

Right to Information: The Constitutional and Judicial Perspectives in India

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Abstract

Right to Information is most beneficial arm of democracy. It is the supreme power of democratic people to know about the function of democratic government. Right to information is a weapon to regulate the democratic government. It is a basic fundamental and inherent right of human being to know about the activities of own elected government. The right to information law is providing justice and avoiding the miscarriage of justice. It is a milestone for transparency and accountability of government in India. The source of Right to Information is democracy. It is a principle established that justice can be achieved in the democratic form of government. It can be said that after receiving information, human being has capacity to disseminate the justice in the society with the help of democratic well known norms. The object of right to information is to provide justice, equality, transparency and universality to the people of the democratic society. This was its existence as a legal right before the political system of the society, because it was originated as a natural right. Thus, it cannot be violated by the state itself. In this research paper I have explained the Right to Information as the fundamental right under the constitution of India as well as the judicial response on the right to information.

Keywords: Information, Right, Fundamental, Know, Constitutional, Judicial, Natural Right.

Introduction

Right to information is the facet of human right, which has been universally acknowledged. Besides, international obligations of various global human rights instruments, the constitution of India makes these human rights designed, led as fundamental rights in the provisions of Article 14, 19 and 21, for example equality doctrine of article 14 has been described as essential to democracy.¹ Equality according to Lord Denning is "in the order of the day, in both directions, for both sexes. What is the source for the goose is the source for the gander." Article 14, 19 and 21 represent the foundation values which form the basis of the rule of law. This case was unanimously decided by the nine judges constitutional benches. In this case Supreme Court held that article 19 is a basic feature of the constitution. On the basis of this judgment, it can be said that art. 19 is an alienable right of human being. Art. 19 is the source of right to information.² Rule of law according to Dr. Thomas Fuller, a British physician and intellectual asserts; "Be you ever so high, the law is above you."³ The constitution of India echoes the basis of Government. It is a document prepared by "We the people of India" the form is republican democracy. Democratic principle includes the protection of fundamental rights. Right to freedom and speech of expression include a bundle of necessary rights and right to information is a facet of speech and expression under article 19(1) (a)⁴ of the constitution. Article 19 is an important fundamental right of the citizens. Right to information is indisputably a fundamental right. The right to information Act 2005 is therefore, not a repository of the right to information. It is a repository of the constitutional Right guaranteed under Article 19(1)(a). The Act merely lays down the procedure in the exercise of this right.⁶ Today right to information is a fundamental right and its origin as a fundamental right is a natural right. In *Vijay Prakash v. Union of India*⁷ Delhi High Court observed that the right to access public administration that is information is the possession of state agencies and Governments, in a democratic system accountability measures empower citizens to be aware of the actions taken by such states "actors".

Meaning of Informataion

Information may be stored in any electronic form. The information could even be relating to any private body which can be accessed by public authority under any other law for the time being in force. For instance, in case of a trust even though it is private body, public authority like either income tax department or registrar office is entitled to access information. By the virtue of this definition, information pertaining to such private body can also be obtained. Right to information is in fact a bundle of rights. The assets details of government servants filed before government though is sealed cover cannot to be said information that could not be accessed by government.¹⁰ The Right to Information Act contemplates furnishing of information which is available on records, but it does not go so far to require an authority to first carry out an enquiry and thereby create information which appears to be what the information seeker had required from the appellatant.¹¹ Definition of information includes file noting during disciplinary proceeding which is in the form of views and comments expressed by various officials dealing with the files.¹²

Aim of Study

The aim of my research paper is to analysis the concept of information under the fundamental right of Indian constitution aswell as judicial responseon the right of people relating to information in India.

Right to Information under Indian Constitution

Indian constitution is the source of all law and has paramount status over all laws. It is supreme lex. It provides social, economics, and politics justice to the people of India.¹² Constitution also enumerates different kinds of freedom to free people of independent India. The right to information is the part of these freedoms and liberties. It is the basic and fundamental aspects of equality of status and opportunity. This right is only possible in the democratic society. In democracy there is concept of open government. It means the public have right to access the government records. To seek, access, and impart the government records are the components of the right to information. In this ways, the information is the basis of open government. Constitution of India only purports to guarantee of open, fair and transparent government procurement, but also to ensure access to information. Everyone has right to obtain information from the government. Government provides this facility to the public through its public authorities. Citizens have right to obtain information from public authority including information regarding national security. However the state can impose restriction on this right by making law. It is necessary in democratic society to protect the interest of national security.¹³

In the Indian constitution, there are some clear provisions for th strengthening and protecting the Right to information. These provisions are in chapter III as fundamental rights, especially under article 19(1)(a). But this right is not absolute. The founding father of constitution imposed restrictions on this right by article 19(2).¹⁴

Right to know this is receiving and sharing information comes under the freedom of speech and expression every citizen has a fundamental right to receive or share information by using the best means that is access to telecasting for the said purpose. However, the right to know has not yet extended to the extent of invalidating section 5 of the official secrets Act, 1923 which prohibits disclosure or certain official documents¹⁵. In *S. P.Gupta v. Union of India*¹⁶ it was admitted that whenever disclosure of a document is clearly contrary to the public interest it is immune from disclosure. But the decision on such immunity will rest with the court ant not with the head of department or government. Rejecting the plea for disclosure of the supporting documents and evidence in *Vohra* committee report, the court held that truncations which serious repercussions on public security can legitimately be claimed to be secret in public interest.¹⁷

The simple meaning and interpretation of the words used in the article 19 and clause (1)(a) sat that constitution provides the freedom of expression because the governmental functions must be transparent¹⁸ and three instrumentalities of the state should be prevented from deceiving people. Simultaneous the closed interpretation of the language of the article 19(1)(a) lead to many derivative provisions. Justice Mathew in his vivid constitutional and juristic mind in case of *Keshvananda Bharti v. state of kerla*¹⁹ stated in these prominent word like :

“Fundamental rights themselves have no fixed content; most of them are empty vessel into which each generation must pour its contents in the light of its experience. It is relevant in this contest to remember that in building up a just social order it is sometimes imperative that the fundamental right should be sub ordinate to directive principles.”

Hence, the arena of the right to information is hiding in article 19(1)(a) of the constitution of India.²⁰ The right to information is intrinsic part of fundamental right to free speech and expression.²¹ Accesses to information on laws mandate government service and government expense are fundamental for the people to hold governments more accountable for their performance.²² Fundamental rights of free expression and imparting information's have been recognized at common law for many years.²³ In Europe a divisional court in a case held that the European court of human right is prepared to accept the obvious need in the limited circumstances for the court to protect in the public interest immunity from production of documents. Article 10 of the European Convention for the protection of Human Rights and fundamental Freedoms establishes a presumptive right to impart information.²⁴

In *Thalapalam Service Co-operative Bank Ltd. v. Union of India*²⁵ kerla high court observed that the right to information is considered as a facet of the right to free speech and expression guaranteed under article 19 of the constitution. The said constitutional right being a fundamental right could be enforced by invoking the writ jurisdiction of the Supreme Court and high court under art.32 and 226 respectively. But he

tight to information Act provides an efficacious remedy for the enforcement of the right to information.

Modern democratic government means as stated above Government of the people, by the people and for the people. But there can be no government by the people if they have are ignorant of the issues to be resolved, the arguments for and against different solutions and the facts underlying those arguments. The business of government is not an activity about which only those professionally engaged are entitled to receive information and express opinion. It is or should be a participatory process. But there can be no assurances that governments is carried out for the people unless the facts are made known and the issues publicly ventilated. Sometimes inevitable those involved in the conduct of government, as in any other walk of life, are guilty of error, incompetence, misbehavior, dereliction of duty, even dishonesty and malpractice. These concerned may very strongly with that the facts relating to such matters are not made public. Publicity may be reflecting discredit on them or their predecessors. It may embarrass the authorities. It may impede the process of administration experience, however shows in this country and elsewhere, that publicity is powerful disinfectant. Where abuses are exposed, they can be remedied. Even where abuses have already been remedied, the public may be entitled to know that they occurred.²⁶

Judiciary and Right to Information

The judiciary accepted the right to information under Article 19(1)(a) of the constitution. Basically the purpose of Right to information is to establish and strengthening the open governmental system. This system as a tool bound to act powerful check on the abuse and misuse of power of the government. The openness and transparency system should be followed in the functions of the government. In this regard, schueartz emphasis that "Americans firmly believe in the health effects of publicity and have a strong Agencies."

Right to Acquire and Disseminate Information

Secretary, Ministry of Information & Broadcasting, Government of India v. Cricket association of Bengal ²⁷ The Sc held that freedom of speech and expression include right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self expression which is an important means of free conscience and self fulfillment. It enablesthe people to contribute to debates on social and moral issues. For ensuring the free speech right of citizens of this country, it is necessary that citizen have the benefits of polarity of views and arrange of opinions on all public issues. A successful democracy posits an unaware citizens diversity of opinions, views, ideas, and ideology which is essential to enable the citizens to arrive at informed judgment on all issues touching them. The court made more clear of the provision of right to information that is inferred itself in article 19(1)(a).²⁸

Disclosure of Information/documents

State of Uttar Pradesh v. Raj Narain²⁹ The court in case observed that freedom of speech and expression includes right of citizens to know every public act, everything that is done in a

public way by their public functionaries. A witness, through competent generally to give evidence, may in certain cases claim privileges as a ground to disclose matter which is relevant to the issues. Secrets of state, state papers, confidential official documents and communications between the Government and its officers are privileged from production on the ground of public policy or as being detrimental to the public interest or service. Injury to the public interest is the reason for the exclusion from disclosure of documents whose contents if disclosed would injury public and national interest. Public interests whose demands that evidence be withheld is to be weighed against the public interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. The court will proprio motu exclude evidence the production of which is contrary to the public interest. It is a public interest that confidentially shall be safeguard. The reason is that such documents become subject to privileges by the reason of their contents. Confidentially is not head of privileges. It is a consideration to bear in the mind. It is not that the contents contain material which it would be damage to the national interest to divulge rather that the documents would be class of which demand protection. To illustrate the class of documents would embarrass cabinet papers, foreign officedispatches, papers regarding the security of the state and high level inter departmental minutes. In the ultimate analysis the contents of documents are so describe that it could be seen at once that in the in the public interest the documents are to be withhold.³⁰

S.P.Gupta v. Union of India³¹ it was held that right to know is implicit in right to free speech and expression. Disclosure of information regarding functioning of the government must be the rule.

"Now it is obvious from the constitution that we have adopted a democratic form of government. Where a society has chosen to accept democracy as its crucial faith, it is elementary that the citizens ought to know what their government is doing. The citizens have right to decide by whom and by what rule they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government survive can survive without accountability and the basic postulate of accountability is that the people should have information about their functioning of the government. It is only if people know how government is functioning that they can fulfill the role which democracy assign to them and make democracy a really effective participatory democracy. The citizen's right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic state. And that is why the demand for openness in the government is increasingly growing in different parts of the world."

Right to know or information and direction on voter's right to information

In a case of corruption and malpractice court is strictly in favor of the right to information under article 19. In this reference Delhi High court observed in Association for Democratic Reforms v. Union of

India³² that right to receive information acquires great significance in the contest of elections. The court said that every candidate for election, the election commission shall secure for the voters following information:

1. Whether the candidate is accused of any offence punishable with imprisonment.
2. Assets possessed by the candidate, his or her spouse and dependent.
3. Any other relevant information regarding candidate's competence to be a Member of Parliament or state legislature.

Court further said, "Since the future of the country depends the power of the ballot, the voters, must be given an opportunity for making an informed decision." This matter was ultimately decided by Supreme Court in appeal in *Union of India v. Association for Democratic Reforms*³³ decision delivered by Delhi high court was on right track and in proper path, because in this case court observed that "one sided information, disinformation, misinformation and non- information will equally create an uninformed citizenry which makes democracy a fare... freedom of speech and expression include right to impart and receive information which include freedom to hold opinions."

*People Unions for Civil Liberties v. Union of India*³⁴ SC held that true democracy cannot exist unless the citizens have a right to participate in the affairs of the policy of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sided issues in respect of which they are called upon to express their views.

People Unions for Civil Liberties and another v. Union of India and others ³⁵ S.B.SINHA, J Right of information is facet of speech and expression as contained in article 19(1)(a) of the constitution of India. Right to information, thus indisputable is fundamental right. In 1948 the United Nations proclaimed a Universal Declaration of Human Right. It was followed by the International Covenant on civil and political Rights. Article 19 of the covenant declare that "everyone has the right to freedom of opinion and expression; the right include freedom to hold opinion without interference, and to seek, and receive and impart information and ideas through any media and regardless of frontiers."³⁶

A similar Enunciation is to be found in the declaration made by the European convention of Human Rights (1950). Article 10 of that declaration guarantees inter alia, "not only the freedom of the press to inform the public but also the right of the public to be informed."³⁷

In *Indian Express Newspaper Private Ltd. and others etc v. Union of India and others*³⁸ the court dealt with the validity of customs duty on the newsprint in the contest of Article 19. The court observed that "the purpose of the press is to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgments..."

The court further observed that "the public interest in freedom of discussion (of which the

freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves."(Per Lord Simon in attorney General v. Times Newspaper Ltd³⁹.)

Freedom of speech and expression as learned writers have observed, has four broad social purpose to serve (i) it helps an individual to attain self-fulfillment, (ii) it assist in the discovery of truth, (iii) it strengths the capacity of an individual in participating in decision- making and (iv) it provide a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own views or beliefs and communicate them freely to others. In sum the fundamental principle involved here is the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration.⁴⁰

*L. K. Koolwal v. State of Rajasthan*⁴¹ In this case High Court held that the citizens has a right to know about the activities of the state, the instrumentalities, the department and the agencies of state. The privileges of secrecy which existed in the old times that the state is not bound to disclose the facts to the citizens or the state cannot be compelled by the citizens to disclose the facts, does not survive now to great extent under article 19(1)(a) of the constitution because there exists the right to freedom of speech. Freedom of speech is based on the foundation of the freedom of right to know. The state can impose reasonable restriction in the matter like other fundamental rights where it affects the national security and any other allied matter of sanitation the nation integrity. But this right is limited and particularly in the matter of sanitation and other allied matter every citizen has a right to know the state is functioning and why the state is withholding such information in such matters.⁴²

*K.Ravikumar v. Bangalore University*⁴³ The Karnataka High Court held that freedom of information Act 2002 and Karnataka Right to Information Act, 2000 would show that the order of the day is to permit openness, transparency and accountability in administration. The Karnataka High Court in *Case*⁴⁴ held that the right to information Act, 2005 applies to Karnataka University. The university is bound to supply information as per the Act.

*Ram Vishal v. Dwarka Prasad Jaiswal*⁴⁵ The Madhya Pradesh High Court held that the record of Municipal Corporation is a public record and usually it will be presumed that there should be no difficulty in getting the certified copy of public record and after enactment of the Right to Information Act, 2005, the positions has become more liberal.

Free Flow of Information for Public Record

*Indra jaising v. Registrar General, Supreme court of India*⁴⁶ it is no doubt true that in a democratic framework free flow of information to the citizens is necessary for proper functioning particularly in matters form part of public record. The decision relied upon by the learned counsel of the petitioner do not

also say that right to information is absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002, to which also reference has been made by the learned counsel of the petitioner, does not say in absolute terms that information gathered at any level in any manner for any purpose shall be disclosed to the public.

Dinesh Trivedi, M.P. v. Union of India⁴⁷ to ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decision taken by the Government and the basis thereof. Democracy, therefore, expects openness is a concomitant of a free society. Sunlight is the best disinfection. But it is equally important to be alive to the dangers that lie ahead. It is important to realize that undue popular pressure brought to bear on decision makers in Govt. can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have chilling effects on the independence of the decisions makers who may find it safer not to take any decisions.. It will paralyse the entire system and brings it to a grinding halt. So there are two conflicting situations almost enigmatic and the answer is to maintain a fine balance would which serve public interest. Constitutional democracy, it is axiomatic that citizens have right to know about the affairs of the government which having been elected by them; seek to formulate sound policy of governess aimed at their welfare.⁴⁸ In *Bennett Coleman & Co. v. Union of India* 49 Supreme Court observed that restrictions on the use of newsprint imposed an unreasonable restriction on the freedom of the press, because it could not give as much reading material to the reader as it wished. So not only the newspapers right to freedom of speech was infringed but the reader's right to read was also curtailed. the readers right to access to the reading material in a newspaper was his right to information which was implicit in the right to freedom of speech.⁵⁰

Conclusion

Information is the ultimate ammunition in democracies. It is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the grater would be the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed n access, the greater the feelings of powerlessness and alienation. Without information, people cannot adequately exercise their right and responsibility as citizens or make informed choice. The right to information can be guaranteed in a number of ways. Many countries provide for the right in their constitutions, usually by means of a broad statement guaranteeing the right of access of information. In other cases only the constitutional right to freedom of expression is specified and the right to information is inferred from this constitutional right. In India Supreme Court right to information is an integral part of the fundamental right to freedom of speech and expression guaranteed by the constitution. The rights to information Act, 2005

merely recognize the constitutional right of citizen to freedom of speech and expression. Independence of judiciary forms part of basic structure of the constitution of India. Both are great values are required to be gone into.⁵¹ all citizens have right to information as it is fundamental right and access to information is the rule⁵².

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