



BASIC ELEMENTS OF RIGHT TO INFORMATION LAW

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INTRODUCTION

'Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed' - Right to Information Act, 2005. India after independence has adopted democratic form of government and emerged as the largest democracy in the world. In a democracy, where people govern themselves, it is necessary to have more openness. Openness in the exercise of public power – be it Executive, Legislative or Judiciary – is backbone in democracy, which needs to be nurtured.

James Madison once said, "A people who mean to be their own governors must arm themselves with power that knowledge gives".

Without openness and participation of citizens, democracy is ineffective. To enable citizens to actively participate in governance, they should be provided with information regarding governmental activities, about their elected representatives, about bureaucrats, about benefits which are conferred on citizens in various walks of life and information about governance itself. Equitable, fair, transparent and justice ridden administration presupposes that persons be made aware of the Law, Rules,

Regulations and Administrative guidelines by which their affairs will be governed.

In India, the Official Secrets Act 1923 was a major instrument to deny public access to information and promote secrecy. Public servants under the Official Secrets Act 1923 were duty bound to practice secrecy in their official functioning. All ministers, constitutional bodies and officials need to take oath for secrecy. Thus, public functioning has traditionally been shrouded in secrecy.

As our democracy kept on maturing, India continued moving towards openness in public dealings. In recognition to the need for transparency in public affairs, for fulfilment of international obligations, citizens' demand and judicial decisions, the Indian Parliament has enacted the Right to Information Act in 2005 and made it fully effective with effect from 12th October 2005 with much fanfare. This Act has provided the machinery for the implementation of this all important "right" within a stipulated time-frame and for the redressal of the complaints when information is not provided.¹

It is a major step in empowering people and promoting transparency. It enables citizens to participate fully in the decision-making process that affects their lives so profoundly and also has a dynamic role in constitutionally guaranteed democracy.

Right to know is the prerequisite of every welfare government and especially

¹ P.K. Saini & R.K. Gupta, "Right to Information Act, 2005", Deep & Deep Publication Pvt. Ltd., 2009, pp.179



democracies and any refusal or blockage in sharing such necessary information with the persons who want to know about it will be an utter feeling of disgrace and dissatisfaction to the citizens of any country which, in the long-term may prove fatal to the government.²

HISTORICAL BACKGROUND OF RIGHT TO INFORMATION AT INTERNATIONAL LEVEL

Citizen's right for access to information held by government and public authority has, since last few decades, been voiced as an important human right globally. There has been a consistent demand in the countries across the world for transforming secretive administrative systems to open and transparent systems. There is an exciting global demand of recognition of Right to Information by nations, their intergovernmental organizations and the people. United Nations, the Commonwealth, the Organization of American States and the Council of Europe and other global organizations have been advocating for making Right to Information as a universal human right and for creating mechanism for its implementation and protection.

- Sweden is the first country in the world which has enacted laws promoting transparency laws in public affairs. On 02 Dec 1776, the increasing criticism of prevailing governmental secrecy in Sweden led to the adoption of the Freedom of the Press Act.
- In 1789, the France has declared its "French Declaration of the Rights of Man" which called for access to

information about the budget to be made freely available.

- In the United States too, Patrick Henry one of the founding fathers of the United States of America protested against the secrecy of the Constitutional Congress, saying "The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them."
- The 'right to know' gained prominence after the Second World War. The United Nations General Assembly had proclaimed in its 65thenary meeting of 14th December 1946, that freedom of information is a fundamental human right and the cornerstone for all other freedoms recognised by the United Nations.
- On 10 Dec 1948, a declaration was made which is named as "Universal Declaration of Human Rights (UHDR)". Article-19 of the Universal Declaration of Human Rights (UHDR), 1948 declares that "everyone has the 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 areas and regardless of frontiers."
- The International Covenant on Civil and Political Rights (ICCPR), which India has also ratified, also provides a corresponding provision in its Article 19.
- According to Article 4 of the American Declaration, "Every person has the right to freedom of investigation, of opinion, and of the

² Ibid



expression and dissemination of ideas, by any medium whatsoever.”

- United States of America enacted its Access to Information Act in 1967. Other countries with access laws include: Canada (Access to Information Act 1983), Australia (Freedom of Information Act 1982), Jamaica (Freedom of Information Ordinance 2002), United Kingdom (Freedom of Information Act 2000), South Africa (Promotion of Access to Information Act 2002), Uganda (Access to Information Act 2005) and Trinidad and Tobago (Freedom of Information Act 1999).³
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the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression. The court has recognized the right to access information from government departments is fundamental to democracy.

Therefore, Justice K. K. Mathew of Supreme Court of India said that ‘in a government... where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people... have a right to know every public act, everything that is done in a public way, by their public functionaries... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption’.⁴

The formal recognition of a legal Right to Information in India occurred was given by the Supreme Court of India in “**State of U.P. v Rajnarain, AIR 1975 SC 865**”, wherein the Supreme Court has ruled that the Right to Information is implicit in the right to freedom of speech and expression explicitly guaranteed in Article 19 of the Indian Constitution.

Subsequently, the Court has affirmed this decision in numerous cases like Association for Democratic Reforms v. Union of India, 2002(5) SCC 294 and People Union of Civil Liberties v. Union of India, 2003(4) SCC 399, and has even linked the Right to Information with the right to life enshrined in Article 21 of the Constitution. The Supreme Court of India emphasized importance of freedom of information and described it as a fundamental right under the facet of “freedom of speech and expression”

CONSTITUTIONAL BACKGROUND OF RTI IN INDIA

The development of the right to information as a part of the Constitutional Law of the country started with petitions of the press to

³ Available at, <http://shodhganga.inflibnet.ac.in/bitstream/10603/51360/2/final%20ph.d.%20thesis%20in%20pdf%20format.pdf> (last accessed on 15 February 2017)

⁴ State of U.P. v Rajnarain, AIR 1975 SC 865



as contained in Article Article-14, 19(1)(a) and Article-21 of the Constitution. But like all rights, right to information, is not at all times and always an absolute right. Being a penumbral right to freedom of speech, right to information is subject to States reasonable restriction on exercise of such right. Interests of sovereignty, integrity, security of India, foreign relations, public order, decency or morality are some of the factors which might encumber exercise of right to information.

BASIC ELEMENTS OF RTI

Right to Access

Any citizen, including overseas citizens of India and persons of Indian origin, can ask for information under this law. This right includes inspection of work, documents and records, taking notes, extracts or certified copies of documents or records, and taking certified samples of material held by the public authority or under its control.

Procedural Guarantees

A citizen, who desires to obtain any information under the Act, should submit an application to the PIO of the concerned public authority. The application should be precise and specific with name and complete postal address of the applicant. There is no prescribed format of application for seeking information. The application need to be submitted along with an application fee as prescribed in the Fee Rules.

If a public authority fails to comply with the specified time limit, the information to the concerned applicant would have to be provided free of charge.

Duty to Publish

The Act, in particular, requires every public authority to publish 16 categories of information. This includes the particulars of its organisation, functions and duties; powers and duties of its officers and employees; procedure followed in the decision making process; norms set for discharge of its functions; rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; etc.⁵

Exceptions

The Act enumerates the types of information(s) that are exempted from disclosure. However, these exempted information(s) or those exempted under the Official Secrets Act can be disclosed if public interest in disclosure outweighs the harm to the protected interest. Also the exempted information(s) would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates.

Appeals

If an applicant is not supplied information within the prescribed time of 30 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. If still not satisfied the applicant may prefer a second appeal with the Central Information Commission (CIC)/State Information Commission (SIC) within 90 days from the date on which the decision should have been made by the first appellate

⁵ Short Commentary on “The Right to Information Act, 2005”, India Law House, 2010,



authority or was actually received by the appellants.

Sanctions and Protections

Where the Information Commission at the time of deciding any complaint or appeal is of the opinion that the PIO has without any reasonable cause, refused to receive an application for information or not furnished within the time specified or denied the request for information or knowingly given incorrect, incomplete or misleading or distorted information it shall impose a penalty of R250 each day till application is received or information is furnished subject to the condition that the total amount of such penalty shall not exceed R25,000.⁶

Protection of whistleblower

The issue of protection for whistleblowers caught the attention of the entire nation when National Highways Authority of India engineer Satyendra Dubey was killed after he wrote a letter to the office of the then Prime Minister detailing corruption in the construction of highways. Dubey's murder led to a public outcry at the failure to protect him. As a result, in April 2004, the Supreme Court pressed the government into issuing an office order, the Public Interest Disclosures and Protection of Informers Resolution, 2004 designating Central Vigilance Commission (CVC) as the nodal agency to handle complaints on corruption. However, such unfortunate incidents kept increasing and brought renewed focus on the need for a law to protect whistleblowers. Thus, Public Interest Disclosure (Protection of Informers) Bill 2010 was introduced in the Lok Sabha on August 26, 2010. The Bill

seeks to establish a mechanism to register complaints on any allegations of corruption, wilful misuse of power or discretion against any public servant. The Bill also provides safeguards against the victimisation of the person who makes the complaint.⁷

DEVELOPMENT OF RTI IN INDIA

Government around the world is providing information about their official activities to their citizens for better understanding and transparency of their day-to-day administration. In the last two-three decades, many of the countries have enacted formal statutes guaranteeing their citizen's right to access the Government information. The United States of America was the first country among the leading democracies to enact the freedom of information Act, 1966. Australia, New Zealand and Canada 1982, and England also enacted, Freedom of Information Act, 2002. In India, several states have also passed laws to provide for the right to information.

Tamil Nadu and Goa became the first two states to legislate on the subject in 1997. Madhya Pradesh in 2003 and Rajasthan enacted the right to Information Act, in the year 2000. Then one by one, Karnataka in 2000, Maharashtra in 2003, Delhi and Assam also enacted Right to Information Acts by 2002. The Parliament of India has enacted the Right to Information Act (Act 22 of 2005) which was notified in the official Gazette on 21st June, 2005. The Bill in its preamble states that the Act is passed because 'democracy requires an informed

⁷ Available at, http://www.cuts-international.org/cart/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf (last accessed on 17 February 2017)

⁶ Ibid



citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the Government'.⁸

RIGHT TO KNOW AND RIGHT TO TELL

CASE LAWS

In **Srinivas v State of Madras**, it was decided that the “freedom of speech and expression includes liberty to propagate not one’s views only; it also includes the right to propagate or publish the views of other people.” Otherwise this freedom would not include the freedom of the press. Freedom of expression has four broad special purposes to serve;

- (1) It helps an individual to attain self-fulfilment
- (2) It assists in the discovery of truth;
- (3) It strengthens the capacity of an individual in participating in decision making; and
- (4) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.⁹

All members of society should be able to form their own beliefs and communicate them freely to others. The fundamental principle involved here is the right to know. In the case between **Indian Express Newspaper v Union of India**, the Apex Court was of the opinion that freedom of speech and expression believe in the

participation of people in the administration and the approach of the Government should be more cautious while levying taxes on matters of concerning news paper industry than while levying taxes on other matters.¹⁰ Freedom of speech includes liberty and protection of law to both the speaker and also the audience. One has the right to speak, the other has to receive that what is spoken. It is this right which is guarded by law. Prior to Right to Information Act, 2005, Nine (9) states in India have already enacted identical laws. These states were; Goa, Tamil Nadu, Delhi, Karnataka, Madhya Pradesh, Rajasthan, Assam, Jammu & Kashmir and Maharashtra. **State of U.P. v Raj Narain**, is authority for the proposition that Article 19(1) (a) includes not only right to communicate, it includes right to receive the information communicated. Right to know is the basic right of the citizens of any free country and is guaranteed and protected by Article 19(1) (a).¹¹

Without adequate information, a person cannot form an informed opinion and democracy is mockery without informed citizenry. The Supreme Court was of the view that in a system like India, where Government is responsible to Parliament and to people, there is nothing like secrecy in public officer’s conduct. The people have the right to know every public act, everything that is done in public way by their public functionaries. They are entitled to know particulars of every public transaction in all its bearings.

⁸ PK Das, Hand Book on Right to Information Act, 2014, Universal Law Publishing House, pp.7

⁹ Srinivas v State of Madras, Air 1931 Mad 70

¹⁰ Indian Express Newspaper v Union of India, (1985) 1 SCC 641

¹¹ State of U.P. v Raj Narain, AIR 1976 SC



CONCLUSION

The Right to Information Act, 2005 is a unique and revolutionary piece of legislation. It is unique and revolutionary because it is the first legislation arising out of public campaign and public outcry. That is why it is said to be a beginning of a new era in the democratic history of our country and to most significant reform in public administration in India. It is expected to expand the democratic space available and empowers the ordinary citizen to exercise a far greater control over the corrupt and arbitrary exercise of State power, as it gives right to the citizen to ask question, examine audit, review and assess Government acts, decisions and to ensure that every act is consistent with the principle of public interest. In this new era the Right to information, the readers or viewers require all kinds of primary information.

They can identify the truth on the basis of their analysis and commonsense. The press being the fourth estate has to make the government accountable by publishing information about matters of public interest even if such information reveals abuses or crimes perpetrated by those in authority. The Supreme Court of India has long back recognised a citizen's access to government information as a fundamental right under article 19, but it has only been with the passage of the RTI Act in 2005 that Indians have had a way to exercise that right and force transparency and fairness onto a notoriously corrupt bureaucracy. Evaluation of public authorities and governance is impossible without factual, current/updated and primary information. The noble intention of the legislators to enact the law can be fruitful if public authorities became

responsible, accountable to the need of citizenry.

All the State Government and Central Government should also earmark adequate budget provision for organising short duration training programmes for Public Information Officers, all over the country every year. Financial support must be given to all the Public Information Officers since expenses are incurred and facilities are needed (e.g. photocopies etc) to make information available on time. Thus the commissions can organize more public awareness programme and education on RTI

Act.

It is also suggested for the introduction of RTI in the core curriculum of school education and more awareness campaigns, workshops and seminars should be conducted particularly in the rural areas. The people should therefore make ample use of this right to help proper and honest functioning of public authorities. The purpose of the Act can be achieved only if the public has proper guidance as how to use the Right to Information. A nationwide movement is initiated to guide and motivate the public.

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