

## **A GLANCE TO THE RIGHT TO INFORMATION ACT, 2005**

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“ ‘ 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 in public security.”

It was observed by Mathew.J. in the reported case of *State of U.P. v. P.V.Rajnarain* reported in (1995) 4 SCC 428 which was perhaps the first decision adverted to the right to information.

It was said very aptly in that case 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.

The Right to Information Act, 2005 has been enacted to provide for getting out the practical regime of right to information for citizens to secure access to information under the control of citizens to secure access 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 Commission and for matters connected there with or incidental thereto. As a result this crucial legislation- the Right to Information Act, 2005 has come into force with effect from 12 October 2005 all over India.

The Right to Information Act is founded on the idea that public bodies hold information not for themselves but on behalf of the public. It also incorporates the powerful democratic principles underlining the right of democratic participation and good

governance including its fundamental function of reinforcement and ensuring respect for all human rights.

The right to information flows from the principle of ‘maximum disclosure’, whereby all information should be subject to disclosure unless there is an overriding public interest in secrecy.

The Right to Information Act, 2005 includes broad definitions of both the scope of information and public bodies, consistent with its basic purpose. It also sets at clear, user-friendly process for the exercise of the right, as well as a right to appeal, on refusal to provide information to an appellate authority and from there to an independent administrative body i.e. Information Commission.

Right to Information is a fundamental right. The concept of an open government is said to be the direct emanation from the right to know which seems to be implicit in the right to freedom of speech and expression guaranteed under Art. 19(1) (a). The freedom of speech and expression includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. It is a part of the fundamental Right to freedom of speech and expression recognized in various S.C. decisions and it is directly linked to the Right to Life. The hon’ble S.C. has widened the definition of Right to Life to include the Right to food, health, education; liberty etc. and denial of information is a denial of these rights.

The primary foundation for insisting upon openness in government rests upon the sovereignty of the people. Under a democracy, Parliament is “supreme”, in the sense that the term is used in the phrase “parliamentary supremacy”, but the people remain sovereign. They enjoy the ultimate power which their sovereignty confers. But the people cannot undertake the machinery of government. The task is delegated to their elected representatives. The government can be perceived as the agent or fiduciary of the people, performing the task and exercising the powers of government which have been devolved to it in trust of the people. The information held by the government is essentially the people’s information being held as their behalf pursuant to this devolution of authority.

The people's sovereignty ultimately determines their right to insist upon openness in government [Thomas J. of the H.C. of New Zealand, 1995].

### **Meaning of Freedom of Information**

Freedom of information is a fundamental human right and the touchstone of all freedom to which the United Nations is consecrated.

### **Scope of the Right to Freedom of Information**

The public has the right to have access to information that the government (or other public institutions) holds about them, holds that could benefit the officials, public and private, have the right to “blow the whistle” on bad practices in public institutions. The public has the right to see and hear what is going on it in the legislature, in the courts, and other public bodies.

This is a big list. It would become bigger still if we were to list all the different types of information that the public might be entitled to- finance, the environment, corruption, health and medicines, defense to name just a few.

“No man is good enough to govern another man without that other's consent”

- Abraham Lincoln.

It is important that the right to freedom of information includes the right to officials to make public information about wrongdoing in the institution that they work for.

Yet the fundamental argument in favour of freedom of information is that the information belongs not to the government, but to the people as a whole.

How does the right to freedom of information make life better?

It will help to live in a less corrupt society that is free from hunger, which is healthier, where the environment is respected. It will help to make sure that fundamental human rights are respected and that privacy is respected. It will help to make country more secure. It will help to make the political system in the country more democratic. It will help to make government more efficient, it will lead to better decision making. It will help the economy more efficient and it will lead to individuals receiving better treatment from institutions.

“Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.”- Abid Hussain the special Reporter on freedom of opinion and expression in United Nations.

### **Right to Know and to Obtain Information**

No democratic government can survive without accountability. The basic requirement of accountability is that the people should have information about the functioning of the government.

Government’s openness is a sure technique to minimize administrative faults. In a democratic setup there is a government of responsibility. It is basic to democratic governance that citizens ought to know what their government is doing. They have the right to know every public act, everything that is done in a public way, by their public functionaries.

Justice Krishna Iyer rightly said, “A government which reveals in secrecy not only acts against democratic but busies itself with its own burial”.

The right to know the truth is paramount and it must outweigh the right to property and other personnel rights. As light is a guarantee against theft, so governmental openness is a guarantee against administrative misconduct.

It has been said that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration.

Further, that, the citizens have the right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct.

So said, a citizen, prepare to pay requisite fee, and is entitled to ask for copies of public documents, to the inspection of such documents.

### **Right to Information- A Fundamental Right**

It is a Constitutional guarantee. Factors restricting the free flow of information are many which include:

- The Officials Secrets Act, 1927
- The Indian Evidence Act, 1872
- The Civil Servants Code of Conduct Rules, 1968.

These Acts continuing to operate in secrecy at administrative level, prohibiting government servants from communicating any official document to anyone is that authorization. Sec.123 of the Indian Evidence Act also prohibits the giving of evidence from unpublished official records without the permission of the head of the relevant department who is free to grant or withhold such permission.

So also bureaucratic culture of secrecy prevalent in government, lack of accountability in public offices, illiteracy of people who do not know where to go for information, absence of effective communication tools and processes and badly maintained records.

Need for a law on the right to information is justified on the following grounds.

1. Law is needed to make access to information a reality for every citizen.

2. A law will operationalise the fundamental right to information. Legislature will help set up systems and mechanisms that facilitates people's easy access to information.
3. Law will promote transparency and accountability and enable people's participation in governance.
4. Law will help minimize corruption and inefficiency in public offices.

### **Right to Information in India – Background**

Indian Constitution does not specifically provide for the right to information as a fundamental right though the Constitutional philosophy amply supports it. Right to Information Act, 2005 is an Act to provide for setting out the practical regime of right 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 Commission and for matters connected therewith or incidental there to.

“Right to Information is a potent instrument for good governance”- the Prime minister Dr. Man Mohan Singh.

The right to information Act came into force in its entirety on the 12<sup>th</sup> October, 2005.

### **Relevant Sections**

- 1) *Section.4(1)*- Obligation of Public Authorities
- 2) *Section.5 (1) and sec.5 (2)* - Designation of Public Information Officers and Asst: Public Information Officers.
- 3) *S.12 & 13*- Constitution of Central Information Commission, Term of Office and Conditions of service.
- 4) *S.15 & 16*- Constitution of State Information Commission, Term of office and conditions of service.

- 5) S.24- Non-applicability of the Act to intelligence and Security Organizations.
- 6) S.27 & 28- Power to make rules to carry out the provisions of the Act i.e. power to make rules by appropriate government, power to make rules by competent authority.

“Real democracy cannot be worked by man sitting at the top. It has to be worked from below by the people of every village and town that sovereignty resides in and flows from the people.” So said the *father of the nation* in whose name we swear. Therefore, “who will watch the watchman?” is the vexed question before our democracy. For this people’s participation at all levels is a must. (Bombay H.C. judgment date: 17.10.86 in W.P. No. 2733 and order of the S.C. in Special Leave Petition No. 1191.

“The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused.”- Mahatma Gandhi.

### **Information as the basis of the Commission**

#### **Rise of Democracy**

Democracy in its true sense entrusts the people with a certain degree of dignity which is considered to be a birth right and the rights and freedom which has been clearly defined in the form of certain covenants, inter related agreements etc.

A few of the important international human rights documents are as follows:

1. Universal Declaration of Human Rights. 1948 (UDHR)
2. The International Covenant on Civil and Political Rights, 1966(ICCPR)
3. European Convention for Protection of Human Rights and Fundamental Freedom, 1950
4. The American Convention on Human Rights, 1968
5. The African Charter Human and People’s Rights, 1981
6. Joint Declaration on International Mechanisms for Promoting Freedom of Expression, 2004

## **Right to Information in Global Perspective**

### The World's Right to Know

During the last decade, many countries have enacted new legislation giving their citizens access to government information. Why?

Because the concept of freedom of Information is evolving from a moral indictment of secrecy to a tool for market regulation, more efficient government, and economic and technological growth- writes Thomas Blenton.

### **International Standards**

The United Nations and the Right to Information- "Secrecy without good reason is no longer an option."

Very early on, freedom of information was recognized as a fundamental right within the U.N. In 1946, at its first session, the U.N. General Assembly adopted Regulation 59(1) which stated "Freedom of Information is a fundamental human right and the touchstone of all the freedom of which the U.N. is consecrated."

In 1948, the U.N. General Assembly adopted the Universal Declaration of Human Rights (UDHR) which guarantees freedom of opinion and expression.

International Covenant on Civil and Political Rights was adopted by the U.N. General Assembly in 1966. This guaranteed everyone the freedom of opinion, freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds, regardless of frontiers, either orally, in writing or in front, in the form of art or through any media of his choice and exercise of the rights which carries with it special duties and responsibilities.



In 1993, the UN Commission on Human Rights established the office of the UN Special Reporter on freedom of opinion and expression.

### **The Common Wealth and the Right to Information**

1980, the commonwealth Law ministers meeting in Barbados states that public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information.

In March 1999, the Commonwealth Expert group meeting in London adopted a document setting out a number of guidelines on the right to know and freedom of information as a human right.

### **A commentary on Right to Information Act, 2005.**

On October 12, 2005 the Right to Information Act, 2005 came into force in India. The object of this Act was revolutionary when seen in the Indian context, as it opened all official departments across the country to public scrutiny. Lawyers and the civil society are the most important stakeholders in the successful implementation of the Right to Information Act, 2005.

#### **Preamble**

It, however, needs to be pointed out that there is nothing new in this right except that the provisions have been consolidated and the people given opportunity (and Right) to know everything they want, simply by writing to the Public Information Officer. The Official Secrets Act has been out to size and except for specified areas; no information

can be withheld from public. The legislature cannot be denied any information and now the citizens have been bestowed with similar powers.

### **Road to the Right to Information Act, 2005**

The social activists and media played a pivotal role in bringing the Right to Information to the attention of the Indian government. The Indian government did not have an easy path to their goal. Therefore, many people's movements and legal battles fought by many academicians, lawyers, and media and so on. The following facts throw light on the road to the formation of the Right to Information Act, 2005 and of India becoming the 55<sup>th</sup> country to enact the RTI Act.

The free flow of information remained severely restricted by three factors:

1. The Legislature framework includes several pieces of restrictive legislature, such as the Official Secrets Act, 1923.
2. The pervasive culture of secrecy and arrogance within the bureaucracy and
3. The low levels of literacy and rights awareness amongst the Indian public.

### **The Mazdoor Kisan Shakti Sangathan Movement: An Immediate Cause for the Right to Information Act, 2005**

The MKSS was one of the most popular Indian social movements for the legislation on the right to information. This movement was led by Aruna Roy. The MKSS was established in 1990.

The MKSS conducted public meetings called jansunwais in which the findings of a public audit are read out and discussed in public consisting of the entire community and stakeholders. The information contained in the official records is read out to the people in the meeting and the people testify before everyone, the veracity of that information. The proceedings take place in a completely transparent manner. There is also little scope for anyone to lie because all the parties are present and if anyone says anything wrong, others would be able to counter that. The MKSS gained a lot of popularity in the public and they got a lot of attention from the media and from throughout the nation.

The MKSS movement started as a simple agitation against a very corrupt government and came to become one of the most important reasons for a quick legislation. The public audit and jansunwais together are a big leap on the road to participatory democracy. The MKSS has conducted a lot of jansunwais till now. The people use the right to information as a tool to obtain the official records from the government offices concerned and conduct social audits to compare the data in the official records with the ground reality.

Public audits do not have any legal sanction. The findings of a public audit are not acceptable as evidences under any law. However, public audit creates a lot of public pressure on the political establishment to take corrective steps. Such public audit and jansunwais are still being practiced even in the urban areas by people rights moments like parivartan and the MKSS itself.

### **Allied Act and Rules**

The fact that the right to information is included in the constitutional guarantee of freedom of speech and expression has been recognized by the S.C. decisions challenging governmental control over news print and bans on the distribution of newspapers.

### **SUPREME.COURT. in the RIGHT to INFORMATION**

*People's Union for Civil Liberties v. Union of India*, AIR 2004 SC 1442 [(2004)2 SCC 476]

Held:

“We are also satisfied that the order issued by the central government under section.18 of the Act and its claim of privilege do not suffer from any legal infirmity warranting interference with the H.C. judgment by us.

(Right to Information is a fundamental right under Art.19 (1) of the Constitution. The State under clause (2) of Article 19 of the Constitution, however, is entitled to impose reasonable restriction inter alia in the interest of the state and it has been so held by the Honorable Supreme Court in a catena of cases which includes:

(1997)4 SCC 306, *Dinesh Trivedi, M.P. v. Union of India*

AIR 1975 SC 865, *State of Uttar Pradesh v. RajNarain*

AIR 1982 SC 149, *S.P.Gupta v. Union of India*

AIR 2003 SC 2363, *People's Union for Civil Liberties v. Union of India*

AIR 2002 SC 2112, [2002(5) SCC 298], *Union of India v. Association for Democratic Reforms*)

### **Right to information**

*'The amendments go against the spirit of the law.'*

The UPA government's move to introduce some amendments to the Right to Information (RTI) Act is meant to reduce the scope and effectiveness of the legislation. In the last five years of its working, the Act has done much to undo the culture of secrecy that marks the functioning of government and public authorities and to empower the citizen. Some of the proposed amendments will directly go against the spirit of the law. One of them is to give immunity to the office of the chief justice of India from any queries under the RTI. This issue has been debated at length in the country. The Delhi High Court, in two rulings, has declared that the CJI is a public authority coming under the purview of the RTI Act. The Supreme Court has refused to accept this. The proposed amendment will validate its unfair position. It is ironical that the apex court which did much to promote and expand the right to information wants to erect a wall around itself, and it is unfortunate that the government is facilitating it.

Another amendment, which has been proposed, is more restrictive. It provides for the rejection of 'frivolous and vexatious' requests for information. This will lead to rejection of inconvenient queries because the office from where the information is sought will only

be happy to withhold it by relying on this exemption. No one would give away information which shows itself in poor light. Even if there are frivolous and vexatious queries that is no reason to deny information. The words will be interpreted by bureaucrats according to their convenience and to suit their interests. In any case there have not been many complaints about frivolous queries in the past. So why should such an exemption be introduced? It is also proposed to bring Cabinet decisions within the ambit of exemptions. Already cabinet papers under process are in the exempted list. If even the final Cabinet decisions are not open to the public, one important area will be removed from public scrutiny.

It is the success of the RTI Act in opening up the government that has prompted the authorities to put more shackles on the Act. An overwhelming majority of the information commissioners have opposed these amendments. There should be concerted pressure on the government to drop the idea of tinkering with the Act. Its scope should actually be widened further.

### **Conclusion**

To conclude with it can be stated that the object of the Act is revolutionary in the Indian Context as it is opened to all public authorities across the country to public scrutiny. The Information held by Government is essentially the people's information being held on their behalf pursuant to this devolution of authority. The people's sovereignty ultimately determines their right to insist upon openness in government.

“Information is the lynch-pin of the political process- knowledge is, quite literally, power. If the public is not informed, it cannot take part in the political process with any real effect.”

- Fitzerland Report 1989.