



ANALYTICAL STUDY OF RTI AND ITS APPLICABILITY

Anjali Verma

Research Scholar, Faculty of Law, M D University, Rohtak
ahujaanjali75@gmail.com

Abstract-- The right to information act is a path making legislation which brings to light the secrecy of administration. In 1982, the Supreme Court of India ruled that access to government information was an essential part of the fundamental right to freedom of speech and expression in Article 19 of the Constitution. The Right to Information Act is a codification of the important fundamental right of citizens. By enacting the Right to Information Act India has moved from an opaque and arbitrary system of government to the beginning of an era where there will be greater transparency and to a system where the citizen will be empowered and the true center of power. . Free flow of information and its utilization improves the condition of nation, and public life is made comfortable. In any nation, if people have liberty to pass information and there is security of human rights, then their many complex problems can be solved. It totally depends on freedom of expression and information. Judicial decisions, over the years, have shaped the Indian polity to a great extent. The role played by the judiciary has been pivotal in ensuring a process of fairness in governance and administration. Thus, be it the pragmatic interpretation of Article 19 or Article 21 or propounding doctrines of equality, the judicial decisions in India have infiltrated through every strata of the society. This paper is sincere effort of critically analysis of the RTI and its applicability.

Key Words: RTI, Constitution, Judiciary, Right to Know

INTRODUCTION

“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

The right to know has taken long in finding a firm footing in India. Independent India never rid itself of the colonial culture of the unreachable, unquestionable, deep rooted red tapism, something that has, for obvious reasons, proved to be a major barrier to transparency in the administrative decision-making process. A democratic society survives by accepting new ideas, experimenting with them, and rejecting them if found unimportant. Therefore it is necessary that whatever ideas the government or its other members hold must be freely put before the public. The free flow of information is must for a democratic society in particular because it helps the society to grow and flourish. It is now recognized that the right to information is vital to democracy for ensuring transparency and accountability in governance. It therefore ensures that governance is more participatory being a vital component of successful democracy. As Justice Krishna Iyer in the Maneka Gandhi case¹ said “a government which functions in secrecy not only acts against democratic decency, but also buries itself with its own burial”. Therefore if look at the concept of power we can note that power corrupts and absolute power corrupts absolutely. There is a certain danger that despite several efforts for welfare purposes, the power may be used arbitrarily and for corrupt goals. The Constitution of India is the supreme law of the country, the fountain source of law in the country. It not only laid the framework of Indian judicial system,² but also has defined the fundamental right and duties of the people and directive principles which are the duties of state. Laws and Rules that license secrecy are a colonial legacy and were adopted by totalitarian regimes to legitimate suppression of information about its functioning. Secrecy in public affairs is anathema to the very notion of democracy. Right to receive information is not written in the Indian Constitution, but later declared as a fundamental right by the Supreme Court of India by its various decisions. Indian judiciary, which is one of the strongest in the world and which enjoys an exalted status above all other pillars of democracy, ought to set a hallmark in the implementation of RTI so that other organs of our system may follow suit. The judiciary delivers a message that it is not hesitant to adopt transparency mechanisms so as to shed hitherto opaque image of the executive. But is Judiciary itself not under the roof of Right to information or it is with certain exceptions if any, create untrust among people of India.

¹ A.I.R. 1978 SC 597

² Constituent Assembly Debates, Vol.VIII, 258.



PROVISIONS OF RTI UNDER THE RIGHT TO INFORMATION ACT 2005

In Indian democratic social structure, freedom of information is the requirement of overall development due to its influential power. Free flow of information and its utilization improves the condition of nation, and public life is made comfortable. In any nation, if people have liberty to pass information and there is security of human rights, then their many complex problems can be solved. It totally depends on freedom of expression and information. The Indian Parliament passed the Right to Information Act, 2005 and provides power to Indian citizens to obtain any type of information from the Government as their right. This regulation is very broad and includes all areas of governance.

The National Campaign for People's Right to Information (NCPRI) formed in the late-1990s became a broad-based platform for action. As the campaign gathered momentum, it became clear that the right to information had to be legally enforceable. As a result of this struggle, not only did Rajasthan pass a law on the right to information, but in a number of panchayats, graft was exposed and officials punished.

The Press Council of India drew up the first major draft legislation on the right to information in 1996. The draft affirmed the right of every citizen to information from any public body. Significantly, the term 'public body' included not only the State, but also all privately-owned undertakings, non-statutory authorities, companies and other bodies whose activities affect the public interest. Information that cannot be denied to Parliament or state legislatures cannot be denied to a citizen either. The draft also provided for penalty clauses for defaulting authorities. In 1997, two states passed right to information legislation (Tamil Nadu and Goa) and the Government of India appointed a working group, headed by former bureaucrat and consumer rights activist HD Shourie, to draft what was reworked into the Freedom of Information Bill, 2000. The Right to Information Act, 2005 got the assent of the President of India on 15.6.2005 and was published in The Gazette of India on 21.6.2005. It applies to whole of the country except the State of J&K w.e.f 15th June, 2005.

The right to information is defined in sec. 2(j) as a right to information accessible under the Act which is held by or under the control of any public authority and includes a right to

- (i) inspection of work, documents, records,
- (ii) taking notes, extracts or certified copies of documents or records,
- (iii) taking separate samples of material,
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Sec. 4 of the Act makes it a duty of public authorities to maintain records for easy access and to publish within 120 days the name of the particular officers who should give the information and in regard to the framing of the rules, regulations etc. Subsection (3) of sec. 4 states that for the performance of subsection (1), all information shall be disseminated widely and in such form and manner, which is easily accessible to the public.

Applicant can obtain Information within 30 days from the date of request in a normal case. In specific circumstances Information can be obtained within 48 hours from time of request. If it is a matter of life or liberty of a person. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. The Act, in particular, requires every public authority to publish 16 categories of information. This includes the particulars of its organization, functions and duties; powers and duties of its officers and employees; procedure followed in the decision making process; norms set for discharge of its functions; rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; ³A request rejected shall be communicated under sec. 7(8) giving reasons and specifying the procedure for appeal and the designation of the appellate authority. Sec. 7(9) exempts granting information where it would disproportionately divert the resources of the public authority or would be detrimental to the safety and preservation of the record in question.

³ Section 6,7 of The Right to Information Act,2005



Penalty for refusal to receive an application for information or for not providing information is Rs. 250/- per day but the total amount of penalty should not exceed Rs. 25,000/- and If an applicant is not supplied information within the prescribed time of 30 days or 48 hours, as the case may be, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. If still not satisfied the applicant may prefer a second appeal with the Central Information Commission (CIC)/State Information Commission (SIC) within 90 days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

Most radical provision of the Act is that the information seeker need not to give any reason for it or prove his Locus standi. It has proved to be a strong weapon in the hands of people, for ensuring transparency in government departments and containing corruption.

UNDER CONSTITUTION OF INDIA

Part III of this Constitution deals with civil, social and political rights and freedoms (the Fundamental Rights) that the people of India are entitled to. [10] These rights have received dynamic interpretation by the Supreme Court over the years and can truly said to be the basis for the development of the Rule of Law in India. [11] Of these are the Right to Freedom of Speech and Expression, Art 19(1), and the Right to Life, Art 21, and the Right to Constitutional Remedies, Art 32. While there is no specific right to information or even right to freedom of press in the Constitution of India, the right to information has been read in to these constitutional guarantees. In *Bennett Coleman v. Union of India*⁴, the right to information was held to be included within the right to freedom of speech and expression guaranteed by Article 19(1)(a). In *State of UP v Raj Narain*,⁵ Mr. Justice K.K. Mathew explicitly stated that "it is not in the interests of the public to cover with a veil of secrecy the common routine business.... the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption." It was further held 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 honorable Supreme Court of India in the year 1975 in the case of *Raj Narain*⁶, where an Indian citizen had asked for the disclosure of the Government official's information kept as 'Blue book' in respect to the rules and instructions of the protection of Prime Minister while travelling. It was sought to be maintained by the Petitioner that the said document would reveal the government's engagement in corrupt practices in connection with the Election campaign. the 'people cannot speak or express themselves unless they know', as such it is very much clear that the right to free speech and expression will not survive if its base i.e. Right to Information will not be allowed to the citizen and as a result the entire political structure and role of media and ordinary common man will be collapsed from the society. Therefore, right to information is said to be embedded under Article 19 of Constitution of India. It was also clarified in the said landmark judgement by the honourable Supreme Court that in the Country like India where huge democracy exists, the people are to be treated as 'Masters' and therefore, the said masters should have Right of knowing the means of serving and functioning adopted by the Governments.⁷

The Right to Information Act, 2005 is also having a close connection with the concept of the liberty of speech and expression. The concerned law on the issue of 'right to information' was enacted with the purpose and object to make provisions to set out the practical regime of right to information for citizens and this appears to be a important issue in the subject of Freedom of speech and expression. Supreme Court has stated in judgement in *Menaka Case*⁸ that Right to information can also be invoked through a fundamental right stated in Article 21

⁴ AIR 1973 SC 106.

⁵ A.I.R. 1975 S.C. 865

⁶ Ibid

⁷ Ibid

⁸ AIR 1978 SC



“ Right to life and personal Liberty”. Post-independent India has a liberal democratic political system with a written Constitution that incorporates the rule of law, social justice development, adult franchise, periodic elections, and multiparty system. The proceedings of the Legislatures are open to public and media and even telecast live in recent years. The meetings of Legislative Committees however are generally not open to the public and media.

APPLICATION OF RTI ON DIFFERENT ORGANS OF GOVERNMENT

The right to information act is a path making legislation which brings to light the secrecy of administration. In 1982, the Supreme Court of India ruled that access to government information was an essential part of the fundamental right to freedom of speech and expression in Article 19 of the Constitution: “The concept of an open Government is the direct emanation from the right to know which seems implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosures 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.”

‘Information’ that can be asked for may be as any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data materials held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force. Thus the definition of information is wide, and pertains to information with public authority, about the State and its functionaries or about any private authority that the public authority is authorized to access. Further a “public authority” is any authority or body or Institution of self-government established or constituted by or under the Constitution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government. The bodies owned, controlled or substantially financed by the Central Government or a State Government and non-Government organizations substantially financed by the Central Government or a State Government also falls within the definition of public authority. The financing of the body or the NGO by the Government may be direct or indirect. Private bodies are not within the Act's ambit directly. In a decision of *Sarbjitroy vs Delhi Electricity Regulatory Commission*,⁹ the Central Information Commission also reaffirmed that privatised public utility companies fall within the purview of RTI.¹⁰ As of 2014, private institutions and NGOs receiving over 95% of their infrastructure funds from the government come under the Act.

The impact created through this legislation can be seen through some of the landmark judgments, for instance, the applications filed by Yogacharya Anandji and Simpreet Singh in 2008 in the matter of Adarsh Scam were crucial in disclosing the links between politicians and military officials. This 31-storey building had permission for only 6 floors which was meant entirely for the welfare of war widows and veterans. Instead, these flats went to several politicians, bureaucrats and their relatives. Supreme Court in a landmark decision in *Reserve Bank of India v. Jayantilal Mistry*¹¹ declared that RBI does not place itself in a fiduciary relationship with the financial institutions because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust. Writing the judgment for the bench, Justice M.Y. Eqbal, expatiating on the nature of functions of the banking sector regulator said: “RBI is supposed to uphold public interest and not the interest of individual banks. RBI is clearly not in any fiduciary relationship with any bank. RBI has no legal duty to maximize the benefit of any public sector or private sector bank, and

⁹ http://www.rti.india.gov.in/cic_decisions/Decision_30112006_12.pdf

¹⁰ http://articles.economictimes.indiatimes.com/2011-10-03/news/30238465_1_rti-act-public-information-officer-pio

¹¹ <http://www.livelaw.in/best-of-2015-eight-significant-rti-verdicts-from-supreme-court-high-courts-and-cic/>



thus there is no relationship of 'trust' between them. RBI has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector.

In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only messiahs that can ensure freedom of all sorts. Information has a pivotal role in strengthening public by making them knowledgeable. Accessing information, however in a developing country like India is a cumbersome task to be accomplished by majority of less educated and illiterate citizenry oblivious of its rights.¹² Red tapism and bureaucratic supremacy is highly hesitant in empowering people. Moreover, the colonial legacy which was copious with policy of secrecy still haunts the system. Here the Constitution of India comes to the rescue of the „little man“ by bestowing upon him certain fundamental rights within Part III.

RTI AND JUDICIARY

It is needless to say that the judiciary and the judicial decisions, over the years, have shaped the Indian polity to a great extent. The role played by the judiciary has been pivotal in ensuring a process of fairness in governance and administration¹³. Thus, be it the pragmatic interpretation of Article 19 or Article 21 or propounding doctrines of equality, the judicial decisions in India have infiltrated through every strata of the society. Judiciary, as one understands, is the edifice of a strong democracy as it endeavors not merely to interpret the black letter of the law but also adopting an activist stance of creatively interpreting it to suit the needs of the society. The office of the robed brethren is based on the great trust reposed by the citizens who seek recourse to judicial powers to defend their democratic rights¹⁴.

In *Romesh Thappar v State of Madras*¹⁵ In this case, the petitioner had challenged an order issued by the then Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the circulation of the petitioner's journal. Such order of ban was struck down as violative of the right to freedom of speech and expression under Article 19(1)(a). The strongest exposition in this regard came from Supreme Court in the case of *State of U. P. v. Raj Narain*¹⁶ who emphasized that in „government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries.“ The facts of this case were that Raj Narain who challenged the validity of Mrs. Gandhi's election required disclosure Blue Books which contained the tour program and security measures taken for the Prime Minister. Though the disclosure was not allowed, Mathew, J. held that the people of country were entitled to know the particulars of every public transaction in all its hearing.

Deviating from earlier trends, the Supreme Court in *Khanapuram Gandaiah v. Administrative Officer*,¹⁷ held that the litigant cannot be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. The Court further illustrated that a Judge is not bound to explain later on for what reasons he/she had come to such a conclusion. Similarly on the same pattern the Apex Court in *Central Board of Secondary Education v. Aditya Bandopadhyay*,¹⁸ held that the examining bodies Universities, Examination Boards, etc are neither security nor intelligence organizations and therefore the exemption under section 24 will not apply to them. Therefore they are bound to provide access to information and any applicant

¹² Nikhil Dey, A Fight for Right to Know, *Yojana*, January 2006, pp. 2-8.

¹³ *All India Judge's Association v. Union of India* (2002) 4 SCC 247 ¶ 24; *S.C. Advocates –on- Record union of India* AIR 1994 SC 268, 421; *S.P. Gupta v. Union of India* AIR 1982 SC 149,197,198;etc,

¹⁴ *Nathubhai Bhat, Accountability of Judiciary to Bar and Society at Large*, 28 *Indian Bar Review* 163 (2001).

¹⁵ AIR 1950 SC 594.

¹⁶ AIR 1975 SC 885.

¹⁷ AIR 2010 SC 615.

¹⁸ (2011) SCC 497



can either inspect the document/record, take notes attract or obtain certified copies thereof. In the last ten years, scores of RTI applications have been filed by citizens seeking information from the courts, many of which have required judicial adjudication. Five such matters reached the Supreme Court, three of which were referred to a constitution bench that is yet to be set up. The other two cases were dismissed by the apex court at the stage of admission.¹⁹

The contention of the Chief Justice of India that being a Constitutional functionary, his office does not fall in the category of “Public Servant” and, as such, is not covered under the Right to Information Act (RTI). Without going into the merits of his stand, it is submitted that the repute and image of Indian judiciary would elevate further if the RTI is implemented by the judiciary in letter and in spirit albeit with suitable exceptions so as to protect the independence of the judiciary. Our judiciary, which is one of the strongest in the world and which enjoys an exalted status above all other pillars of democracy, ought to set a hallmark in the implementation of RTI so that other organs of our system may follow suit. Let the judiciary deliver a message that it is not hesitant to adopt transparency mechanisms so as to shed its hitherto opaque image. That would silence its critics who often decry lack of accountability and openness in its functioning. Already, the Central Information Commission has held in the past months that neither the judicial proceedings (which includes notes, minutes and jottings of court proceedings) nor the process of selection methodology in regard to the appointment of judges of higher judiciary would be covered under the RTI. If needed, an RTI code for the judiciary can be framed separately so that there can be effective and uniform adoption of the act across country²⁰.

INFORMATION EXEMPTED FROM THE AMBIT OF RTI

- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, “strategic, scientific or economic” interests of the State, relation with foreign State or lead to incitement of an offense;²¹
- Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign Government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;²²
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. (NB: This provision is qualified by the proviso to sub-section 11(1) of the Act which exempts disclosure of “trade or commercial secrets protected by law” under this clause when read along with Section 8(1)(d))

¹⁹<https://thewire.in/124766/judiciary-accountability-transparency-rti/>

²⁰<http://www.thehindu.com/todays-paper/tp-opinion/RTI-in-judiciary/article15216563.ece>

²¹ Official Secrets Act, 1923

²² Section 8 of The Right to Information Act, 2005



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CONCLUSION

Concluding, Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution and well stated by The Right to Information Act 2005 (RTI) is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. RTI is not only a tool to avail information but it is a correctional method to empower democracy and provide right to access inside not only the tight jacketed government departments but also semi-governmental and even private institutes are coming in its ambit. The golden thread of RTI is that anyone can get relevant information without approaching the court.