

PERSPECTIVE ON RIGHT TO KNOW

Written by **Dewanish Vashishth**

3rd year BA LLB student, School of Law, Christ University, Bangalore, Karnataka

When the public's right to know is threatened, and when the rights of free speech and free press are at risk, all of the other liberties we hold dear are endangered.

-Christopher Dodd

Article 21 of the Indian Constitution, states- “No person shall be deprived of his life or personal liberty except according to a procedure established by law.”¹

Article 21 essentially secures 2 rights which are-

1. Right to life; and
2. Right to personal liberty,

and is considered to be the heart of constitution. It forms the foundation of the Indian laws, and is also considered as a progressive provision in our constitution. This right can be claimed by every person, citizen or non- citizen. Even a foreigner to the land of India can claim this right, however, a foreigner is not entitled to reside in India as mentioned in article 19(1)(e) of the constitution.

According to J. Iyer, article 21 has been characterized as- “procedural *magma carta* protective of life and liberty”. According to J. Bhagwati, article 21 “embodies a constitutional value of supreme importance in a democratic society.” ‘Life’ in article 21 does not only mean the physical act of breathing or mere animal existence. It also includes the right to live with dignity, right to pollution free environment, right to health, right to livelihood, right to know, etc. Right to Life has a wide interpretation and covers the essential aspects which form the basic requirement for a person to live or make his life worth living.

The correspondences to article 21 are the Magma Carta (1215), article XXXI of The Constitution of Japan, Article 40(4) of the Constitution of Eire and The Fifth Amendment to the American Constitution.

¹ Article 21 of the Indian Constitution.

In the case of *Kharak Singh v. State of Uttar Pradesh*,² the SC held that the term 'life' does not only mean mere existence but also extends to the aspects through which life can be enjoyed and is made worth living. Further in case of *Sunil Batra v. Delhi Administration*,³ observed and held that right to life includes right of living a healthy life and enjoying all the faculties of human bodies not only healthy living is included but it also comprises of the right to protect one's tradition, culture and heritage which gives meaning to life. These include right to sleep, right to repose, etc.

RIGHT TO KNOW

There is a saying that information is power, and in a society, by sharing information among the people, there is an involvement of participatory governance. Government works in secrecy, however, it should be noted that there must exist a limit to secrecy and information which are relevant and beneficial for the people must be given. There must exist transparency in administration. Also, when people are given information, they can actively participate in the decision making process, corruption in the administrative bodies is minimized and this will also ensure that every public officer is working in public interest. Right to know can be claimed under article 21 of the Indian Constitution.

Since there were many new dimensions and interpretations to right to life under article 21, the apex court, in the case of *R.P. Ltd. v. Proprietors Indian Express Newspapers, Bombay Pvt. Ltd.*,⁴ gave the observation that if there needs to be an effective function of democracy, the people must be given right to know and right to be informed about the conduct of affairs of the state.

Right to Know: Importance in a Democracy

Right to know plays a very keen role in the development of democracy and it very essential as it makes the government transparent, open, and accountable. Since, in a democracy, the government is elected by the people and thus are accountable to the people and the people have full rights to keep be informed about the policies and decisions that are being taken by the government. It is their right to know how they are being governed. It through the right to know, people are aware and empowered and the government is also transparent. In democracy direct participation of people is necessary, and the citizen cannot participate unless they are well aware of the issues to

² AIR 1963 SC 1295

³ AIR 1978 SC 1675

⁴ 1989 AIR 190, 1988 SCC (4) 592.

which they are called onto to express. In case there is misinformation, disinformation or no information among the people, there is no meaning of democracy. This also leads to monopoly of information by public or private organization. And in order to avoid this monopoly of information, it becomes the government's duty to provide its people with information. In reference to the same, Henry Clay once quoted that- "*Government is a trust, and the officers of the government are trustees. And both the trust and trustees are created for the benefit of the people.*" Information forms a crucial part of good corporate and state governance.⁵ If the government keeps secrecy and provides no information or very less information to its people, it results into corruption, inefficiency and wastefulness. This is not only applicable for the government or public authorities, but also the private organizations must provide good information in order to maintain an open and efficient marketplace or products and ideas. The importance of right to information has been showcased in the Mazdoor Kissan Shakti Sangathan (MKSS) organization, as to how the ordinary people are empowered and living a better of life style. If people are aware or have information about the issues and policies which are being made by the government, they can meaningfully participate and contribute to the decision making process of government, especially the poor people can be empowered and improve their life. However, this law or right must not only be in books and constitution but the proper implementation is necessary for effective working of this right in a democracy. Again it is the responsibility of government for proper application of law.

Further in the case of *Essar Oil Ltd. v. Halar Utkarsh Samiti*,⁶ the Supreme Court linked the connection between right to know and article 21 especially in cases where the decisions of government may affect the livelihood and life of people. The case of *Essar Oil Ltd.* was reiterated in the case of *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers*, where it was held by the apex court that government proposals shall be conveyed to the citizens who are made responsible to protect the environment.

There exists two classifications under which right to know is categorized, which are- the general right to information and the voter's right to know. Right to information is included under article 19(1)(a), which is a fundamental right that can only be claimed by the citizens while right to know falls under the ambit of article 21, which can be claimed by citizens as well as non- citizens and also forms a natural right. It was in the case of *Essar Oil Ltd. v. Halar Utkarsh Samiti*, case

⁵ Dr. Richard Colland, *Access to Information: A Key to Democracy*, Carter Center, 2002.

⁶ [2004] 2 SCC 392.

that the Supreme Court considered Right to know is an offshoot of article 21 and not just article 19(1)(a).

VOTER'S RIGHT TO KNOW

The SC in one of the case gave the verdict that every voter has fundamental right to know the candidate's educational qualification. It is also the candidate's duty to provide the correct information to the public. This appeal came before the bench consisting of J. Anil R. Dave and J. L. Nageswara Rao, and was filed by Prithviraj Singh and Pukhrem Sharatchandra Singh, against each other and they challenged the judgment given by the High Court Manipur.⁷ The court further stated that the duty to give correct information about the educational qualification of the candidate is clearly laid down in the Representation of the People Act, 1951 and Form 26.⁸ In the case of *Union of India v. Association for Democratic Reforms*,⁹ the court held that it is the right of people (voters) to know about the background of the candidate.

RIGHT TO INFORMATION

The Right to Information Act was enacted in the year 2005, and was a big stepping stone for the accountability and transparency of our democratic institution. If there is an effective implementation of this right by the government, this would ensure good governance and would also eliminate or significantly decrease the level of corruption in the country. The term right to information means the freedom of people to have access to government information.¹⁰

Supreme Court and RTI

In *Bennett Coleman v. Union of India*, it was held that Right to Information¹¹ is to be included under Article 19(1)(a), which is right to freedom. The same was also upheld in the case of *State of UP v. Raj Narain*¹², where J. K.K. Matthew stated that there can be but few secrets the public has right to know every public act. Further in the case of *Secretary Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal*¹³, it was held that the Right to Freedom includes the right to impart information from electronic media. In case of *S.P. Gupta v. Union of India*¹⁴, it

⁷www.thehindu.com/news/national/Voter-has-right-to-know-candidate's-qualification-SC/article16435745.ece

⁸ www.livelaw.in/every-voter-fundamental-right-know-educational-qualification-candidate-sc/

⁹ (2002) 5 SCC 294 (SC).

¹⁰ <http://www.omnisonline.org/open-access/roght-to-information-act-in-indiaan-overview-2332-0761-1000207.php?aid=76441>

¹¹ AIR 1973 SC 106.

¹² 1975AIR 865.

¹³ 1995 SCC (2) 161.

¹⁴ AIR 1982 SC 149.

was described that all people have the right to know about every detail of public transactions and acts undertaken by the public functionaries. The right to information was recognized with the status of human right to make government transparent and accountable was further established in the case of *People's Union for Civil Liberties v. Union of India*.¹⁵

Right to Know: Interpretation in Article 19(1)(a)

As stated in the case of *S.P. Gupta and Bennett Coleman*, Right to Information comes within the ambit of Article 19(1)(a). Again in the case of *Express Newspaper v. Union of India*¹⁶, the fundamental principle which was involved in the instant case was people's right to know.

In *Ozair Husain v. Union of India*,¹⁷ the Delhi HC held that it would be a violation of Articles 19(1)(a), 21 and 25 if the customers are not told whether the food products, cosmetics and drugs consumed by them are of non-vegetarian or vegetarian origin.

Right to Know: Interpretation in Article 21

In the case of *R.P. Ltd. v. Proprietors Indian Express Newspapers, Bombay Pvt. Ltd.*¹⁸, gave the observation that if there needs to be an effective function of democracy, the people must be given right to know and right to be informed about the conduct of affairs of the state. The court also stated that it is the basic right which must be granted to every citizen. The right to information was recognized with the status of human right to make government transparent and accountable was further established in the case of *People's Union for Civil Liberties v. Union of India*.¹⁹ The court stated that there must be a participatory government. Further in the case of *K. Ravi Kumar v. Bangalore University*, the Supreme Court held that the public authorities, on the grounds of confidentiality, cannot reject or deny any documents or information to the citizens.

Other relevant provisions-

Further, right to know is not only traceable in article 19(1)(a) and 21 but also there are other provisions through which the right to information can be accessible. In article 22(1) of the Indian Constitution, every person is entitled to know on what grounds the person is being detained. And in article 311(2) of the constitution, a government servant has the right to know as to on what grounds he/she is being dismissed or reduced in rank or removed' and to be given opportunity to

¹⁵ AIR 2004 SC 1442.

¹⁶ [1962] 3 SCR 842.

¹⁷ AIR 2003 Delhi 103.

¹⁸ 1989 AIR 190, 1988 SCC (4) 592.

¹⁹ AIR 2004 SC 1442.

represent himself/ herself against the action being taken on him/ her. In the case of *Secretary General, Supreme Court of India v. Subhash Chandra Agarwal, 2010*²⁰, the court referred to S.P. Sathe and said that Right to know is not only confined to article 19(1)(a) but is also linked with article 14.

RTI in International Instruments-

In the UDHR, right to information has been given consideration. According to UDHR, “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”²¹ Similarly, according to article 19 of the ICCPR (International Covenant on Civil and Political Rights), “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”²² According to the European Convention on Human Rights, “everyone has the right to freedom of expression. This right shall include freedom to hold opinions, and to receive and impart information and ideas without interference by public authority and irrespective of frontiers.”²³ Further the commonwealth countries like US, Scandinavian and France also deal with similar provisions and laws on the right to information to the people and citizens in a country.

CONCLUSION

The right to know brings transparency and accountability of the government and administration and thus forms a very essential right that every citizen must be provided with. The constitution not only have the traces of Right to Know, in Articles 19(1)(a) and 21 but also in Article 22(1), 311(2) and Article 14. If there is absence of Right to Know, the Right to freedom of expression is meaningless. Information is essential for life and not only for dignity of an individual and also for proper democratic governance. If there is no information or lack of information or improper information, there are possibilities of wild rumors and false allegations against institutions. Moreover, the public must have information about the public facilities and policies that are being formed by the government for their benefit, and through information, the public can derive the maximum benefits of such scheme. Right to know forms an important aspect for self-expression as this enables people to contribute to the society. In order to have the desired effects

²⁰ AIR 2002 SC 2112.

²¹ Article 19 of UDHR.

²² Article 19 of ICCPR.

²³ Clause 1 of Article 10 of European Convention on Human Rights.

of the law (right to information), there must be an active participation of NGOs, media and other organizations to simplify the flaws that may have been got up in the functioning of the law.

