

RIGHT TO INFORMATION IN INDIA : A SUCCINCT REFLECTION

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Introduction:

The citizen's right to know in a popular Government is logically perfect and politically ethical. It is a mandatory of the citizen to know about functions of the Government with certain exception made by Law. In this world, every country has different culture, customs, and traditions. They have their own norms and patterns of behavior. They born with certain basic rights like food, water, shelter etc. in democratic countries, they preserve and give a affirmation regarding the Right to Information. India is the cynosure of the argument. Even so, to get a historical hang of the popular struggle for open, as against closed Government, we may undertake a imprecise global jurisprudential journey relating to Freedom of Information.¹

In a democracy people are the real sovereign. They have right to appoint the Governments as well as dismiss them. The people's Right to Information is the foundation of healthy functioning of democracy.² Information is a resource which empowers the people to act more meaningfully as electors as well as elected representative of the people. If the people are well informed they will be more vigilant and therefore, democracy is bound to become more vibrant. In a real sense, Government of the people, by the people and for the people requires that people should know who governs them and how they are being governed. The participation of the people must be meaningful. It should deal with major issues affecting lives of people. Such participation can hardly be effective unless people have information about which way Government business transacted. The fundamental element in the foundation of democratic societies has been an informed and active citizenry. It can be said that there are five pillars of good governance which makes Government stronger and beneficial to everyone: these are:

- ✓ transparency in decision-making processes,
- ✓ ensuring people's participation,
- ✓ responsibility in the exercise of power,
- ✓ accountability of the decision-makers and
- ✓ Responsiveness to people's needs to uphold the edifice of sustainable democracy.

Right to Information: Conceptual Analysis

The original route of the word "information" is the Latin word "*informare*" which means to fashion, shape, or create, to give form to. Information is an idea that has been given a form, such as the spoken or written word. It is a means of representing an image or thought.³ The Black's Law dictionary defines the Information as 'an accusation exhibited against a person for some criminal offence, without an indictment.'⁴ In any a social welfare society, a person well-informed stands in a better position to exercise his legal rights better than those who do not have access to any information who is poorly-informed. Therefore, access to information has become inevitable, to the individuals and also various the institutions. Freedom of speech and expression is the bulwark of democratic Government. Equality and freedom of liberty are two rights that are most essential to a democracy.⁵ The freedom of expression means the right to express one's convictions and opinions and also to seek, receive and impart information and ideas, either orally or by legally operated visual auditory devices, such as the radio, cinematography, loudspeaker and the like. Freedom of speech plays a crucial role

in the formation of public opinion on social, political, economic matters.⁶

Administrative Law has become most outstanding development in field of Law in 20th century. Administrative Authorities has always been competent to do multi-functions according, to Laws and principles as lays down by the legislatures or Judiciary. But if legislatures have conferred a discretionary power on administrative authorities then they have choice to act or not to act upon any case or matter. The state has to do various functions for the welfare of people at large. If wide discretionary powers will be in hands of state officials then it may lead to arbitrariness and violations of principles of natural justice. Therefore discretionary power may lead to social-economic injustice. Therefore to control over such arbitrariness and to promote open and transparent Government, right to information is one of weapon in hands of people to keep transparency in functions of Government. Right to Information is seen as the one which will change power balance between citizens and the state and empower people to participate in decision making processes.

Right to Information : Legal Status and Observations

While the essential aim is to bring accountability to system of governance, there is governing awareness of a similar insistence on transparency and accountability in present enterprise, given the trend of globalization and the new economic order and its growing influence in everyday life. The concept of Right to Information had expanded momentum when Article 19 of the Universal Declaration of Human Rights was adopted in 1948⁷ provides that “Everyone has the right to seek, receive and impart information” Even under, Article 19(2) the International Covenant on Civil and Political rights, 1968 provides that “Everyone shall have the right to freedom of expression, the freedom to seek and impart information and ideas of all kind, regardless of frontiers.” Even Article 13 of American Convention on Human Rights, 1969 recognized Right to Information as a human right.⁸ Under, Article 10 of European Convention of Human Rights, 1950, it has been provided that everyone has a right to freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Under Article 13 of The United Nations Convention on the Rights of Child, 1989⁹ , it has been declared that the child shall have freedom to seek, receive and impart information and ideas of all kinds. Even under the African Charter on Human and People’s Rights, 1981 declares that every individual shall have the right to receive information. Hence notion of Freedom of Information has perceived in various conventions.

In India, the Constitution itself guarantees Right to Information to the people. The Constitution of India confers the right to freedom of speech and expression only to a citizen. Freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves, but are basic to a democratic form of Government. The preamble of the Constitution of India has given a prime place to the liberty of the thought and expression. It is gratifying to note that the guarantee of freedom of speech and expression have found express recognition in Part III of the Constitution of India which deals with the Fundamental Rights.¹⁰ Right to Information is an implicit fundamental right under the Constitution of India. This right is an integral part of right to Freedom of Speech and Expression under Article 19(1) (a) and right to life and personal liberty under Article 21. The impact of various Supreme Court decisions has clearly established that the right to freedom of information, or the public’s right to know, embodied in the fundamental rights provisions of the Constitution.

In spite of all of this there was a need of a specific Law relating to access to information in India to protect individual’s interest and enrich good governance. It becomes very necessary that

the legislations like, Official Secrets Act, 1923 has kept the people in dark about the happenings in the Government. Therefore after studying various suggestions from National Advisory Council, Government of India repeals the Freedom of Information Act, 2002 and to enact another Law for providing an effective framework for effectuating the Right to Information recognized under Article 19 of the Constitution of India. The new legislation is a radical improvement which is titled as Right to Information Act, 2005. It unequivocally confers on all citizens the right to access information and, correspondingly, makes the dissemination of such information an obligation for all public authorities. It is quoted in the preamble of the Act that “it provides for setting out the practical regime of Right to Information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto”. The new Law, among other things, includes establishment of appellate machinery with investigating powers to review decisions of the Public Information Officers; penal provisions for failure to provide information as per Law; provisions to ensure maximum disclosures and minimum exemptions consistent with constitutional provisions and effective mechanism for access to information and disclosures by authorities, etc.

Information as a Right: Judicial Efforts in India

Law is a reflex of the social conscience, expression of the social will of the people and it should, therefore, be a major promise of the legal process to give effect to the social conscience, the social habits, the social norms and social mores.¹¹ Though Law has been enacted but proper adjudication shall be essential to get justice to all. Justice Krishna Iyer draws heavily on the contents contained in the preamble to the Indian Constitution in order to shape up the concept of justice. The preamble to the constitution enunciates the very basic objectives and the socio-economic goals for the achievement of which the Indian Constitution has been established.

It can be stated from review of many decision by Judiciary, it has acknowledge the existence of right of Freedom of information in India. The legal position with regard to Right to Information has developed through several Supreme Court decisions given in the context of right to Freedom of Speech and Expression. The Judiciary in this country has been constituted the sole authority to interpret Laws, including the provisions of the Constitution, and to pronounce its verdict on the validity of Laws or of executive actions which are alleged to invade Fundamental Rights contrary to the provisions of the Constitutions.¹² The Fundamental Rights conferred on an Indian citizen under Article 19(1)(a) of the Constitution of India which shows the right to freedom of expression and speech including the principle of receiving and sharing of information. Freedom of Speech and Expression comprehends right to know, and right to receive information regarding that matters of public concerns. This right also emanates from the preamble of the Constitution which secures to all its citizens liberty of thought and expression.¹³ The Right of freedom of expression includes several specific rights which are bound together and through which a common string passes. These include¹⁴:

- a) Right to voice one’s opinion;
- b) Right to seek information and ideas;
- c) Right to receive information;
- d) Right to impart information.

The state is under an obligation to create conditions in which the foresaid rights flowing from Article

19(1) (a) of the Constitution can be effectively and efficiently enjoyed by the citizens. Right to seek, receive and impart information can be through words of mouth, in writing or in print, in the form of art or through television, radio, etc.¹⁵ In *State of U.P. vs. Raj Narain*¹⁶, apex court guarantees Freedom of Speech and Expression, it also ensures to the citizens that Article 19 (1) (a) of the Constitution not only ensures to the citizens a right to receive information.

In *Bennett Coleman & co vs. Union of India*¹⁷, the petitioners a publishing house bringing out one of leading dailies challenged the Government's newsprint policy which put restrictions on acquisitions, sale and consumptions. The Supreme Court struck restriction on the basis that they interfered with the petitioner's right to publish and circulate their paper freely, which was included in their right to Freedom of Speech and Expression and held that violated the Fundamental Rights of citizens. In case of *Ramesh Thapar vs. State of Madras*,¹⁸ the court held that Freedom of Speech and Expression includes freedom of press. The apex court has made interpretation of Article 19 including preamble of the Constitution. It has given a broad dimension to the term freedom of speech and expression. It involves communication as well as receipt and information. In the landmark case, *Indian Express (Bombay) Pvt. Ltd Vs Union of India*¹⁹, publishers of one the leading national dailies challenged the restrictions in the Newsprint Control Order on the acquisition, sale and use of newsprint.²⁰ In this case the Justice Venkataramiah observed that, "In today's world freedom of press is the heart of social and political intercourse. The press has now assumed the role of public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of the society. The purpose of the press is to advance the public interest by publishing facts and opinions without which democratic electorate cannot make responsible judgments."

The right to know was further elaborated by Justice Bhagwati in the *S.P. Gupta and other v. Union of India and others*²¹, famously known as Judges Transfer Case which involved the question of whether the correspondence between Chief Justice of India and the Union Law Minister ought to be disclosed. In this case, a fundamental change in the conception of the right of disclosure of information took place. The Court while adding a afresh liberal dimension to the need for increased disclosure in matters relating to public affairs, held that the concept of an open Government is the direct emanation the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistently with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.²²

Summation:

Democracy is only what the citizens make of it, more often, practice of democratic ideals are governed by democratic institutions of the state.²³ Freedom of Speech and Expression is a Fundamental Right of an individual. And it includes Freedom of Information which provides that one person has a freedom to know about functions of government and ask them about information relating to public or private interest. Freedom of Information as a tool to make a government accountable is not a recent phenomenon. Sweden has the oldest legislation (1766) relating to public access to official documents. The 1789 French Declaration of the Rights of Man called for access to information about the budget

to be made freely available. However, for over 100 years, Sweden remained the only nation that took to transforming this principle of access to information to a legal right.

Information, in a sense, has been the very basic root of existence of Government. It has become a critical practice for progress of society. It has become a part of modern decision making as well as socio-economic development. The ultimate purpose of information is to put knowledge to work, and in turn, to improve the quality of everyone. It may be citizen, legislator or executive body or judges, or any other person. Only well-informed person can contribute to a debate that is thorough, substantial and well founded on facts. Any argument stated or act done after such debates will be less open to criticism by the public and the Press or scrutiny by the Judiciary. Right to Information has come as a peaceful info-weapon that offers eloquence to the voice of powerless info-weapon that offers eloquence to the voice of the powerless to stand up for social justice.²⁴ Thus, it can be seen that information is indispensable for the functioning of a true democracy.²⁵

(Endnotes)

- 1 * Assistant Professor, School of Law, Rights and Constitutional Governance, Tata Institute of Social Science, Mumbai
V.R.Krishna Iyer, *Freedom of Information*, 170 (1990)
- 2 Mohit Bharracharya, *New Horizons of Public Administration*, New Delhi, 474, (5th 2010)
- 3 Justice P.S. Narayana & Dr. G.B. Reddy, *Right to Information and Law*, 5 (3rd edn, 2007).
- 4 Black's Law dictionary, Bryan A. Garner, *Herbert Campbell*, 2011
- 5 "Indian Constitutional at Work", Textbook in Political Science for Class XI, National Council of Educational Research and Training, p.34
- 6 Rodney D Ryder, *Right to Information: Law-Policy-Practice*, 3(1st edn.2006)
- 7 Article 19 of Universal Declaration of Human Rights, 1948
- 8 Article XIII, of American Convention on Human Rights, 1969
- 9 Article 13 :1. The child 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 child's choice. 2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by Law and are necessary
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- 12 P.B. Gajendragadakar, *The Indian Parliament and The Fundamental Rights*, 36 ((1st ed.)1972)
- 13 Association for democratic reforms vs. Union of India, AIR 2001, Del. 126
- 14 *Supra*, n. 5, p. 574,
- 15 Association for democratic reforms vs. Union of India, AIR 2001, Del. 126
- 16 AIR 1975 SC 865
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- 19 AIR 1986 SC 515
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- 21 AIR 1982 SC 149
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