

Right to Know as a component of Freedom of Speech and Expression

^{1*}Barsha Mitra

I. INTRODUCTION

The Right to Freedom of Speech and expression under Article 19 (1) (a) is an inalienable right of every citizen of the country; however the right is not absolute and subject to certain limitations. This right is enjoyed exclusively by the citizens i.e., natural persons of the country. Through this Article the framers of the Constitution have intended to provide some basic imperative value of a democratic secular polity, equal freedom for individual fulfillment, attainment of truth, participation in political and ideological debate, decision making and providing opportunities of free discussions and exchange of opinions. This freedom is paramount for smooth functioning of a democratic process. In a country like India, the Right to information is considered as the groundwork of free speech and expression because every person is entitled to know the activities of the State, the instrumentalities and the agency of the State. In modern world, the government does not have the privilege of secrecy which has existed in ancient times. Now the government and its agencies are bound to disclose facts to the citizens of the country and in almost every country right to information have been made a basic fundamental right.²

II. FREEDOM OF SPEECH AND EXPRESSION :

The spirit of free speech and expression lies on the ability to think and obtain information from others from various sources like publication, media, public e government and disclosure, etc without the fear of retaliation, reckoning and repression by the government and its agencies. This freedom is contemplated as the first condition of liberty as it holds a preferred and crucial position in the hierarchy of the

liberty giving succor and protection to all other liberties. In a democracy, freedom of speech and expression provides roots for free discussions of contemporary issues and raise voices against atrocities by the government.

In the case of *Maneka Gandhi v. Union of India*³, Bhagwati, J. opined that, “Democracy is based essentially on free debate and open discussion, for that is the only corrective government action in a democratic set up. If democracy means government of the people, by the people and for the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential.”

Article 19 (1) (a) is corresponding to Amendment 1 of the Constitution of the United States which states that, *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.* And this right does not have any reasonable restriction unlike Article 19 (2) of the Indian Constitution.

III. RIGHT TO INFORMATION OR RIGHT TO KNOW

Through several landmark judgments, the Apex Court has established that the expression freedom of speech and expression includes the right to acquire information and disseminating the same. In a democracy, flow of information is quintessential to bridge the gap between the government and the public as it the citizen who votes and choose their representative. The voter must have the right to access basic information

about the contesting candidate. Democracy requires every citizen to be well informed because every citizen has a right to vote which is a constitutional right but the right to make choice by means of ballot is a part of the freedom of expression. The Universal Declaration of Human Rights 1948 is the mother of jurisprudence of democracy under which Article 19 provides that

“Everyone has the right to freedom of opinion and expression: the right includes freedom to hold opinion without interference, and to seek, and receive and impart information and ideas through any media and regardless of frontiers,”

This spirit got reflected in the Preamble of the Constitution the Parts III and IV of the Constitution of India which embody a solemn resolve of its people to secure, inter alia, to its citizens, liberty of thought and expression. The right to freedom of expression includes few specific rights which can be listed as following:

- Right to voice one’s opinion
- Right to seek information and ideas.
- Right to receive information.
- Right to impart information.⁴

IV. THE RIGHT TO INFORMATION ACT (RTI ACT), 2005 – INSIGHT

The Right to Information Act was passed in 2005 with an intention to provide a practical guidance to the citizens for obtaining any kind of information which is under the control of the public authorities. The main objective of the Act is to maintain transparency and accountability of the public officials and for the establishment of the Central and State Information Commission. The Act was a major development in the way of Right to Know or information. The Right to Information Act has inspired from the Freedom of Information Act in the United States of America which also gives the right to right to request access to federal agency records or information subject to certain exceptions and

limitations. Previously the right to information was laid down under Section 76 of the Indian Evidence Act, 1872 which states that any public documents under the custody of a public officer, can be inspected by any person upon the payment of certain fees.⁵ But a crucial question used to arise as who will decide whether and which person has a right to inspect the documents.

After the enactment of the Right to Information, it has been clearly mentioned in Section 3 that, “Subject to the provisions of this Act, all citizens shall have the right to information.” Section 6 and 7 has provided the procedure for obtaining information from the concerned government department and the time takes for the entire process. Under RTI Act, the limitations have been specifically laid down under Section 8, when the public officials are not bound to disclose information. Some of the exceptions are sovereignty and integrity of the country, information expressly forbidden by any Court of Law, information which might lead to breach of Parliament and State Legislature, maintaining international relations, etc.⁶ Further, the role of the appropriate Government is minutely defined in Sections 26, 27, and 28 and the Information Commissioner’s role is defined in Section 19. Although the Act is quite comprehensive but pivotal part is to implement the Act in a country like India where many people are still illiterate and some people might misuse certain information.

V. IMPLEMENTATION OF THE ACT:

A report by the Research, Assessment and Analysis Group (RAAG) revealed that around two million RTI requests has been filed in the first two years, ie. October 2005 to March 2008. Some of key areas of concern are:

- Awareness: Lack of awareness is the main reason behind improper implementation. Around 64% of the rural area and 62% of urban area stated that they never heard about the Act.

- Non-availability of User Guides for RTI implementation for information seekers.
- The submission channels are generally inconvenient for RTI application.
- There is a lack of assistance in filing RTI application.
- Most of the times there is a failure on the part of the information provider to complete the process within 30 days.
- No Judicial power given to the appellate authority.⁷

VI. JUDICIAL ACTIVISM:

The judicial activism in the area of right to information has been quite regressive. In the case of SUBHASH CHANDRA AGARWAL V. OFFICE OF THE ATTORNEY GENERAL OF INDIA⁸, the Delhi High Court held that the office of the Attorney General of India is not a public authority under the RTI Act which was held as a public authority by the Central Information Commission. Further in the case of SUBHASH CHANDRA AGARWAL V. REGISTRAR GENERAL, SUPREME COURT OF INDIA,¹⁰ the Delhi High Court held that the details of medical expenses of Judges are not qualified to come under the purview of the RTI Act, because it doesn't serve any public interest which was later upheld by the Supreme Court. In the case of KHANAPURAM GANDIAH V. ADMINISTRATIVE OFFICER & ORS, the Supreme Court held that judicial officers are not bound to give their reason for judgment.¹¹

In a breakthrough judgment, in the case of JIJU LUKOSE v. STATE OF KERALA¹², the Kerala High Court held that the copy of the First Information Report (FIR) should be available by the police authorities within two days of receipt of application. The court observed that the accused has a right to receive the copy of the FIR even before the proceedings initiates under Section 207 of the Criminal Procedure Code, 1973.

In the case of VIJAY KUMAR MISHRA v. CENTRAL BOARD OF SECONDARY EDUCATION¹³(CBSE), the Central Information Commissioner held directed CBSE to furnish copies of the answer sheet to the father of a student for inspection and to pay a compensation of Rs. 25000/- (Twenty five thousand rupees) for harassing him and forcing him to sign an undertaking to waive his rights.

Therefore, the role of judiciary is very significant in a democracy to protect the right and liberties of the citizens but the judiciary is comfortable until its interest is coming into the picture.

VII. EXEMPTIONS UNDER RIGHT TO INFORMATION ACT:

Despite the fact that the every person has the fundamental right to know guaranteed in the Constitution but many Central Agencies are out of the purview of the RTI Act. Section 8 is an important Section which has already been discussed above. In the case of SHRI SC SHARMA V. MINISTRY OF HOME AFFAIRS,¹⁴ the central Information Commission opined that the matters connected with the interceptions of telephone were governed by the provisions of the Telegraph Act, 1885 as they are related to the security of the country. Again in the case of NANAK CHAND ARORA V. STATE BANK OF INDIA¹⁵, that there is no provision in the Act which restrict the disclosure of information merely on the ground or the fact that matter is pending with the Consumer Court. In the instant case, the CIC has not forbidden the disclosure of investigation report or inspection of record.

Further, central agencies like Intelligence Bureau, Central Bureau of Investigation, National Investigation Agency, Narcotics Control Board and others are also kept aside for the purpose of safety and security of the country under Section 24 of the Act, the list of which is given under Schedule 2 of the Act.

Therefore, to certain extent limitations can be imposed but in most of the times a through media and press some misinformation are also given to the general public, which pose a threat to the democracy. A citizen who votes must be given the right to choice as to what information is necessary for him after having background check. In this way transparent relation will evolve between government and its subjects.

VIII. CONCLUSION

A law becomes successful when even a layman of the country is aware of such law because an Act is an easy task rather than implementation. In India where most of the people lives in rural areas and many people are illiterate and poor are hardly aware of their constitutional rights. They get misguided easily by the government officials who are unwilling to provide any kind of information which might disclose some serious issues pertaining to corruption and human rights violations. These challenges should be grappled by the government to serve all the citizens equally and not only to powerful and wealthy and have knowledge and resources to get the law enforced in their favor. This has been witnessed in many countries that a law gets adopted to serve the interest of the public but end up serving the interests of the advantaged people by reinforcing their position. Like the other countries, in India also, the advocates of RTI Act have been continuously facing attempts of amending the Act, launched from the ministers and bureaucrats so as to restrict the right to information. This can be possible if the judicial system takes the responsibility to safeguard people's right to information which will be the best way to preserve confidence of the common man in the system.

As right quoted by our Prime Minister Mr. Narendra Modi, "*while transparency reduces corruption, good governance goes*

beyond transparency in achieving openness. Openness means involving the stakeholder in the decision making process. Transparency is the right to information while openness is right to participation."

(Endnotes)

- 1 * LLM Student; Symbiosis Law School, Pune
- 2 M. P. Jain- Indian Constitutional Law
- 3 AIR 1978 SC 597 : (1978) 1 SCC 248
- 4 M.M. Semwal and Sunil Khosla- "RIGHT TO INFORMATION AND THE JUDICIARY" The Indian Journal of Political Science, Vol. 69, No. 4 (OCT. - DEC., 2008), pp. 853- 864
- 5 A. G. NOORANI - Right to Know or Freedom of Information Economic and Political Weekly, Vol. 21, No. 31 (Aug. 2, 1986), p. 1337
- 6 The Right to Information Act, 2005
- 7 Peoples' Monitoring of the RTI Regime in India 2011-13 by RTI Assessment and Advocacy Group (RaaG)
- 8 W. P (C) 1041/2013
- 9
- 10 W.P. (C) no. 288/2009
- 11 AIR 2010 SC 615
- 12 W.P.(C) no 1240/2015
- 13 CIC/RM/A/2014/000014-SA
- 14 CIC AT/A/2006/000056
- 15 F.No. CIC/MA/A/2006/00018