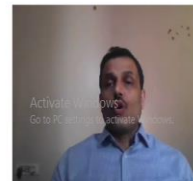
You must know the purpose for which the RTI Act has been enacted. The reasons, the vision that it

attempts to achieve and when those reasons are very clear you know whether a section and its interpretation should go in this way or in the other way. So, I think the court should adopt the interpretation of the statute which is reasonable, which is sensible, which is just and which reflects real and true meaning and intention of what is stated in the Preamble.

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The preamble is the soul of the Act.

- There can be no doubt that the court must construe the preamble as a key to the construction of the statute.
- It is a settled rule that the preamble cannot be made use of to control the enactments themselves where they are expressed in clear and unambiguous terms. The Earl of Halsbury observed that: "Two propositions are quite clear, one that a preamble may afford useful light as to what a statute intends to reach and the other that if an enactment is itself clear and unambiguous, no preamble can qualify or cut down the enactment."



The Preamble is considered the soul of any Act. There can be no doubt that the court must construe the Preamble as a key to the construction of the statute. It is a settled rule that the Preamble cannot be made use of to control enactments themselves where they are expressed in clear and unambiguous terms. Now the Earl of Halsbury observed that, "Two propositions are quite clear, one that a Preamble may afford useful light as to what a statute intends to achieve. And the other that if an enactment is itself clear and unambiguous, no Preamble can qualify or cut down the enactment."

So, Preamble is used as a guiding light, it is used to interpret a statute in the right manner. However, the statute is clear and not unambiguous then the Preamble will not be used to qualify or cut it down. This is the intention of the Preamble, this is the purpose of the Preamble and generally the Preamble is the part of the statute and hence every discussion of any Act starts with the discussion on what the Preamble attempts or intends to achieve from the different provisions in the legislation itself.