



Right To Information

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Abstract : Right to information (RTI) is a tool for promoting participatory development, strengthening democratic governance and facilitating effective delivery socio-economic services. The right to information is a fundamental right and flows from Article 19(1)(a) of the constitution of India which guarantees right to speech. The right to information has also been traced to Article 21 of the constitution of India which concerned about right to life and liberty. The right to information therefore, not only a constitutional right of citizen but there is now a legislation in the form of right to information Act 2005 which provide a legal regime for people to exercise their fundamental right to information and to access information from public authorities.

Index Terms – Right, Information, Good Governance.

I. INTRODUCTION

Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability.¹ Information is a many splendored virtue. It is the key to power, fortune, science and technology and even steadfast democracy. Its potential when channelized is capable of banishing ignorance, poverty, hunger and want. It plays significant role in every walk and sphere of life, including the field of politics and democracy. It can transform democratic institutions and the governance of the country.² In a modern constitutional democracy, it is axiomatic that citizens have a right to know about the affairs of the government which having been elected by them, seek to formulate sound policies of governance aimed at their welfare.³ Right to information is a basic to any democracy.⁴ The democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country the right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views.⁵ India has adopted a democratic form of government and no democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government.⁶ In the *State of Uttar Pradesh Vs Raj Narain*,⁷ the Apex Court observed that: 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 public transaction in all its bearing. The right to information is harnessed as a tool for promoting development, strengthening the democratic governance and effective delivery of socio-economic services⁸. Though the Indian constitution has no express provision guaranteeing the right to information, it has been recognized by the courts in plethora of cases as implicit in Article 19 (1)(a) which guarantees to all citizens the right to free speech and expression and Article 21 of the constitution, which guarantees the right to life in accordance with due process to all citizens.⁹

From the date of the constitution was adopted i.e. 26th January 1950, a Red Letter Day in the history of India. The Nation stood as a silent witness to corruption at high places. Corruption erodes the fundamental tents of the rule of law.¹⁰ Corruption in a civilized society is a disease like cancer, which if not detected in time, is sure to malignancies the polity of country leading to disastrous consequences. It affects the economy and destroys the cultural heritage.¹¹ The Right to Information (RTI) Act, 2005 has been enacted to provide for a legal right to information for citizens to secure access to information under the control of the public authorities, in order to promote transparency and accountability in the working of every public authority.¹² The information supplied under the Act brings about transparency and accountability both of which hold to reduce corruption and increased efficiency in governance and it also encourages participation of the people in a democracy.¹³ The said legislation is undoubtedly one of the most significant enactments of independent India and a landmark in governance.¹⁴

II. CONSTITUTIONAL PROVISIONS

Right to information is a fundamental right under Article 19(1)(a) of the constitution. Right to information is a facet of the freedom of speech and expression as contained in Article 19(1)(a) of the constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions.¹⁵

Article 19: Protection of certain rights regarding freedom of speech etc.- (1) All citizens shall have the right-(a) to freedom of speech and expression.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence.

Article 21: Protection of life and personal liberty:- No person shall be deprived of his life or personal liberty except according to procedure established by law.¹⁶

III. INTERNATIONAL PROVISIONS

The right to information is a right incidental to the constitutionally guaranteed right to freedom of speech and expression. The international movement to include it in the legal system gained prominence in 1946 with the General Assembly of the United Nations declaring freedom of information to be a fundamental human right and a touchstone for all other liberties. It culminated in the United Nations conference on freedom of information held in Geneva in 1948.¹⁷ Article 19 of the **Universal Declaration of Human Rights, 1948** says: "Everyone has the right to freedom of information 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".

IV. INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS, 1966

Article 19: (1) Every one shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the choice.¹⁸

V. EUROPEAN CONVENTION ON HUMAN RIGHTS, 1950

Article 10(1): Everyone has the right to freedom of expression- This right shall include freedom to hold opinion and to receive and impart information and ideas without interference by public authority and regardless of frontiers¹⁹.

VI. GOOD GOVERNANCE

The word governance is defined as "the exercise of political, economic and administrative authority in the management of country's affairs at all levels. Governance comprises the mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their political rights, meet their obligations and mediate their differences. Therefore, participation in administration by both men and women is the key cornerstone of good governance.²⁰ Participation may be direct or indirect. Good governance requires fair legal frame works that are enforced impartially. It also requires protection of human rights, independent and impartial police force, and bureaucracy. It means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement, maintaining utmost transparency.²¹

Good governance as a democratic exigency, in order to rid corruption, provides rights, the means, and the capacity to participate in the decisions that affect their lives and to hold their governments accountable for what they do, since the basic features or elements of good governance, it is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision making. It is also responsible to the present and future needs of the society.²²

VII. INFORMATION

Information means any material in any form, including records, documents, memo, emails, opinions, advice, 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.²³

VIII. OBJECTIVE OF THE RIGHT TO INFORMATION

The Right to Information Act is a right based enactment more akin to any other enactments safeguarding fundamental rights. The Act encompasses basically two things, firstly the right of a citizen to seek for information to which he is entitled under the provisions of the Act and the corresponding duty of the information officers to furnish such information and secondly, it leads to transparency

in the government functioning.²⁴ In *Anjali Bhardwaj Vs Union of India*,²⁵ the Apex Court held that: There is definite link between the right to information and good governance. In fact the RTI Act itself lays emphasis on good governance and recognizes that it is one of the objectives which, the said Act seeks to achieve. The RTI Act would reveal the four major elements / objective required to ensure good governance are-

- i) Greater transparency in functioning of public Authorities.
- ii) Informed citizenry for promotion of partnership between citizens and the government in decision making process.
- iii) Improvement on accountability and performance of the government
- iv) Reduction in corruption in the government departments.

IX. EFFECTS OF THE RIGHT TO INFORMATION

The RTI Act 2005 has been enacted to ensure greater and effective access of information and progressive and meaningful participation of all concerned.²⁶ The effect of the provisions and the scheme of the RTI Acts divide information into three categories. They are-

- a) Information which promotes transparency and accountability in the working of every public authority, disclosure of which may also help in containing or discouraging corruption (enumerated in clauses (b) and (c) of Section 4(1) of the RTI Act).
- b) Other information held by public authority [that is all information other than those falling under clauses (b) and (c) of section 4(1) of RTI Act].
- c) Information which is not held by or under the control of any public authority and which cannot be accessed by a public authority under any law for the time being in force.²⁷

Information under the third category does not fall within the scope of RTI Act. Section 3 of RTI Act gives every citizen the right to “information held by or under the control of a public authority, which falls either under the first or second category. In regard to the information, falling under first category, there is also a special responsibility upon public Authority is to suo moto publish and disseminate such information so that they will be easily and readily accessible to the public without any need to access them by having recourse to section 6 of RTI Act. There is no such obligation to publish and disseminate the other information which falls under the second category²⁸. The information falling under the first category, enumerated in sections 4(1)(b) and (c) of RTI Act are extracted below.

Section 4: obligation of public Authorities-(1) every public authority shall hundred and twenty days from the enactment of this Act-

- i) The particulars of its organization, functions and duties;
- ii) The powers and duties of its officers and employees;
- iii) The procedure followed in to decision making process, including channels of supervision and accountability;
- iv) The norms set by it for the discharge of its functions;
- v) The rules, regulations, instructions, manuals and records, held by it or under its control used by its employees for discharging its functions;
- vi) A statement of the categories of documents that are held by it or under its control.
- vii) The particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- viii) A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- ix) A directory of its officers and employees;
- x) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

- xi) The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- xii) The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes.
- xiii) Particulars of recipients of concessions, permits or authorizations granted by it.
- xiv) Details in respect of the information, available to or held by it, reduced in an electronic form.
- xv) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use.
- xvi) The names, designations and other particulars of the public information officers.
- xvii) Such other information as may be prescribed, and thereafter update these publications every years.

Section 4(c): Publish all relevant facts while formulating important policies or announcing the decisions which affect public.

X. EXEMPTION FROM DISCLOSURE OF INFORMATION

The Right to Information Act, 2005 was enacted on 12th October, 2005, with the objective of empowering the citizens of this country to seek, information from any public authority, and in turn uphold the principles of a true democracy by keeping the public authorities in check by making them answerable to the general populous.²⁹ The Section 8 of the RTI Act is titled “Exemption from disclosure of information”. Which suspends the obligation for disclosure of information under various heads under Section 8 (1)(a) to 8(1)(J). However, there exists a non- obstante clause in the form of section 8(2) which allows for disclosure of exempted information under section 8(1) in the interest of the public at large.³⁰ The Hon’ble High Court of Delhi In B.S. Mathure Vs PIO³¹, held that, the scheme of the RTI Act, its objects and reasons indicate that disclosure of information is the rule and non- disclosure the exception. A public authority which seeks to withhold information available with it has to show that the information sought is of the nature specified in section 8 RTI Act. Access to information, under section 3 of the RTI Act, is the rule and exemption under section 8, the exception.³² Section-3 of the RTI Act provides that subject to the provisions of this Act all citizens shall have the right to information. Section 8(1) enumerates the categories of information which are exempted from disclosure under the provisions of the RTI Act.

Section-8 Exemption from disclosure of information.—(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,- information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

- (a) Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (b) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (c) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (d) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- (e) information received in confidence from foreign Government;
- (f) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (g) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (h) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

XI. JUDICIAL INTERPRETATION ON RIGHT TO INFORMATION

In *People’s Union For Civil Liberties & Anr Vs. U.O.I & Ors*³³, the Apex Court held that: Right of information is a facet of “speech and expression as contained in Article 19(1)(a) Of the constitution of India. Right of information, thus, indisputably is a fundamental right.

In secretary, ministry of information and board casting, **Government of India & others Vs. Cricket Association of Bengal and Others**³⁴ this Hon'ble court summarized the law on the freedom of speech and expression under Article 19(1) (a) as restricted by Article 19(2) that "The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-fulfillment, it enables people to contribute to debate on social and moral issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavors of all sorts."

General Manager Finance Air India Ltd. & Anr Vs. Virender Singh³⁵ The Hon'ble High Court held that, the RTI Act, as per its preamble was enacted to enable the citizens to secured access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. An informed citizenry and transparency of information have been spelled out as vital to democracy and to contain corruption and to hold government and their instrumentalities accountable to the governed. The said legislation is undoubtedly one of the most significant enactments of independent India and a land mark in governance. The spirit of the legislation is further evident from various provisions thereof which require public authorities to:

(A) Publish inter-alia:

- i) The procedure followed in the decision making process;
- ii) The norms for the discharge of its functions;
- iii) Rules, regulations, instructions manuals and records used by its employees in discharging of its functions;
- iv) The manner and execution of subsidy programs including the amount allocated and the details of beneficiaries of such programmers.
- v) The particulars of recipients of concessions, permits or authorizations granted.

(B) Suo moto provide to the public at regular intervals as much information as possible.

In **R.B.I. and Ors. Vs. Jayantilal N. Mistry and Ors**³⁶ the Apex Court held that: the idea of government by the people makes it necessary that people have access to information on matters of public concern. The free flow of information about affairs of government paves away for debate in public policy and fosters accountability in government. It creates a condition for 'open governance' which is a foundation of democracy.

XII. CONCLUSION

The Right to information is a fundamental right of the citizens of India. The right to information is a right based enactment to protect the fundamental rights to information of the citizens. In the valedictory address at the national convention on right to information held on 15th October 2006, the then Prime Minister of India, Dr. Manmohan Singh, made the following pertinent remarks: "we live in an age of information, in which the free flow of information and ideas determines the pace of development and well being of the people. The implication of RTI Act is therefore, an important milestone in our quest for building an enlightened and at the same time, a prosperous society. Therefore, the exercise of right to information cannot be the privilege of only a few. Therefore, it is the duty of the central or state government to take effective steps for proper implementation of the Right to Information Act 2005.

XIII. REFERENCES

- 1 Central Board of Secondary Education & Ors Vs Aditya Bandopadhyay and Ors, (2011) 8 SCC 497.
- 2 Association for Democratic Vs Union of Indian (UOI) & Another, AIR 2001 Delhi 126, 2000 (57) DRJ 82.
- 3 Dinesh Trivedi Vs Union of India, (1997) 4 SCC 306.
- 4 S.P. Gupta Vs .Union of India, (1981) Suppl. SCC Page 87.
- 5 Secretary Minister of Information and Board Casting, Govt. of India & Ors Vs. Cricket Association of Bengal and Anr, (1995) 2 SCC 161.
- 6 S.P. Gupta Vs .Union of India, (1981) Suppl. SCC Page 87.
- 7 1975 AIR 865, 1975 SCR (3)333.
- 8 Namita Sharma Vs Union of India, (2013) 1 SCC 745.
- 9 CPIO Intelligence Bureau Vs. Sanjiv Chaturvedi, W.P.No.5521/2016 order dated 23.08.2017, <https://indiankanoon.org/doc/>
- 10 Manoj Narula Vs Union of India, (2014) 9 SCC 1.
- 11 State of M.P. & Ors Vs Ram Sing, (2000) 5 SCC 88.
- 12 State of Jharkhand and Anr Vs Navin Kumar Singha & Anr, AIR 2008 Jhar 19, 2007(3) JCR 668 Jhr.
- 13 Supra Note 9
- 14 General Manager Finance Air India Ltd. & Anr Vs Virendra Singh LPA No.205/212 decided on 16.07.2012, <https://indiankanoon.org/doc/>
- 15 Civil Liberties Vs Union of India, (2004) 2 SCC 476.
- 16 V.N. Shukla, Constitution of India, 10th Edn 2001, Lucknow Eastern Book Company
- 17 Justice V.R. Krishna Iyer "Freedom of Information".

- 18 The State of Public Information Vs The State of Information Commission, <https://indiankanoon.org/doc/178536465>
19 Supra Note 5.
20 Vellanki Bose Babu Vs The State of Andhra Pradesh, <https://indiankanoon.org/doc/161944074/>
21 Ibid.
22 Duggirala Ayyanna Vs The State of Andhra Pradesh, <https://indiankanoon.org/doc/37951617/>.
23 Section 2(f), Right to Information Act, 2005
24 The Superintendent of Police Vs R. Karthikeyan, <https://indiankanoon.org/doc/822176/>.
25 (2019) 18 SCC 246.
26 Pankaj Kumar Vs Ministry of Heavy Industry, <https://indiankanoon.org/doc/118353175/>
27 CBSE Vs Aditya Bandhopadhyay & Ors. (2011) 8 SCC 497
28 Ibid
29 Union of India and Anr Vs. Subhash Chandra Agrawal on 20 December 2023, <https://indiankanoon.org/doc/>
30 Ibid
31 B.S. Mathure vs. PIO in W.P. © 295 of 2011 dated 03-06-2011, <https://indiankanoon.org/doc/>
32 Dr. Rajendra R. Karpate Vs. Directorate of Marketing on 13 May 2020, <https://indiankanoon.org/doc/>
33 AIR 2004 SC 1442
34 (1995) 2 SCC 161
35 AIR 2013 (NOC) 118
36 AIR 2016 SC 1

