

Right To Information: An Aide of Justice

Jaspreet Kaur Majithia

Assistant Professor, Rayat Bahra University School of Law, Sahauran, Mohali, India

Abstract

For over fifty years, secrecy has been the norm in the working of the Government, and transparency the exception. In the guise of protecting the State's interest, secrecy in public affairs has been a shield for those in Government, a means of concealing their actions and motives from public scrutiny. Access to information, on the other hand, is power in the hands of the electorate. It demands accountability. This is fundamental to the functioning of any truly democratic society. The hallmark of a meaningful democracy is the institutionalization of transparent and participative processes which gives the electorate access to information about the Government it has brought to power, and enables it to make an informed decision to remove that Government from power, if it so chooses. Just as secrecy undermines democracy, information is a threat to authoritarianism. Laws that license secrecy are a colonial legacy and were adopted by totalitarian regimes to legitimize suppression of information about its functioning. Secrecy in public affairs is anathema to the very notion of democracy. Yet laws favoring governmental secrecy have dragged on for half a century after India became a democratic republic

KEYWORDS: Secrecy, Access to Information, Democracy, Government

INTRODUCTION

Information is the currency that every citizen needs to make a difference in the life and governance of society, since the knowledge gained on the basis of this right would equip him to make out wrong from right. The greater the access the citizen has to information, greater would be his reaction, which would in turn make the Government more responsive and tuned to the community needs. Alternatively, greater the restrictions on access, greater the feelings of powerlessness and alienation would be seen in the common man. The free flow of information would make the common man identify with the Government. Without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choices. Neither the particular Government of the day nor public officials create information for their own benefit. Information is always generated for a specific purpose. It helps in legitimate discharge of the duties of office, and for the service of the public for whose benefit the institutions of the Government exist, and who ultimately fund the institutions of the Government and the salaries of officials. It follows that the Government and officials are trustees of this information for the people. The Right to information is a necessary ingredient to achieve the objectives like Transparency and openness, People's Participation and Empowerment, Eradication of Corruption, Accountability, Securing Good Governance, Cementing Trust in Government, and Facilitating Equitable Economic Growth etc.

For over fifty years, secrecy has been the norm in the working of the Government, and transparency the exception. In the guise of protecting the State's

interest, secrecy in public affairs has been a shield for those in Government, a means of concealing their actions and motives from public scrutiny. Access to information, on the other hand, is power in the hands of the electorate. It demands accountability. This is fundamental to the functioning of any truly democratic society. The hallmark of a meaningful democracy is the institutionalization of transparent and participative processes which gives the electorate access to information about the Government it has brought to power, and enables it to make an informed decision to remove that Government from power, if it so chooses. Just as secrecy undermines democracy, information is a threat to authoritarianism. Laws that license secrecy are a colonial legacy and were adopted by totalitarian regimes to legitimize suppression of information about its functioning. Secrecy in public affairs is anathema to the very notion of democracy. Yet laws favoring governmental secrecy have dragged on for half a century after India became a democratic republic.

World-wide movements have begun in democratic countries, for providing to the citizens the right of access to information in order to promote participation of the citizens in the governance of the country and also to ensure transparency and accountability of the Government.¹ A number of countries² have enacted legislations for disclosure of information held by public authorities and many more are in the process of enacting the legislations on the subject. At the International level, the Right to information finds articulation as an inalienable fundamental human right in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights. At the regional level, there are numerous other human rights documents, which include access to information as a fundamental right.

RIGHT TO INFORMATION AND THE INDIAN CONSTITUTION

India is a Democratic country, therefore free flow of information is a must, because it helps the society to grow and flourish and also ensures people's participation in decision making, transparency and accountability in governance. One of the major objectives of the Indian Constitution according to the Preamble is to secure liberty of thought and expression to the citizens of India which is incorporated in the Fundamental Right of the freedom of Speech and Expression under Article 19(1) (a) of the Constitution. The Right to freedom of Speech and Expression means the freedom to communicate one's ideas, opinion, views or feelings through any medium. However the fundamental Right to Speech and Expression can never be exercised until and unless the information regarding public matters is being circulated freely. The importance of this right is being time and again emphasized by various judicial pronouncements from time to time.

¹ Ibid.

² For example: Albania, Angola, Argentina, Armenia, Azerbaijan, Australia, Austria, Belgium, Belize, Bosnia and Herzegovina, Bulgaria, Canada, Colombia, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Mexico, Netherlands, Norway, Pakistan, Poland, Philippines, Portugal, New Zealand, Romania, Switzerland, USA, United Kingdom, Sweden, South Africa, South Korea, Spain, Thailand, Turkey, Tajikistan, Uzbekistan, Ukraine, Zimbabwe etc.

In *S. P. Gupta vs Union of India*³, Bhagwati, J. has observed that :

"The concept of an open government is the direct emanation from 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 the Government must be the rule and secrecy an exception"

In *State of U.P. vs Raj Narain*⁴, it was observed by Mathew, J. that:

'The right to know', "which is derived from the concept of freedom of speech, though not absolute is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security".

In *Secretary, Ministry of Information and Broadcasting, Govt. of India vs Cricket Association of Bengal*⁵, the Supreme Court has observed that:

"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"

The three pillars on which the edifice of democracy stands are fair and free elections, freedom of thought, expression and press and independence of the Judiciary. In *Union of India vs. Association for Democratic Reforms*⁶, the Supreme Court has observed that :

"There is no reason to hold that freedom of speech and expression would not cover the right to get material information with regard to the candidate who is contesting election for a post which is of utmost importance in the democracy"

In *People's Union for Civil Liberties vs Union of India*⁷, the Supreme court held that : *"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. The Right to Information, thus, indisputably is a Fundamental Right"*.

In *Indian Express Newspapers (Bombay) Pvt. Ltd. vs Union of India*⁸, the Supreme Court emphasized 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'. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle is the people's right to know."

The Right to information is inherent in the Right to live as enshrined in Art. 21 and freedom to speech and expression as guaranteed under Article 19(1)(a) of our Constitution. For the first time the Supreme Court recognized the Right to information as a part of the right to live under Article 21 of the constitution. In *Reliance Petrochemicals Ltd. V. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd*⁹, the Supreme Court observed that:

³ 1981 Suppl. SCC 87

⁴ (1975) 4 SCC 428

⁵ 1995 AIR 1236 (1995) 2 SCC 161 at p. 198

⁶ (2002) 5 SCC 294 at p. 317.

⁷ AIR 2004 SC 1442 : (2004) 2 SCC 476.

⁸ 1985 SCR (2) 287 at p. 292.

⁹ AIR 1989 SC 190, 1988 SCR Supl. (3) 212 at p. 234.

“The people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. The Right to know is a basic right which citizens of a free country aspire to the broad horizon of the right to live in this age , on our land under Article 21 of the Constitution.”

The freedom enumerated in Article 19 is not absolute or uncontrolled, for each is subject to reasonable restrictions. “Prevention is better than cure” is a time honoured maxim, which was perhaps the idea behind inserting the term “reasonable restrictions” in clause(2) to clause (6) of Article 19 and consequently to prevent citizens from arbitrary, fanciful and unconstitutional restrictions on the exercise of the freedoms.

In *LIC vs Manubhai*¹⁰, the Supreme Court expressed the views that:

“The constitutional guarantee of the freedom of speech and expression is not so much for the benefit of the press as it is for the benefit of the public. The people have a right to be informed of the developments that take place in a democratic process and the press plays a vital role in disseminating this information. Neither the Government nor any instrumentality of the Government or any public sector undertaking run with the help of public funds can shy away from articles which expose weaknesses in its functioning and which is given cases pose a threat to their power by attempting to create obstacles in the information percolating to the members of the community”.

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¹⁰ 1993 AIR 171, 1992 SCR (3) 595,at pages 610-611

¹¹ 1985 SCR (2) 287 at p.292.

¹² AIR 1989 SC 190 , 1988 SCR Supl. (3) 212 atp.234.

clause(2) to clause (6) of Article 19 and consequently to prevent citizens from arbitrary, fanciful and unconstitutional restrictions on the exercise of the freedoms. Alongside Article 19(1) (a), the other provisions which secure the right to information under Indian Constitution are Articles 311(2) and 22(1). Article 22(1) provides that:

“No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice”

On the other hand in Article 311(2) provides that:

“No person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges”

The overall impact of above mentioned decisions and provisions has clearly established that the Right to freedom of information, or the public's right to know, is embedded in the provisions guaranteeing fundamental rights in the Constitution. The access to information held by a public authority as a matter of right was not possible until 2005. Lack of information barred a person to realize his socio-economic aspirations, because he had no basis to participate in the debate or question the decision making process.

The government, in 1977, formed a working group to look into the possibilities of amending the Official Secrets Act, but the working group did not recommend changes. In 1989, a committee was set up which recommended some limitations to be imposed in the areas where Government information could be hidden, and opening up all other spheres of information. In 1996, the Press Council of India headed by Justice P. B. Sawant presented a draft model law on the Right to Information to the Government of India. Thereafter a working group under the chairmanship of Mr. H.D. Shourie was formed by the Central Government in order to prepare a draft legislation on the freedom of information. The Shourie Committee's report and draft law were published in 1997. Eventually, the Committee's draft law was reworked into the Freedom of Information Bill (FOI) 2000, which was passed by the Parliament in 2002, but was not notified. Inspired and encouraged by the exercises taken up by the Central Government, many State Governments yielded under popular pressure and prepared draft legislations on the Right to information. A number of states enacted their own transparency legislations before the Freedom of Information Bill was finally introduced in the Lok Sabha on July 25, 2000. However, a number of objections were raised by the civil society to the Freedom of Information Bill and suggestions were made for amendments to the National Advisory Council. As a result of civil society's long-drawn struggle, the Right to Information Act was enacted in 2005.

The main objectives of the law of the Right to Information are to operationalise the Right to information, to set up systems and mechanisms that facilitate people's easy access to information, to promote transparency and accountability in governance, to minimize corruption and inefficiency in public offices and to ensure people's participation in governance and decision making. The Right to Information Act promises to make the right to information more progressive, participatory and meaningful, as it

encourages the common citizen to enthusiastically participate in the whole process of governance. The Right to Information Act paves the way for an empowered citizen, as well as an alert, efficient, responsive, transparent and accountable Government. The Central and State Information Commission has a major role in enforcing the implementation of the provisions of the Act as well as for educating the information seekers and providers.

While assessing the impact of The Right to Information Act on good governance, it may be worthwhile to understand as to how it works and what it does or does not do. There is a need to answer the question: whether the objectives of the Act are being realized or not?

If we take into account the responses to the Right to information requesters and activists in the cases listed before the National and State(s) Commission to resolve the disputes between information seekers and providers, media reports on the issues pertaining to Right to information and preliminary research studies and publications of result specifically those relating to corruption and accountability of public bodies, we come to the conclusion that the Right to information has a significant bearing on good governance and development. This statutory right to information is in many ways a significant reform in public administration in India. It seeks to secure to every citizen the enforceable right to question, examine, audit, review and assess Government acts and decisions and ensures that these are consistent with the principles of public interest, probity and justice. It promotes openness, transparency and accountability in administration, by making the Government more open to consistent public scrutiny. The Right to information is an important aid in ensuring transparent administration of public affairs and will help expose corruption and nepotism to ensure a clean administration. It covers a wide spectrum of bodies and officials from the Central government, the State Governments, Panchayati Raj institutions, local bodies and, significantly all bodies including Non-Governmental organizations (NGO) that are established, constituted, owned, controlled or substantially financed by the government. The implementation of the law on Right to know for setting up an information regime therefore augurs well for strengthening the knowledge of society as well as for increasing the accountability of public bodies.

The Right to information Act has increased awareness among the members of the public about the rights conferred under the Act and the procedure for obtaining information from Public Authorities is also known to the general public by and large. All the State Information Commissions are receiving an increasing number of complaints and appeals under the Right to Information Act, 2005. It is observed that the role of the State Governments in supplying the information is continuously under scrutiny of individuals and institutions including Non Governmental Organizations and the media. At the same time, many individuals and organizations are critically scanning the performance of individual Information Commissions.

The Act has helped a great deal in the growth of the society and the nation. A number of queries relating to the Right to Information have revealed and are in the process to reveal a number of truths which are otherwise not possible to be communicated to the people in the routine course of things.

A social organization in Meghalaya has found that wheat worth crores of rupees under the Targeted Public Distribution System has been allegedly diverted for the past

several years. Under the Right to Information application the Food Corporation of India (FCI) has given information that the State has been receiving wheat from 2008. Every month the State receives its quota of 1,403 metric tons of wheat, but none of the fair price shops are distributing it to the targeted people. This disclosure was made possible under the Right to information Act.

It has come to light that the Goa Government has been tapping telephones in the State, allegedly in violation of Supreme Court directions and the Indian Telegraph Rules, until very recently. The Information obtained by the Right to information activist Savio Correia from the State Home Department suggests that telephone tapping was done in breach of the procedure established by law.

A query under the Right to information Act has revealed that a sum of Rs.38 lakhs is lying unspent at the Delhi Child Labour Rehabilitation cum Welfare Society, which takes care of rehabilitation of rescued child labourers annually. Many other irregularities of various Government agencies have been brought to the light by the Right to information Act. The awareness about the Right to information Act in the country is increasing day by day.

A question has arisen that Whether the 'Office of Chief Justice of India, in his capacity as Chief Justice not sitting in a Court is subject to the application of Right to Information Act, 2005. The Information Commission's view was that the Chief Justice is a custodian of the information available with him, and that it is available for perusal and inspection to every succeeding office-holder. Therefore the information cannot be categorized as "personal information" even if the Chief Justice of India holds it in his personal capacity. Public statements have been issued from time to time by the Chief Justice of India, who has been in the forefront in advocating the view of keeping the higher judiciary out of the purview of Right to Information Act for he has said that no self respecting judge will accept compulsory declaration. The Chief Justice is not a public servant. He is a constitutional authority. Right to Information Act does not cover constitutional authorities. We do not want the judges to be harassed. Such statements are directly or obliquely concerned to the controversy regarding asset declaration by the judges and the Chief Justice of various High Courts and the Supreme Court of India.

Since then, however, amidst views from some judges themselves that declaring their assets publicly is necessary, the Chief Justice has reversed his stand owing to a unanimous decision taken by all the Supreme Court judges that now the Court will place the statements of assets on its web sites. Whether this amounts to accepting the jurisdiction of the Right to Information Act or if any action will be taken for non-declaration of assets, is still unclear.

However, a legislation has been proposed under the name of "The Judges (Declaration of Assets and Liabilities) Bill, 2009". The bill apparently aimed at bringing transparency to the functioning of the higher judiciary by providing for declaration of assets and liabilities by the judges. However, it was postponed due to opposition from both Left and Right about Clause 6 of the bill which states that High Court and Supreme Court judges would declare their assets but the same would not be made public. So far no final law has been made on the proposed Legislation.

RIGHT TO INFORMATION AND JUDICIARY

The legal position with regard to the right to information has developed through several Supreme Court decisions under the Constitution, basically the fundamental rights

& other legislative provisions, but more specifically in the context of the Right to Freedom of Speech and Expression, which has been said to be the other side of the Right to Know, and one cannot be exercised without the other. The interesting aspect of these judicial pronouncements is that the scope of the right has gradually widened, taking into account the cultural shifts in the polity and in the society. The Supreme Court of India has recognized the right to information as a constitutionally protected fundamental right. The court has recognized that right to access information from Government departments is fundamental to democracy.

Justice K. K. Mathew of Supreme Court of India observed that:

'In a government where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people have a right to know every public act, everything that is done in a public way, by their public functionaries. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption'.

According to our country's constitutional scheme, the Executive, Legislature and Judiciary are the three organs of our constitution. Judiciary is the most powerful, primarily because it has the power of judicial review over every action of the executive and the legislature. The Right to Information is a tool which attempts to monitor and ensure accountability and transparency in every public functionary. The Law of Contempt is a shield used by the judges in order to silence criticism and muzzle dissent. The additional immunity with which the judges shroud themselves is the protection from being investigated for criminal offences. There are various layers of protection afforded to judges which hinder accountability.

In *Secretary General, Supreme Court vs Subhash Chandra Aggarwal*¹³ it is observed by the Supreme Court that: *"Accountability of the Judiciary cannot be seen in isolation. It must be viewed in the context of a general trend to render Governors answerable to the people in ways that are transparent, accessible and effective. Behind this notion is a concept that the wielders of power Legislative, Executive and Judicial - are entrusted to perform their functions on condition that they account for their stewardship to the people who authorize them to exercise such power. Well defined and publicly known standards and procedures complement, rather than diminish, the notion of judicial independence. Democracy expects openness and openness is concomitant of free society. Sunlight is the best disinfectant"*

The Judiciary should not be scared of transparency. Transparency in Judicial Administration is a must. It is rather in the interest of the Judiciary itself that to save its fine image it must subject itself to the provisions of the Right to Information Act.

In *S.P. Gupta vs. Union of India*, It was observed by the Supreme Court that¹⁴:

¹³ AIR 2010 Delhi 159,(2010) 1 RCR(Civil)764.

¹⁴ 1982 2 SCR 365 para 66.

“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 know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate have no repercussion on public security. To cover with veil of secrecy the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired”.

Another sensitive issue is that, Can a judge be asked under the Right to Information (RTI) Act as to why and how he came to a particular conclusion in a judgment. The Supreme firmly have said that a judge speaks through his judgments and he is not answerable to anyone as to why he wrote a judgment in a particular manner. The best suggested course of action would be that in case of non speaking judgments and in some cases of arbitrary and controversial judgments, this criteria should not be followed. It goes without saying that every judicial order has to be fortified with the rational, logic and law of the land Court says that such a question can't be raised against any judgement. *In Khanapuram Gandaiah vs Administrative Officer*¹⁵ The Chief Justice K.G Balakrishnan and Justice B.S Chauhan firmly have said that a judge speaks through his judgments and he is not answerable to anyone as to why he wrote a judgment in a particular manner. The best suggested course of action would be that in case of non speaking judgments and in some cases of arbitrary and controversial judgments, this criteria should not be followed. It goes without saying that every judicial order has to be fortified with the rational, logic and law of the land collectively. An absence of these aspects in judicial pronouncements renders it suspicious and hence should be open and available for explanation.

CONCLUDING OBSERVATIONS

With the enactment of the Right to Information Act, India has taken a small step towards achieving real Swaraj. India now can proudly proclaim that its citizens today have been bestowed with specific right to information, which will unquestionably lead to true democracy with transparency and accountability as essential elements. Although there are still some shortcomings, yet, they can be overcome for the growth of a healthy democratic atmosphere especially in a country which happens to be the largest democracy in the world. Information is power, and the executive at all levels attempts to withhold information in order to increase its scope for control, patronage, and to facilitate the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and pro-active dissemination of relevant information amongst the public is potentially a very strong safeguard against corruption. Fighting corruption has been a major anxiety for our country for decades. The answer to corruption lies potentially in the hands of Right to Information Act. Transparency can be achieved by growth of a comprehensive information management system and by the promotion of information literacy among the citizens. This will positively lead to ultimate recognition of the objectives of Right to Information namely transparency and accountability. It is therefore, rather safe to affirm that the Right to Information is a means as well as end in itself to attain democracy in its truest meaning.

¹⁵ Special Leave petition No.34868 of 2009 at p.6, decided on 4 January, 2010.

REFERENCES

1. A. David Amrose, '*Judicial Response to the Right to Information in India*', 11 Delhi Law Review (1999)
2. Divan and Rosencranz, *Environmental Law and Policy in India*, Tripathi Publications, 1991.
3. Justice K.K. Mathew, State of U.P vs Raj Narain, AIR 1975 SC 865.
4. Madhavi Divan, 'from Secrecy to the Freedom of Information -A Reluctant Transition', (2003) 8 SCC (Jour) p. 60
5. Minal M. Bapat 'Right to Information: Its Scope and Need', Legal Bytes Practical Lawyer, Eastern Book Company, December 2007, <http://www.ebc-india.com/practicallawyer>.
6. P.S. Jaswal, '*Environmental Law, Environment (Protection) Act*', 1986, Pioneer publications, 2008.
7. Shalu Nigam, 'About your Right to Information', We the People Trust, New Delhi, 2008, p.20.
8. Slough, P. and Rodrigues, 'Indian's Right To Information Movement Makes A Breakthrough', Open Government: A Journal on Freedom of Information. (2005) Volume 1, Issue 1 published on 21st March, p. 1.