

**RIGHT TO INFORMATION ACT 2005 – A DENOVO DIMENSION TO  
FREEDOM OF SPEECH AND EXPRESSION**

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Awareness is a process of becoming fully conscious. Awareness can trickle into the corners of your mind slowly, as you clean out the cobwebs, or it can dawn suddenly the moment you become cognizant of your rights and begin to see yourself objectively.

Information adds some new flavour to awareness. It enables one to assimilate on what we may be conscious of, but may not be aware of or to build something new. Here information is for democratization of communication. Human beings need information in order to realize their full social – political and economic potential. Information entails a spectrum of knowledge about various issues and involve different stakeholders from market to Government. It leads to awareness which in turn brings true and quality education. Information is a key that helps in decision making. Sharing of information helps a nation to build strong cadre of informed citizenry who can participate meaningfully in the democratic process and would fulfill their responsibility effectively. Information is a public resource collected and stored by government in trust of people.

Today, 'Information at Finger Tips' is a reality Computers, fax machines, cell phones, digital cameras, satellite communications etc. have revolutionalized the information age.

Information is indispensable for the functioning of true democracy. People have to be kept informed of the current affairs and broad issues – political, social and economic. Free exchange of ideas and free debate are essentially desirable for the government of a free country.

It may be mentioned here that RTI existed in Sweden to India for transmission from an opaque system to governance, legitimized by the Colonial Official Secrets Act, 1923 to one where citizens can demand right to information. Right to Information Act, 2005 marked a step towards bringing transparency in working of public authorities. Transparency, accountability and containing corruption are the three main objectives of the enactment. It is high time to analyse how far the Act is helpful to the most ordinary citizen and to what extent the people are educated about. The law reinforced its democratic foundation. By and large India's experiment has proved to be successful.

The right to information is derived from the concept of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India, though not absolute. The concept of open Government is the direct emanation from the right to information which seems to be implicit in the right of free speech and expression. Therefore, disclosure of information must be the rule and secrecy an exception justified only where strictest requirement of public interest so demands. The approach of this cardinal legislation is to attenuate the area of secrecy as much as possible consistent with requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.

The RTI Act is the reflection of a liberal and resurgent India that shifts the power of knowledge to the hands of common man, the real stakeholders. Information is a necessary input for knowledge and truth, but they are wider and more profound concepts. To ensure the availability of a right that has been given becomes a duty; a duty well performed is its own moral reward. Section 4 of the Act imposes that duty on the public authorities by enumerating in 17 manuals and also requiring to take constant endeavor to take steps to provide as much as

information suomoto to the public at regular intervals through various means of communication including internet, so that public have maximum resort to the use of the law to obtain information.

Section 3 of RTI Act, says - all citizens shall have the right to information', subject to certain exceptions u/s. 8 and 9 and partially u/s. 10 and 11 and absolutely u/s. 24. Thus the right to know is assumed rather than guaranteed. In fact, this right is deemed from government's correlative duty of accountability and answerability to the people. Therefore, no Government should think that people must be told only that much which it thinks to be good for the people and safe for itself. Thus, despite some limitations, the RTI Act is guaranteeing the right to information, ensuring participatory developmental process in the country.

This development is, no doubt, healthy for ensuing good governances and curbing corruption. Each and every decision of the government has now become available for public scrutiny and those in decision making process have to be very cautious as also judicious while exercising their powers. Though the Act has crossed its infancy, it is bound to have effect only when the contents of the enactment reach the people in the remote village of India.

RTI became a fundamental civil right much later because we were obsessed with the British legacy. Art. 19(1)(a) of our Constitution indicate citizens right to know but one or more clauses which give an overwhelming authority to the state to abridge, distort and deny the right. The reasons for such denial under Art. 19(1)(a) include public order, public morality, incitement etc.

The efforts of the Central Vigilance Commission in this connection to make a fundamental right has to be acknowledged. It is, however, apt to be pointed out that there is nothing new in this right except that the provisions have been consolidated and the people given an opportunity to know everything they want, simply by writing to the Public Information Officer. The Official Secrets Act, 1923 has been cut into size and except for specified areas, no information can be withheld from the public. The legislature cannot be denied any information and now the citizens have been bestowed with similar powers.

RTI, strictly speaking was embedded in Art. 19(1)(a) and now RTI Act gave anew dimension to the freedom of speech and expression. Art 19(1)(a) gives the freedom to express one's convictions and opinions freely, by word of mouth, writing, printing, pictures or electronic media or in any other manner. It would then include not only the freedom of the press, but the expression of one's ideas by visible representation. This freedom can be properly exercised only by an informed citizen for that stands the RTI Act 2005 in a specific, elaborated and consolidated form.

Any restriction imposed on freedom of speech and expression is prima facie unconstitutional, unless it can be justified under the limitation clause. ie. Clause (2) of Act 19. This clause authorizes the State to impose restrictions upon the freedom of speech only on certain specified grounds so that it, in any case, the restrictive law cannot rationally be shown to relate to any of there specified grounds, the law must be held to be void.

Clause (2) of Art. 19, as amended, enables the legislature to impose restrictions upon freedom of speech and expression, on the following grounds:-

- (i) Sovereignty and integrity of India.
- (ii) Security of the State.
- (iii) Friendly relations with foreign states.
- (iv) Public order.
- (v) Decency and morality.
- (vi) Contempt of Court.
- (vii) Defamation
- (viii) Incitement to an offence.

While looking into the exempting provisions ie, sections 8 and 9 of the RTI Act, we can see that the law makers went a little more forward with a new dimensions of 19(2). Law makers gave representation to the three pillars of the Constitution viz. legislature, executive and judiciary. In Section 8(1)(c), 8(1)(i) and 8(1)(b) respectively. Section 8(1)(a) provides an additional clause than those in clause (2) of Article 19 ie. strategic, scientific and or economic interests of the State. Along with contempt of court, those information which has been expressly forbidden to be published by any court of law or tribunal is also made exempted from disclosure u/s. 8(1)(b). Though decency and morality and defamation were grounds in Art. 19(2), the disclosure of information which would cause breach of privilege of the legislature is added giving respect to parliamentary democracy. Commercial confidence, trade secrets, Intellectual Property Rights, fiduciary relationship, personal information are new incitements of RTI Act when compared to Art. 19(2).

Copy right and other forms of IP protection are granted in some jurisdictions to public authorities for their works. The law makers decided to protect the works produced by public entities because of the tradition or to achieve national economic and cultural objectives in the light of costs and benefits and hence S. 9 of the RTI act. Doctrine of

severability as provided in S. 10 of RTI Act is a well accepted constitutional doctrine.

The right to information set out to Indian citizens u/s. 3, impliedly provides the right to be informed whether the information requested is held by the public authority concerned and if so the right to have that information communicated to him. But this right is subject to other provisions of the Act. Section 8 and 9 and section 24 provide for circumstances under which a public authority may refuse a request. Section 24 absolutely exempts the information relating to certain intelligence and security organizations where as the other two provide only for qualified or class exemptions.

Freedom of speech and expression is the bulwark of democratic government. This freedom is essential for the proper functioning of democratic process and is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving protection to all other liberties. It has been truly said that it is the mother of all other liberties. That liberty include the right to acquire information and disseminate the same. It includes the right to communicate it through available media without interference to as large a population of the country, as well as abroad, as is possible to reach. Right to know is the basis right of the citizens of a free country and Art. 19(1)(a) protects that right. Right to receive information springs from Art 19(1)(a). The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression. Without adequate information a person cannot form an informed opinion. Thus RTI Act opened a new arena a wider arena to free speech and expression.

Information is the currency that every citizen requires to participate in the life and governance of the society. In any democratic polity, greater the access, greater the responsiveness and greater the restrictions, greater the feeling of powerlessness and alienation. Information is not private property- it is national property. Thus government and public officials, who are supposed to serve the people on payment from public purse are none else than trustees of this national resource – information. Besides moral and legal obligation, it is their constitutional obligation based on philosophical foundation of freedom of speech and expression under Art. 19(1)(a) of the Constitution. As transparency is the culture required for good governance, secrecy directly means disempowerment and hence, RTI stands for empowerment on the substratum of free speech and expression giving a denomo dimension to the fundamental freedom.

In a government of responsibility like ours, all agents of the public must be responsible for their conduct; there can be but few secrets. Right to Information Act is a means, not an end, for change, equity activism, citizen participation and good governance.