



Right To Information 19(1) a

Bhanu Prakash Singh Markam

B.B.A., LL.B (Hons), Indore Institute of Law
Indore, Madhya Pradesh, India

INTRODUCTION

In India, the movement for the right to information has been as vibrant in the hearts of marginalized people as it is in the pages of academic journals and in the media. This is not surprising since food security, shelter, environment, employment and other survival needs are inextricably linked to the right to information. In the early-1990s, in the course of the struggle of the rural poor in Rajasthan, the Mazdoor Kisan Shakti Sangathan (MKSS) hit upon a novel way to demonstrate the importance of information in an individual's life -- through public hearings or Jan Sunwais. The MKSS's campaign demanded transparency of official records, a social audit of government spending and a redressal machinery for people who had not been given their due. The campaign caught the imagination of a large cross-section of people, including activists, civil servants and lawyers.

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.

Finally in 1997, a conference of chief ministers resolved that the central and state governments would work together on transparency and the right to information. Following this, the Centre agreed to take immediate steps, in consultation with the states, to introduce freedom of information legislation, along with amendments to the Official Secrets Act and the Indian Evidence Act, before the end of 1997. The central and state governments also agreed to a number of other measures to promote openness. These included establishing accessible computerised information centres to provide information to the public on essential services, and speeding up ongoing efforts to computerise government operations. In this process, particular attention would be placed on computerisation of records of particular importance to the people, such as land records, passports, investigation of offences, administration of justice, tax collection, and the issue of permits and licences.

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.

Right To Know

Article 21 enshrine 'right to life and a person liberty' are compendious term which include within themselves variety of right and attributes. Some of them are also found in article 19 and thus have two sources at the same time. In R.P Ltd v Indian express

news paper the SC reads right to know in article 21. The SC held that right to know is a necessary ingredient of participatory democracy. In view of translational development when distance are shrinking international communities are coming together for cooperation in various sphere and they are moving toward the global preparative in various field including human right ,the expression liberty must receive and expanded meaning . The Supreme Court is limited mere absence of bodily restrain. It is wide enough to expand full range of right to hold a particular opinion and right to sustain and nurture that opinion Article 21 confer on all person a right to know which include right o receive information. The ambit and scope of article 21 is much wider as compared to article 19(1)(a).

Thus the court are required expand it scope by the way of judicial activism. In PUCLv UOI the supreme court observed that fundamental right themselves have no fixed content, most of them are empty vessel into which each generation must pour its content in the light of its experience .The attempt of the court should be to expand the reach and ambit of the fundamental right by the process of judicial interpretation. There cannot be any discrimination between fundamental right mention in chapter III of the constitution and the declaration of such right on the basis of judgment render by supreme court.

Over past two decades, right to know laws have become one of the most innovative and effective means for protecting the environment and public health. These laws, also known as information disclosure statute, serve number of board and important societal interests. Right to know laws helps to improve the efficient functioning of the market. Armed with better information, consumer can make informed decision, and press for safer products. Better informed worker can negotiate for less toxic working conditions, or demand wages premiums for hazardous jobs. Investor in securities market can act more knowledgeably; indeed, studies shows that stock prices significantly to the release of environmental information; upward when information reveals a firm's superior performance; downward when poor performance is revealed.

Right to know laws also serve fundamental liberty and autonomy interest. They provide individuals with knowledge of the risk involved in their choice and allow them to decide whether or not encounter these risks.

Right to know laws also promote a democratic decision making and the power of ordinary citizens. Equipped with better information, citizens can participate on a more equal footing it regulated entities permitting, land use and other political decisions. Local resident and member of the public can exert pressure on firm to reduce risky activities or eliminate unnecessary toxic exposures. Right to know laws also can improve health and safety, by facilitating emergency planning, avoiding accidents, and helping the government determine area In need of additional regulation. They also provide strong incentive for firm to undertake self-regulation and reduce risky activities; when companies face a choice between, say , disclosing harmful substances in their product and reformulating the product to eliminating the harmful substances, often they chose to eliminate the substances.

Making People Aware of Their Right To Know

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 West Bengal Right to Information Rules, 2006 were framed by the Administrative Reforms Cell of Personnel and Administrative Reforms Department of Government of West Bengal and published in the Kolkata Gazette Extraordinary on 29.3.2006.

The RTI Act, 2005 is the culmination of responses generated at different corners of the country including the Government at the Centre, to people's demand for right to know initiated by Mazdur Kisan Shakti Sangathan in 1990 in a sleepy village named Devdungri of Rajasmand district of central Rajasthan. From 1997 onwards in several landmark judgments Supreme Court of India and High Courts of different States observed that Articles 19(1) and 21 of Constitution of India, i.e., right to freedom of speech and expression and right to life and liberty include right to information. Right to live loses much of its meaning if a citizen's right to information is denied. In the preamble to the Act this has been widely acknowledged as a necessity by way of commitment for creation of an informed citizenry, to contain corruption and enhance accountability and transparency in the working of every public authority.

Assert Your Right To Know

Right to Information Act, 2005 has come into effect from 15th June, 2005. It applies to the whole of India except Jammu & Kashmir

Under the Act all 'public authorities' as defined under section 2(h) are liable to designate for all administrative units or offices Central Public Information Officers or State Public Information Officers to receive and dispose of requests for information within thirty days from the date of receipt.

Similarly, Assistant Public Information Officers are to be designated at sub-divisional levels or offices by such 'public authorities' to receive application for information or appeal and to forward such applications/appeals forthwith to the CPIO or SPIO.

Information concerning life and liberty of a person shall be furnished within forty eight hours.

To ask for information a person only needs to be a citizen of India.

Information that cannot be denied to the Parliament or State Legislature cannot be denied to any person.

For seeking information a person does not require to state any reason. He is to furnish only his contact details (name, address, etc.) and particulars about the information sought for.

To seek information a person has to submit a written application on plain paper in English or Hindi or the official language of the area. There is no prescribed form for application.

In case of a person who cannot write, the CPIO or the SPIO shall arrange to reduce the oral request to writing.

Request for Information can be sent by e-mail.

Persons belonging to BPL category need not pay any amount as application fee. APL category persons are to pay Rs.10/- by court fee at the time of filing application for information.

For any grievance regarding his/her request for information a person can prefer his/her first appeal to the departmental appellate authority after expiry of thirty days from the date of filing application or the date of receipt of information from the CPIO or the SPIO. The appeal requires to be filed not later than

thirty days. A second appeal against the departmental appellate authority can be filed in a similar way before the Central Information Commission or State Information Commission, as the case may be. The time limit fixed for the purpose is ninety days. In both the cases the appellate authority or the Information Commission can relax the time limit.

The RTI Act, 2005 confers also the right to inspect office records, take extract and/or notes, inspect works and obtain certified sample of documents.

Constitutional Aspect of Right To Information

Article 19(1)(a) of the constitution guarantees the fundamental right to free speech and expression. The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matter of public interest will only encourage wild rumors and speculation and avoidable allegation against individuals and institutions. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizen perform their fundamental duties as set out in article 51A of the Indian constitution. A fully performance of these duties. Thus access to information would assist citizen in fulfilling these obligations.

Right To Information In Not Absolute

As no right can be absolute, the Right to Information has to have its limitations. There will always be area of information that should remain protected in public and national interest. Moreover, this unrestricted right can have an adverse effect of an overload of demand on administration. So the information has to be the properly, clearly classified by an appropriate authority.

The usual exemption permitting Government to withhold access to information is generally in respect of the these matters;

- 1) International relations and national security
- 2) Law enforcement and prevention of crime
- 3) Internal deliberations of the government
- 4) Information obtained in confidence from some source outside the Government

- 5) Information which, if disclosed, would violate the privacy of an individual
- 6) Information, particularly of an economic nature when disclosed, would confer an unfair advantage on some person or object or government
- 7) Information which is covered by legal / professional privilege, like communication between a legal advisor and his client and
- 8) Information about scientific discoveries and invention and improvements, essentially in field of weapons

Need For Right To Information

The Right to Information has already received judicial recognition as a part of the fundamental right to free speech and expression. An Act is needed to provide a statutory framework for this right. This law will lay down the procedure for translating this right into reality. Information is indispensable for the functioning of a true democracy. People have to be kept informed about 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.

In this Age of Information, its value as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is important because every developmental process depends on the availability of information.

Right to know is also closely linked with other basic rights such as freedom of speech and expression and right to education. Its independent existence as an attribute of liberty cannot be disputed. Viewed from this angle, information or knowledge becomes an important resource. An equitable access to this resource must be guaranteed.

Soli Sorabjee stressing on the need of Right to Information aim at bringing transparency in administration and public life, says, "Lack of transparency was one of the main causes for all pervading corruption and Right to Information would lead to openness, accountability and integrity". According to Mr. P.B. Sawant, "the barrier to information is the single most cause responsible for corruption in society. It facilitates clandestine deals,

arbitrary decisions, manipulations and embezzlements. Transparency in dealings, with their every detail exposed to the public view, should go a long way in curtailing corruption in public life."

Right To Privacy

The right to privacy in India has derived itself from essentially two sources: the common law of torts and the constitutional law. In common law, a private action for damages for unlawful invasion of privacy is maintainable. The printer and publisher of a journal, magazine or book are liable in damages if they publish any matter concerning the private life of the individual without such person's consent. There are two exceptions to this rule: first, that the right to privacy does not survive once the publication is a matter of public record and, second, when the publication relates to the discharge of the official duties of a public servant, an action is not maintainable unless the publication is proved to be false, malicious or is in reckless disregard for truth.

In India, the Constitution does not expressly recognize the right to privacy. The concept of privacy as a fundamental right first evolved in 1964 in the case of *Kharak Singh v State of Uttar Pradesh*. The Supreme Court, for the first time, recognized that there is a right of privacy implicit in the Indian Constitution under Article 21. The Court held that the Right to Privacy is an integral part of the Right to Life, but without any clear cut laws, it still remains in the grey area.

In *Kharak Singh v State of Uttar Pradesh*, Supreme Court of India struck down Regulation which authorized domiciliary visits as being unconstitutional but upheld the other provisions of surveillance under that Regulation. Their view was based on the conclusion that the infringement of a fundamental right must be both direct as well as tangible and that the freedom guaranteed under Article 19(1)(a) - a right to freedom of speech and expression - was not infringed by a watch being kept over the movements of a suspect. At that time court did not recognize the right of privacy.

But in *Gobind v. State of M.P*, also a case of surveillance, the Supreme Court, while upholding the regulation in question which authorized domiciliary visits by security personnel, also held Depending on the character and the antecedent of the person subjected to surveillance as also the object the limitation under which surveillance is made, it cannot

be said surveillance by domiciliary visit would always be unreasonable restriction upon the right of privacy. Assuming that the fundamental right explicitly guaranteed to a citizen of have penumbral zone and that right is itself a fundamental right that fundamental right must be subject to restriction on the basis of compelling public interest.

Right to privacy vs Right to know

The conflict between right to know and the privacy by imaging relationship and situation pertinent to both concluded that the right to know and right to privacy are two of the most ambiguous legal area today facing government the court, the public and individuals. The welfare of the society is the primary duty of every civilized state. In Mr X v Hospital Z the supreme court held that it was open to hospital authorities or the doctor concerned to reveal such information to the person related girl whom he intended to marry and she had right to know about the HIV status of the appellants. A three judge bench of the supreme court held that the disclosure of HIV positive status justified as a girl has right to know, there was no need to for this court to go further and declare in general as to what right and obligation arise in such context as to right to privacy.

An encroachment upon one's privacy is only shielded if the offender is the state and not a private entity. If the offender is a private individual then there is no effective remedy except in tort where one can claim damages for intruding in his privacy and no more. In R.Rajagopal v State of TN the Supreme Court held that the right to privacy is a right to be let alone. None can publish anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy of the person concerned and would be liable in an action for damages.

The right to privacy is not however, absolute; reasonable restriction can be placed thereon in public interest under article 19(5) MATHEW, J., observed in Govind case.

International Perspective

The world has moved toward the universalisation of right to freedom of expression. in this context reference may be made to article 10 of the European

Convention on human right. Article 10 of the convention provide that everyone has a right to freedom and expression and this right shall include to hold opinions and to receive information and ideas without interference by public authorities and regarded of the frontier. Again, Article 19(1) and 19(2) of the International Convention on civil and political Right declare that everyone shall have the right to freedom of expression, and this right shall include freedom to seek, receive and impart information of idea of all kinds regardless of frontier, either, orally, in writing or in print, in form of art or through any other media of his choice.

Similarly, Article 19 of the Universal Declaration of Human Rights, 1948 provides that everyone has the right to freedom of opinion and expression and this right include freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Americans believe that they have a fundamental right to know what goes into air their kids breathe. The water they drink and the ground they play.

In recent years, many Commonwealth countries like Canada, Australia, and New Zealand have passed laws providing for the right of access to administrative information. USA, France and Scandinavian countries have also passed similar laws. US Freedom of Information Act ensures openness in administration by enabling the public to demand information about issues as varied as deteriorating civic amenities, assets of senators and utilization of public funds.

In USA, the first amendment to the Constitution provided for the freedom of speech and expression. The country had already passed the Freedom of Information Reform Act 1986, which seeks to amend and extend the provisions of previous legislation on the same subject. But this right is not absolute. Recently, the US Supreme Court struck down two provisions of the Communications Decency Act (CDA), 1996, seeking to protect minors from harmful material on the Internet precisely because they abridge the freedom of speech protected by the first amendment. Moreover, the vagueness in the CDA's language, the ambiguities regarding its scope and difficulties in adult-age verification, make CDA unfeasible in its application to a multifaceted and unlimited form of communications such as Internet.

Sweden has been enjoying the right to know since 1810. It was replaced in 1949 by a new Act which enjoyed the sanctity of being a part of the country's Constitution itself. The principle is that every Swedish citizen should have access to virtually all documents kept by the State or municipal agencies.

In Australia, the Freedom of Information Act was enacted in December 1982. It gave citizens more access to the Federal Government's documents. With this, manuals used for making decisions were also made available. But in Australia, the right is curtailed where an agency can establish that non-disclosure is necessary for protection of essential public interest and private and business affairs of a person about whom information is sought. Even the Soviets, under Mikhail Gorbachev, have realised that "the State does not claim monopoly of truth any longer". Glasnost has cast away the cloud of secrecy and stresses the priority of human values.

Conclusion

Every citizen has a right to impart and receive information as part of his right to know. The state is not only under the obligation to respect this right of the citizen but equally under an obligation to ensure condition under which this right can be meaningful and effectively enjoyed by one and all. Right to know is the basic indivisible from a democratic polity. This right include right to acquire information and it disseminate it. Right to information is necessary for self expression, which is an important means of free conscience and self -fulfillment. It enables people to contribute on social and moral. issue .it is the best way to find a truest model of anything, since it is an only through it that widest possible of ideas can be circulated .the right can be only limited by reasonable restriction under a law for the purpose mention in article 19(2)of our constitution. Despite all these shortcomings, legislation guaranteeing the right to information is a major step towards ensuring a participatory developmental process in the country. For the law to be truly effective, it will need the active participation of the community at large, including non-government organizations and the press, who will need to simplify and disseminate the possibilities under the new law to citizens.