

RIGHT TO INFORMATION AND DEMOCRACY: LEGAL POSITION IN INDIA

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INTRODUCTION

Access to information is recognized as one of the indispensable human rights across the globe, therefore all the information under the domain of the public authorities should be accessible by the public. Everyone has the fundamental right of freedom of expression under Article 19 (1) (a) of the Constitution and this includes the right to seek, impart and receive information. Right to information means right of every citizen to access information of public interest, which is under the control of public authorities, in order to ensure transparency, accountability in administration and participation of common man in governance. "Information is needed by human beings to realize their full social, political and economic potential. It entails a spectrum of knowledge about various issues and involves different stakeholders from market to government. It is the key which helps make decisions. It is also a public resource collected and stored by government in trust for people."⁴⁵

Almost every society has made endeavors for democratizing knowledge resources by way of putting in place the mechanisms for free flow of information and ideas so that people can access them without asking for it. People are thus empowered to make proper choices for participation in development process.⁴⁶ Access to information is a foundational human right as without its protection, it is almost impossible for people to fully exercise their other rights and freedoms.

INTERNATIONAL TREND

International bodies have recognized that freedom of information is a fundamental human right and effective laws are needed to secure freedom of information. The right to freedom of

⁴⁴ I/c Principal, Jitendra Chaunan College of Law

⁴⁵ Varun Malik, *Right to Information in India: A Hallmark of Democracy*, International Journal of Management and Social Sciences Research (IJMSSR), Volume 2, No. 2, February 2013, retrieved from <http://www.irjejournal.org/ijmssr/Feb2013/8.pdf>, accessed on 26/05/2015

⁴⁶ M. M. Ansari, Right to Information and its Relationship to Good Governance and Development, <http://cic.gov.in/CIC-Events/IC-MA-LectureAtUNESCO-04122008.pdf>, accessed on 27/05/2015.

information is found in Article 19 of the International Covenant on Civil and Political Rights (1966). Article 19 (2) of ICCPR provides the everyone shall have right to freedom of expression which includes freedom to seek, receive, and impart information and ideas of all kinds regardless of frontiers, either orally or in writing, or in print, or in the form of art or through any other media of his choice, subject to certain restrictions in sub-clause (3) of the covenant.

Article 19 of the Universal Declaration of Human Rights (1948) provides for right to freedom of opinion and expression, which includes freedom to hold opinion without interference and of association,⁴⁷ where, Article 21 of the same declaration confers the right to take part in the Government of the country.⁴⁸ Article 13 (1) of American Convention on Human Rights, 1969 confers freedom of thought and expression and right to information and exchange of ideas.⁴⁹ Similar provision on freedom of speech and expression and imparting information contained in Article 10 of European Convention on Human Rights, 1950.⁵⁰

India is a signatory to the UDHR (1948) and the ICCPR (1966). As a party to these instruments it is under an international obligation to effectively guarantee the right to information. Further, under Article 51 (c) of the Indian Constitution states that the state is duty bound to foster respect for international laws and treaty obligations. This binds the Indian Government to create suitable conditions to implement international laws and obligations with respect to right to information.⁵¹

RIGHT TO INFORMATION AND CONSTITUTION

Part III of the Indian constitution deals with basic and inalienable rights termed as Fundamental Rights. These rights include the right to equal protection of the laws and the right to equality before

⁴⁷ Article 19 of UDHR-Everyone has right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

⁴⁸Article 21(1) of UDHR- Everyone has right to take part in the government of his country, directly or through freely chosen representative.

⁴⁹ American Convention on Human rights, article 13 (1) – Everyone has the right to freedom of thought and expression. This right shall include freedom to work, to receive and impart information and ideas off all kinds, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

⁵⁰ European Convention on Human Rights, 1950, Article 10-Everyone has a right to freedom of expression. This right shall include within it, freedom to hold opinions and receive or impart information and ideas without interference by public authorities regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

⁵¹ Article 51 (c) - Promotion of international peace and security- The State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples with one another.

the law, the right to freedom of speech and expression and the right to life and personal liberty. A remedy for enforcement of rights conferred by this part is provided under Article 32.⁵²

Article 19 (1) (a) guarantees the fundamental right to free speech and expression, which includes right to access information. Therefore, by virtue of this article right to information becomes a constitutional right as the right to free speech also guarantees right to receive and collect and information.⁵³ Freedom of speech and expression guaranteed under Article 19(1) (a) impliedly includes freedom and right to information as held by Supreme Court in *Bennett Coleman & Co. v Union of India*.⁵⁴ Article 51 A of the Constitution imposes certain duties upon the citizens and a citizen with full information is better equipped for the performance of these duties. Thus right to information is an inherent part of Right to Freedom of Speech and Expression under article 19(1) (a) and the Right to Life and Personal Liberty under article 21 of the constitution.

RIGHT TO INFORMATION ACT, 2005

Until 2005, a common man had no access to information held by a public authority. Freedom of speech and expression is guaranteed by the Constitution of India, nonetheless, citizen had no right to know about the public policies of the government, therefore, unable to participate in public policies, planning and its executions. Right to information has been recognized as constitutional right in all most all the developed and under developing countries in the world; nonetheless a separate and elaborate legislation was required to strengthen the same. Right to Information Act, 2005 (herein after referred to as 'the Act') was passed by the Parliament as Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority as stated in its preamble. The word 'information' has been

⁵²Article 32 - Remedies for enforcement of rights conferred by this Part- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.)

⁵³Article 19 (1) (a) - all citizen shall have right to freedom of speech and expression.

⁵⁴ AIR 1973 SC 106

defined under section 2(f) as any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. An inclusive definition of 'right to information has been given under section 2(j).⁵⁵

Section 3 of the Act declares that subject to the provisions of this Act, all citizens shall have the right to information. Section 4 of the Act imposes duty upon the public authorities to maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and disseminate information which should be cost effective, given or published in local language and release in most effective mode of communication. Section 5 of the Act deals with administrative mechanism under the Act and provides that all administrative officers of every public authority will designate Public Information Officers in order to provide information to information seekers within one hundred days from the commencement of this Act.

Section 6 of the Act requires the person seeking information to make a request in writing or through electronic means in English, Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to the Central Public Information Officer or State Public Information Officer, of the concerned public authority, and he is not required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Section 7 of the Act requires the PIO to provide information within 30 days of the receipt of the request and within 48 hours if the information sought for concerns the life or liberty of person, failing which it will amount to refusal of the request.

Section 8 of the Act lays down the list of the information which are exempt from the ambit of application of the Act and PIO is not obliged to give such information to anyone, thus right to get

⁵⁵ RTI Act 2005-Section 2 (j) right to information “means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to--

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

information under the Act is not absolute right but subject to certain exemptions as provided in the present section. Some of the such information are disclosure would affect the sovereignty and integrity of India, publication is expressly forbidden by any court of law, commercial confidence, trade secrets, cabinet papers including records of deliberation of the council of Ministers etc. Section 9 provides the grounds of rejection of request for information involving infringement of copyright subsisting in person other than the state.⁵⁶

Chapter III & IV, section 12 to 17 deal with the constitution, term of office, conditions of service and removal of Information Commissioner, Deputy Commissioner, State Chief Information Commissioner or State Information Commissioner of Central Information Commission and State Information Commission. Section 19 of the Act provides right to appeal and states that any person who does not receive any reply from PIO within specified time under sub-section (1) or (3) (a) of section 7 or aggrieved by the decision of PIO, may prefer an appeal to officer senior to PIO within 30 days from the expiry of such period or from the receipt of such decision. Section 23 bars the jurisdiction of Courts from entertaining any suit, application or other proceeding in respect of any order made under this Act except writ jurisdiction of the Supreme Court under Article 32 and High Court under Articles 226. Section 24 excludes the certain organizations from the ambit of this Act unless the information pertaining to the allegations of corruption or violation of human right in these organizations.

RIGHT TO INFORMATION AND DEMOCRACY

Transparency has increased than ever before in the working of the public bodies as a result of number of RTI applications. “Right to know is an important ingredient of participatory democracy. The concentration of political and administrative power in the management of the country’s economic and social resources led to wide spread corruption jeopardizing the universally acknowledged principles of good governance namely democracy, liberty and the rule of law. Democracy, in turn requires accountability and transparency through devolution of information and effective participation citizens in decision making”.⁵⁷

⁵⁶ RTI Act, 2005-Section 9 - Grounds for rejection to access in certain cases-Without prejudice to the provisions of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

⁵⁷ Dr. N. V. Paranjape, *Right to Information Law in India*, 1st edn. 2014, Gurgaon, Haryana, LexisNexis, p.2

The Right to Information (RTI) generally understood as the ‘right to access information held by public authorities’, is not just a necessity of the citizens; it is a precondition for good governance. To be specific, ATI makes democracy more meaningful and allows citizens to participate in the governance process.⁵⁸ An efficient representative democracy presupposes free access to information held by public authorities by making disclosure of information in the public domain. A truly democratic set-up requires an informed citizenry who is a direct stakeholder in every public authority’s action.⁵⁹ In *Reliance Petrochemicals Ltd. v Proprietors, Indian Express Newspapers Pvt. Ltd.*⁶⁰ Supreme Court observed that right to information is an essential ingredient of a participatory democracy.

When citizens are able to access timely and accurate information about their government's policy-making processes and resource allocation will be in a position to scrutinize the rationale and impact of these policies thus able to suggest alternatives more effectively suited to their needs. “Until the implementation of the Right to Information Act, it was not possible for ordinary persons to seek the details of a decision making process, which was found most often, as ineffective in terms of its outcome. It was, therefore, not possible to hold a free and frank discussion on issues of common concern of people or to fix the responsibility for any action. Such an era of darkness in policy planning, including monitoring and evaluation of schemes by affected persons, is over.”⁶¹

Every citizen of the country has a right to know the functioning of the government. A Right to Information will make sure that people can hold public bodies accountable without having to lay the entire burden on their elected representatives who are themselves often unable to get the information sought though all the resources are at their command. Right to Information is derived from our fundamental right of expression under Article 19. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. This has been accepted by various Supreme Court judgments, since 1977. All of us accept that the freedom of the press is an essential element for a democracy to function. It is worthwhile to

⁵⁸ P. Chandra Sekhar, *RIGHT TO INFORMATION IN STRENGTHENING PARTICIPATORY DEMOCRACY*, Global Media Journal - Indian Edition Winter Issue / December 2010, retrieved from <http://www.caluniv.ac.in/global-media-journal/WINTER%202010%20COMMENTARIES/Commentaries%204.pdf>, accessed on 27/05/2015

⁵⁹ Supra note 9 p. 2

⁶⁰ AIR 1989 SC 190

⁶¹ Supra note 2

understand the underlying assumption in this well entrenched belief. Why is the freedom of the media considered as one of the essential features for a democracy? Democracy revolves around the basic idea of Citizens being at the center of governance and a rule of the people.⁶²

Normally it is presumed that whatever is done by the government is done for the public for public welfare with optimum benefits from the funds used. However, the reality is other way round, as in recent times; there are many incidences of misuse, misappropriation and also careless use of public funds. In order to check it, a complete transparency in all public dealings is required. Transparency would go a long way in helping to expose the corrupt and allowing the honest to do their jobs without fear or favor. “When a government is transparent, there is less chance for corruption and more room for accountability. That’s why Freedom of Information Acts (FOIAs) is becoming standard good practice in the international arena. The RTI generally understood as the right to access information held by public authorities’ is not just a necessity of the citizens; it is a precondition to good governance. To be specific, ATI makes democracy more vibrant and meaningful and allows citizens to participate in the governance process of the country. In particular, it empowers ordinary citizens, especially those in rural areas”.⁶³

CONCLUSION

Right to Information Act is a social legislation to enable every citizen of the country to obtain information from the public bodies as a matter of right thus facilitated the common man to obtain information from the government agencies, thereby bringing transparency in governance and checkmate to corruption. Right to information brings transparency, ensures accountability, checks corruption and brings openness of public bodies in decision making. It facilitates public debate on Government policies, thereby preventing public authorities to act high handedly and arbitrary manner. RTI Act, 2005 has effect of dismantling the culture of secrecy and changing the mindset of bureaucrats and politicians and created conditions for taking informed decisions. Public offices and government agencies have masses of information, which are in public interest which should

⁶² Shailesh Gandhi, RIGHT TO INFORMATION – A TOOL TO IMPROVE THE GOVERNANCE OF INDIA, <http://www.bcasonline.org/policy/Article%20by%20Shailesh%20Gandhi%20for%20February%202006.htm>, accessed on 29/05/2015

⁶³ http://www.cuts-international.org/cart/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf , accessed on 27/05/2015

be published to make available to the public and it should be provided to the citizen if any specific information is sought by them.

Right to Information Act is in fact life line of any democracy, since it empowers the citizen, keeps check on corruption in public offices and brings greater transparency and accountability in government agencies. Last but not least what is more important is general awareness amongst people about the RTI Act so that it can be used for their benefit. Government officials should be sincere in disclosing information, which often threaten the applicant or refuse to provide information on some or other grounds.

