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Supremo Amicus**



ROLE OF INFORMATION LAW IN MAKING DEMOCRACY MORE MEANINGFUL IN INDIA

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Abstract

Democracy stands on the feet of accountability. India is the largest democracy and in order to protect its democracy there must be transparency in the policies of Government. The law of Secrecy has its roots in the British Colonial period and has been in force in many countries. The Official Secrets Act 1923, Indian Evidence Act and the Civil Service Code of Conduct Rules contains provision that restrict the Fundamental Right to Information.

After India gained its independence, the Constitution of India was framed but there was no direct mention of the Right to Information. The Right to Information was recognized by the United Nations in the year 1946.¹ The Apex court of India for the first time in a landmark case of U.P. V/s Raj Narain² held that the Right to Information is included under Article 19(1)(a) of the Constitution of India.³ This view was followed in number of decisions.

Thereafter, the Right to Information Act 2005 was passed and the secrecy regime became diluted to some extent. But after so many years of independence, still the draconian law of secrecy that is the Official Secrets Act 1923 and the others Rules exists with very minimal amendments in our free democratic country. The Government of India has also amended some

provisions of Right to Information Act 2005 to make the provisions more fruitful. Some jurists have mixed views upon the recently enacted Act namely the Digital Personal Data Protection Act 2023 which might narrow down the Right to Information Act 2005.

This paper revolves around the secrecy laws and the march towards transparency which makes democracy more meaningful. Its focus is upon the achievements of the use of Right to Information Act 2005 in strengthening our country at the present time along with some misuse of the provisions of this Act. The author also analyzed various landmark judgments and at the end the author has drawn conclusion.

Keywords: Right to Information Act 2005, Information Democracy, Transparency, Public Authority, Good Governance

Without facts you cannot have truth, without truth you cannot have trust without any of these things you cannot have democracy.

---Maria Resse,
Nobel Prize Awardee Journalist.

Introduction

In India the Constitution of India came into force in the year 1950 after gaining its freedom from Britain. The constitution makers kept in mind about the welfare of the people and chose democratic form of government. In democracy, the Government gains power from the citizens of its country and they are answerable to them. The Constitution makers very wisely, learning from the past, have introduced the chapter of Fundamental Rights in the Constitution itself in the part III of the Constitution which is also known as Magna Carta of India to keep its citizens

¹ Under Art. 19 of Universal Declaration of Human 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.

² AIR 1975 SC 865

³ Art. 19 of the Constitution of India which says "protection of certain rights regarding freedom of speech, etc"¹. All citizens shall have the right- (a) to freedom of speech and expression.



safe from any arbitrary action of the Government. Among the other Fundamental Rights, Right to Information is also one of the most important right, which gives power to the citizen of India to ask question from its elected representatives about the governance of their motherland. Although there is no direct mention of Right to Information as a Fundamental Right but the Supreme Court of India who is also Guardian of the Indian Constitution using its powers have widen the provisions of the Constitution included Right to Information as a Fundamental Right. This is the only tool in the hands is common people to bring transparency and accountability of the Government.

History of Information Law

In ancient period the rights were recognized by dharma. It was duty of the king to inform the public about their welfare and protection. The welfare includes Right to Information as well. The roots of Right to Information can be traced back to the 1215 when the King John was forced to sign the Magna Carta which is the first written document, that guarantees the liberty to the English people.

In 1776, Sweden became the first country in the world to enforce Information Laws. Swedish Constitution in Section 13 says Swedish people have freedom of expression along with right to take and give information. The limitations are also mentioned.

After end of World War II, the United Nations Organization approved the Human Rights Declaration. As per clause 19 of it, every man has the freedom of expression and right to vote. It includes right of man to make his own opinions and ideas beyond boundaries of nation.

There after many countries passed their legislation of Information laws like Germany in 1949, Canada in 1980-83, Australia in 1982, France in 1976, America

in 1966, Finland in 1951, Denmark in 1964, Norway in 1970, South Africa in 2000 and so on.

Development of Right to Information in India

Article 19 of the Indian Constitution gives its people six types of freedom as Fundamental Rights. Article 19(1) (a) speaks about Freedom of speech and expression, subject to its limitation. This freedom includes freedom of press and Right to know. In a landmark case Bennett Coleman & Co. vs. Union of India in which the petitioners, a leading newspaper Company challenged the government policy which restricts of acquisition, sale and consumption of newspapers. This policy was challenged before Supreme Court and it struck down the policy saying that it violated freedom of speech and expression. Apex Court also remarked that freedom of press means the right of all citizens to speak, publish and express their views and it includes right to read and be informed now, the question rises if people are unable to get information of government and administration foodies, then how can a citizen express its opinions and views?

The Supreme Court of India in U.P v/s Raj Narain⁴ observed that in a country where democracy form of governance is being followed, the people have every right to know every public Act. There can be very few secrets. The responsibility of Government officials is to provide transparency in their acts.

In Judges Case, the claim for privilege was laid down before the Apex Court by the Government of India in respect of disclosure of certain documents. The Apex Court by interpretation of guarantee of freedom of speech and expression gave the right to know and right to information, a status of Fundamental Right.

Thereafter, The demand for Right to Information took the shape of mass movement. An organization called Mazdoor Kisan Shakti Sangathan (MKSS)⁵ became very active in the year 1990. It lead the people in

⁴ AIR 1975 SC 865

⁵ MEDIA LAW DR. S.R. MYNENI PG 450 ED.2020



Rajasthan to demand details of names of person who have been paid wages in construction of school small dams etc and found that a huge amount of money was misappropriated public hearing and agitation in demand of the law of information started which became an eye opener for the people of India.

Another NGOS namely National Campaign for People's Right to Information(NCPRI) and Parivartan Organization also started mass movement against the Government in order to bring concrete information Laws. Then the government of India was compelled to think about it and lately Freedom of Information Act 2002 was passed but was criticised as in this Act providing information was not mandatory. This Act was never enforced, later in 2004, the UPA Government presented a new bill and it saw the light of the day. The present Act of 2005 was enforced on 12th October 2005.

Right to Information Act, 2005

The Right to Information Act, 2005 gives power to a common citizen to access information which is under control of a Public Authority.⁶ This right can be enforced against Public Authorities.⁷ There is also obligation to disclose maximum information pro-actively. The Act provides that an applicant may apply before any public authority for getting information after payment of fee and the designated officer shall be bound to provide with the same within 30 days. If the applicant do not get a reply or is dissatisfied with the reply, he may go for appeal. There are also provision for penalties upon the officers reluctant to give information. There are certain information which falls under the category of exceptions.

This Act aims to boost openness by reducing secrecy in government affairs and as a result it prevents corruption. The law applies to almost all government departments and the request can be submitted in offline or online mode. The reply is time bound. In this way a democratic government becomes answerable to citizens of India.

⁶ Sec 3 of RTI Act 2005

⁷ Sec 2(h) of RTI Act 2005

Some Achievements of RTI Act 2005

A report ⁸is available in the website of Right to Information, Department of Personnel & Training, Govt. Of India regarding a study conducted by Price waterhouse Coopers. The said study revolves around the impact of RTI at grassroot level and the achievements of RTI, so far.

It says that in a village namely Panchampur, 70 kms away from District Headquarters of Bank, a teacher was appointed in a pre-middle school. However the teacher was absent for most of the times. The villagers using the tool of RTI asked for the records of the teacher and the role of the Primary Education department. Immediate action was taken on the issue and the school reopened with new teacher.

In another case, school uniforms are distributed in Govt. Schools of UP. But despite government claims school dress were not received by the students of Gulrahai Primary School in Allahabad. Then some villagers filed RTI application regarding the issue. Within 7 days all the students received school dress.

In Yashwant Singha Vs CBI, 2019 SCC online SC 517 'The Hindu newspaper published some documents which has been procured in wrongful manner and the rafale deal with France came to headlines of every news agencies. The Apex Court observed that Sec. 8(2) of the RTI Act contemplates that notwithstanding anything in the Official Secrets Act,1923 and the exemptions permissible under sub section (1) of Sec 8, a public authority would be justified in allowing access to information, if on proper balancing, public interest in disclosure outweighs the harm sought to be protected.

In CBSE vs Aditya Bandopadhyay & Ors (2011), the main issue before Supreme Court was whether or not an examinee has a right under RTI Act 2005 to view

⁸ Report on working of RTI Act available onwww.rti.gov.in



and inspect and certified copies of his/her evaluated answer books in a Public Examination.

The Apex Court held that the examining body did not hold any type of fiduciary relationship with the examinees or examiners, hence it will not be exempted and told that the answer sheets should be provided to students who seek them under RTI Act 2005.

In CPIO, Supreme Court of India VS Subash Chandra Agarwal- It was held that Supreme Court Judges also should declare their assets. Such declaration is not breach of Right to Privacy.

In DAV College Trust and Management Society & Ors VS Director of Public Instruction & Ors.- The Apex Court held that NGOs which receives Financial Aid from Government falls within the definition of Public Authority. Hence the the of RTI Act 2005 is applicable to them.

MISUSE OF RTI

Every coin has two sides there are some instances of misuse or wrong use of this Act

In Neha Srivastav vs Trademarks Registry –It was held that there are no provision in the Act for redressal of grievances in the garb of seeking information.⁹

In Uma Kanti and Ramesh Chandra vs Navodaya Vidyalay Samity- It was held that it is the worst case of misuse of RTI law and punitive action should be take against the applicant.¹⁰

CONCLUSION

We can conclude by saying that before introduction of the Right to Information Act Secrecy was the culture. The Government used the Official Secrets Act 1923 to keep all information relating to government affairs secret which is similar to the British Official Secrets Act. Now with the enactment of the RTI Act 2005, people have got the opportunity to take part in

governance and check any information that they desire except what is exempted under the Act. We can see through various Supreme Court Judgments and other instances that, the Act has empowered the Indian democracy. We further need to launch awareness campaigns and programs to educate people about their Right to get information from Public Authorities so that the people of India can get the real taste of democracy. There are instances of misuse but that may be weigh with the advantages and disadvantages. Some misuse is for the lack of knowledge of the real ambit of this Act.

There are many efforts from the Government to weaken this law through amendments and enacting new laws and rules. But the people should not be kept in dark and the Right to Information must become more and more powerful in near future for making democracy more meaningful.

The Indian RTI Act has been laud around the globe as it is at par with the laws enacted by the developed nations.

⁹ CIC Vol IV 3666(2833)

¹⁰ CIC digest vol ii 1977(943)