

RIGHT TO INFORMATION AND ROLE OF JUDICIARY IN INDIA: AN ANALYSIS

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Introduction

Right to Information is just like oxygen for democracy. It stands for transparency. Transparency in dealings, with their every detail exposed to the public view, which is meant for curtailing corruption in public life. Information would lead to openness, accountability and integrity. In democratic set up of Government, every citizen is having right to know regarding the functions of the government. Right to Information Act, is also meant for checking maladministration. So, the need for Right to Information has been widely felt in all sectors of the country and this has also received judicial recognition through some landmark judgments of Indian courts. As the transparency is the culture required for good governance, secrecy directly means disempowerment. Whenever, the executive interfered with the freedom of speech and expression through its executive orders or legislative measures, the press knocked the doors of justice in apex court and the resultant judgments paved way for the jurisprudence of information rights. The development of the right to information as a part of the constitutional law of the country started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging governmental order for control of newsprint, bans on distribution of papers etc.

Development of Right to Know

Followings are the cases through which right to know is developed. The landmark case in freedom of the press in India was *Bennett Coleman and Co v. Union of India*⁵⁰, in which the petitioners, a publishing house bringing out one of the dailies challenged in the government's newsprint policy which put restriction on acquisition, sale and consumption of newsprint. This was challenged as restricting the petitioner's rights to freedom of speech and expression. The Court struck down the newsprint control order saying that it directly affected the petitioner's right to freely publish and circulate their paper. The judges also remarked, "it is indisputable

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⁵⁰ AIR 1973 SC 106

that by freedom of press meant the right of all citizens to speak, publish and express their views” and “Freedom of Speech and expression includes within its compass the right of all citizens to read and be informed.” In *Indian Express Newspapers (Bombay) Pvt. Ltd v. Union of India*⁵¹, court remarked, “The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know.” Another development on this front was through a subsequent case *Manubhai D Shah v. Life Insurance Corporation*⁵² in which it was held that if an official media or channel was made available to one party to express its views or criticism, the same should also be made available to another contradictory view.

A Supreme Court judgment delivered by Mr. Justice Mathew is considered a landmark. In his judgment in the *State of U.P v. Raj Narain*⁵³ case, Justice Mathew rules:

“ In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security. But the legislative wing of the State did not respond to it by enacting suitable legislation for protecting the right of the people.

It was in 1982 that the right to know matured to the status of a constitutional right in the celebrated case of *S.P.Gupta v. Union of India*,⁵⁴ popularly known as Judges Transfer case. Here again the claim for privilege was laid before the court by the Government of India in respect of the disclosure of certain documents. The Supreme Court by a generous interpretation of the guarantee of freedom of speech and expression elevated the right to know and the right to information to the status of a fundamental right. On the principle that certain unarticulated rights are immanent and implicit in the enumerated guarantees.

The Court declared that the concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression

⁵¹ (1985) 1 SCC 641

⁵² AIR 1993 SC 171

⁵³ AIR 1975 SC 865

⁵⁴ AIR 1982 SC 149

guaranteed under Article 19 (1) (a). The Supreme Court of India has emphasised in the S .P Gupta case⁵⁵ that open Government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. In a country like India which is committed to socialistic pattern of society, right to know becomes a necessity for the poor, ignorant and illiterate masses.

The Apex Court in *Union of India v. Association for Democratic Reforms*⁵⁶, rules that voters right to know the antecedents including criminal past of his candidate contesting election for Member of Parliament of Member of Legislative Assembly was fundamental and basic for survival of democracy. Holding that “democracy cannot survive without free and fair elections, without free and fairly informed voters” the court said that the voter had the right to get material information with respect to a candidate contesting election for a post, which was of utmost importance in the democracy, was implied in the freedom of speech guaranteed by Article 19(1) (a) .

In *S.K.Kanitkar v. B.N.Municipal Council*⁵⁷, court held that the petitioner had the right to the inspection of documents and to the certified copies of building plan of the illegal and unauthorised construction in B.N.M.C.

The Apex Court in *Essar Oil Ltd v. Halar Utkarsh Samiti*⁵⁸, said that there was a strong link between Article 21 and the right to know, particularly where “secret government decisions may affect health, life and livelihood.” The case related to the grant of permission by the State of Gujarat to the appellants to lay the pipelines carrying oil through the Marine National Park and Sanctuary. The respondents, by way of PIL, had challenged the State decision and contended that government before granting permission , should have asked for and obtained an environmental impact report from expert bodies and be satisfied that the damage which might be caused to the environment, was not irreversible and that the applicant should publish its proposal so that public, particularly those who were likely to be affected, be made aware of proposed action. In *Reliance Petochemicals Ltd. v. Proprietors of Indian Express Newspapers*⁵⁹, the Court ruled that the citizens, who had been made responsible to protect the environment, had a right to know the government proposal.

⁵⁵ AIR 1982 SC 149

⁵⁶ AIR 2002 SC 2112.

⁵⁷ AIR 2000 Bom. 453.

⁵⁸ AIR 2004 SC 1834.

⁵⁹ AIR 1989 SC 190.

Right to know, whether food products, cosmetics and drugs are of non-vegetarian or vegetarian origins, has been held to be a fundamental right forming part of the right secured under Article 21 read with Articles 19(1)(a) and 25 in *Ozair Husain v. Union of India*.⁶⁰

In *D.K.Basu v. State of West Bengal*⁶¹, the Supreme Court held that the detainees had right to know the grounds of their arrest and also right to know that such right exists in them. This expression is preferred over 'freedom of information'. State should refrain from interfering.

The right to Information has already received judicial recognition as a part of the fundamental right to free speech and expression. An Act is needed to provide a statutory framework for this right. This law will lay down the procedure for translating this right into reality. The Right to Information Act, 2005, is indeed a path breaking legislation, which can enable achievement of transparent and accountable governance in true earnest. It is also an instrument to usher in participative governance and help citizens to influence policy formulation and programme implementation by securing the legally enforceable right to know.

In this Age of Information, its value as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is important because every developmental process depends on the availability of information. Right to know is also closely linked with other basic rights such as freedom of speech and expression and right to education. Its independent existence as an attribute of liberty cannot be disputed. Viewed from this angle, information or knowledge becomes an important resource. As equitable access to this resource must be guaranteed, 'Right to know', therefore, is the basic and fundamental right of citizens, without which other rights and citizenship responsibilities cannot be adequately discharged. Hence, exercising the 'Right to Know' is at least essential first step in strengthening citizen leadership and in democratizing governance. 'Knowledge is Power'. Empowerment and of the marginalized and excluded citizens requires knowing and learning.⁶²

Critical Analysis of Right to Information Act. 2005

⁶⁰ AIR 2003 Del. 103.

⁶¹ AIR 1997 SC 610.

⁶² Dr. Nimmi, "Right to Information: A Myth or Reality" published in the Journal "The Legal Analyst" Vol. III, No. 1, Jan-June, 2013 at p. 28.

Let us examine some of the provisions of the RTI Act which is having some lacunae for the better protection of the right of the citizens especially right which is related to administration as recognised as public right. The shortcomings in the Act is critically examined through interpretation of the Sections and the aim of the law maker.

At the outset, if the provisions of the Section 3 of the Right to Information Act, 2005, is interpreted elaborately we find that this right is available to all citizens. It does not make provision for giving information to corporations, associations and companies, which are legal person but not the citizens. However, if an application is made by an employee or office bearer of any corporation, association, company, NGO, who is also a citizen of India, information shall be supplied to his/her full name. It will be presumed that a citizen has sought information at the address of corporation. It is suggested here that the word 'every person' should be used in stead of 'citizens'.

Similarly, Section 2(1)(b) of the right to Information Act, 2005, defines Public Authority which means any authority or body or institution of self government established or constituted by or under the Constitution, by any other law made by Parliament, by any other law made by State Legislature; by notification issued or order made by the appropriate government and includes any body owned, controlled or substantially financed ; non-government organisation substantially financed directly or indirectly by funds provided by the appropriate government . the very first doubt, which arises, is whether the definition of public authorities includes the government departments. The expression 'public authorities' does not tell out clear that all governmental departments are public authorities and the same has to be inferred from the language used as one constituted or established under the Constitution or any State law. It is suggested that the government departments may be specified in the definition at the very commencement of the definition.⁶³

The next peculiar feature of this Act is that judicial intervention is strictly prohibited. The court has no power to entertain any suit or application or proceedings in respect of any order made under this Act. The Act provides for the rule making power both Central and State governments and such rules that were framed shall be laid before parliament in case of Central government and State government.

⁶³ Dr. Nimmi, "Right to Information: A Myth or Reality" published in the Journal "The Legal Analyst" Vol. III, No. 1, Jan-June, 2013 at p. 28

There have been grievances of the applicants that information is not provided to them in their regional language. This is against the spirit contained in Section 6 (1) of the Act which makes it clear that information is to be provided in Hindi and English or in the official language of the area in which the application is being made. It is suggested here that penalty must be imposed, who violate the provision of Act.

So far as Section 6 of the Right to Information Act, 2005 is concerned, a person can obtain information by accompanying such fee as may be prescribed. The provision of taking fees for disclosing the information seems to be against the spirit of the right and the Act too. It is quite paradoxical that a person has to pay for availing information which is a fundamental human right, which has been consecrated even by the Constitution. Being a legislation which is socially oriented, it strikes wrong chord at this place, by creating a hiatus between people on the economic basis. Information can be easily accessed by the affluent classes whereas same is not so comfortable for the students and lower strata of middle class.

According to the Public Records Act, 1993, the government shall maintain records while classifying them as top secret, confidential and restricted. As there is no exception in Section 8 of the Right to Information Act, 2005. The Public Information Officer is competent to decide the large public interest to be served while disseminating the information that was restricted under different classification. Logical reasons for the rejection of the requests seeking information are not being provided as required by Section 7 (8) of the Act. Moreover, exemption clause contained in Section 8 of the Act is being misused to veil the misdeeds in the name of secrecy essential for national security, integrity etc. Although the inclusion of a public interest override is a huge step forward, the fact that the exemptions only contain a low level harm test requiring that relevant interests are only harmed prejudicially affected could be used to block a lot of applications at the initial stages.

Conclusion and Suggestion

There is no specific safeguard for the protection of person of person from the harm he may suffer after seeking the information through the Act. It should not be forgotten that if a person seeks information which is potentially harmful for the authorities superior to him, he can be subjected to ill treatment latter. For example, if a student asks for information from the school or college or university in which he, she is studying there are ample of chances that he could

be made to suffer in of such a step taken by him. There should be promulgation of some safeguard in this regard, so that one can resort to using the Act fear free.

To conclude, RTI Act is a unique legislation in many sphere. It provides right to the citizen to know the details of government with some limitations. It is just like a watchdog for the rule of law, the dynamic concept. The objective of this Act is empowerment to public to know what is going on under the guise of administration and should not be treated as an enactment providing penalties and punishments. Without any hesitation it can be said that this Act should be the voice of so called voiceless in our society. Simply making an enactment is not sufficient there must have efficacy of the same. Mass awareness is indispensable for accomplishing the purpose of the Act. The downtrodden people of the society who are deprived very much of benefits, programmes, schemes launched by the government should be given top priority in making them aware with regard to benefits of this legislation from being victims of corruption and maladministration.



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