

Right to Information in India: A Critical Appraisal

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Government of the people, by the people and for the people.

- Abraham Lincoln

I. Introduction

The democracy is the governance by the five words enshrined in the beginning of the noble Preamble of the Constitution of India, *i.e.*, **WE, THE PEOPLE OF INDIA** and ending with the five words, *i.e.*, **GIVE TO OURSELVES THIS CONSTITUTION**. Broadly speaking, the people of India are largely living in the darker side of the governance of the country and are often uninformed about the public affairs and are dominated by those who wheel power in the executive, legislative and judicative spheres.

The word “**Information**” has been derived from the Latin words ‘**Formation**’ and ‘**forma**’, which means giving shape or giving structure to something and which simultaneously forms a pattern.

Nowadays one’s strength is calculated on the basis of his/her accumulated Information. The more Information one will possess, the more powerful he will be considered. Because this world is full of information and one who will have the maximum knowledge of that can explore it in a better manner. This strong dependence on “**Information**” forced human being to accept “**Information**” as “**Power**”.²

Information as a tool by which awareness can be created by eliminating ignorance among the human beings. We need information to empower ourselves. It helps us to realize our potential and prosper.³

It is only information which enables its citizens in this modern democratic state to know exactly how the government is functioning, whether various government schemes are benefiting the intended target groups and if any irregularities are committed during implementation of the

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² Ref: 2nd National Convention on Democracy, Participation, and the National Campaign for People’s Right to Information held at Delhi, 2004.

³ Ibid.

same.⁴ Information is imperative for exercise of free choice. It makes the governance accountable, transparent and participatory, which are a vital component of successful democracy⁵.

India has so far followed the British style of administration. In Great Britain, Official Secrets Act, 1911 and 1989 are intended to defend national security by rendering inaccessible to the public certain categories of official information. However, the government recognizes the access to information is an essential part of its accountability. A recent legislation as governing access to public information includes the Local Government (Access to Information) Act, 1985; the Environment and Safety Information Act, 1988, and the Access to Health Records Act, 1990 are such laws. On the other hand, the Data Protection Act, 1984; the Access to Personal File Act; the Access to Medical Reports Act, 1988, and the Consumer Credit Act, 1974, all provide some protection for different aspects of personal information⁶.

The Right to Information gained prominence when the Universal Declaration of Human Rights was adopted in 1948 providing 'everyone' has right to seek, receive and impart information⁷. The International Covenant on Civil and Political Rights of 1966 provides that "everyone shall have a right to freedom of expression; the right shall include freedom to seek and impart information and ideas of all kinds, regardless of frontiers"⁸. The European Convention on Human Rights and Fundamental Freedoms confers similar right to every individual too⁹.

In the present era, India is on the uppermost belt of all developing countries with its booming technology sector. To enhance this 'Tech-boom', Government of India has recently enforced Right to Information Act (RTI). The Government of India and many of the Indian states have invested heavily in Information Technology; it is of sufficient importance that not only has the Government of India instituted a Ministry of Information Technology but a number of states have done so as well, all competing for a place in the sector. Information Technology centers exist in the major cities of Bangalore known as the "Silicon Valley of India", Kolkata, Mumbai, and Chennai. Indeed, India is a major player in the global Information Technology phenomenon. With the advent of information technology

⁴ Ref: Maharashtra Right to Information Act, 2002, Publisher AGNI Publications.

⁵ Right to Information: Evolution, Perspectives and Challenges by Anand Shakar Jha, IIIrd Year Law Student at Hidayatullah National Law University, Raipur, posted on the Internet.

⁶ <http://upslsa.up.nic/info.htm>

⁷ Article 19, the Universal Declaration of Human Rights, 1948.

⁸ Article 19 (2), The International Covenant on Civil Political Rights, 1996.

⁹ Article 10(2), the European Convention on Human Rights and Fundamental Freedoms.

industry, the information is growing at the exponential rate and has been substantially contributing towards country's development. The nine (9) states of the country, out of 29 States and 7 Union Territories namely Delhi, Maharashtra, Tamil Nadu, Rajasthan, Karnataka, Jammu & Kashmir, Assam, Goa, Madhya Pradesh, Haryana, West Bengal already have laws on the right to information. Although these acts came into force but were not effective enough to take the country in its stride and thus the need was felt to establish the National 'Right to Information Act'.

II. Constitutional Provisions

Constitutionally, Right to Information flows from our right to equality before the law and lack of arbitrariness as enshrined under **Article 14** of our Constitution, our freedom of speech and expression as under **Article 19 (1) (a)** and our right to life and liberty under **Article 21** of our Constitution.

- **Right to Information and Freedom of Expression**

Information is power for development. For this reason, the right to information is an important human right. **Article 19(1) (a)** of the Constitution guarantees the fundamental rights to free speech and expression. The pre-requisite for enjoying this right is knowledge and information. The absence of authentic information on matters of public interest will only encourage wild rumors and speculations and avoidable allegations 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 citizens perform their fundamental duties as set out in **Article 51A** of the Constitution. A fully informed citizen will certainly be better equipped for the performance of these duties. Thus, access to information would assist citizens in fulfilling these obligations.

Still presence of some Draconian laws led to minimizing the effect of the Right to Information legislation as—

1. **The Official Secrets Act, 1929:** This colonial legislation was mainly drafted to stop espionage or any unauthorized disclosure of secret official information. British government suppressed freedom of information in the garb of this legislation. An official secret was not defined in the act and government possessed blanket power to mark a document "confidential" so as to prevent its publication. The Amendment Act of 1967 makes this law more disastrous. We unfortunately still continue with this legislation. President of India framed "Rules of Business in pursuance of his powers under **Article 77** of the Constitution of India. Access to these rules are

necessary for knowing whether right person has excised the power but, unfortunately, these rules till now are kept confidential.

2. The Indian Evidence Act, 1872: Sections 123, 124 and 162 of the Indian Evidence Act are implements in realization of right to information. Under **Section 123** of Indian Evidence Act any head of department can refuse to part with any information from unpublished official records relating to affairs of the state. Under **Section 124** no public officer shall be compelled to disclose communications made to him in official confidence. **Section 162** seeks to prohibit from inspection by court any document, which refers to matters of state.

3. The Atomic Energy Act, 1962: This law prohibits disclosure of any information restricted by central government. It thus prohibits sharing of information even in matters such as what hazards the surrounding population of atomic reactor.

4. The Central Civil Services (Conduct) Rules, 1964: Rule 11 prohibits communication or parting with any official document except special order of the government.

- **Voters Right to Information**

The Constitution of India has conferred many powers upon the Hon'ble Supreme Court to remedy the defects and to ensure various concepts, enshrined under the fundamental rights of the people. There are ample powers conferred by **Article 32** read with **Article 142** to make orders which have effect of law by virtue of **Article 141** and there is mandate to all authorities to act in aid of the orders of the Hon'ble Supreme Court as provided in **Article 144** of the Constitution. In a catena of decisions of the Hon'ble Supreme Court this power has been recognized and exercised, if need be by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. It means that in exercise of the powers of the Hon'ble Supreme Court under **Article 32** read with **Article 142** guidelines and directions have been issued in a large number of cases pertaining to sensitive issues.

The Hon'ble Supreme Court observed in *Peoples Union case*¹⁰ that the foundation of a healthy democracy is to have well informed citizen voter. The reason to have right to information with regard to the antecedents of the candidate is that voter can judge and decide in whose favour he should cast his vote. It is voter's discretion whether to vote in favour of an illiterate or literate candidate. It is his choice whether to elect to a candidate against whom criminal cases for serious or non-serious charges were filed but is acquitted or discharged. He is to consider whether his candidate may or may

¹⁰ Peoples Union for Civil Liberties vs. Union of India, AIR 2002 SC 2112

not have sufficient assets so that he may not be tempted to indulge in unjustified means for accumulating wealth. For assets or liabilities the voter may exercise his discretion in favour of a candidate whose liability is minimum and or those who have no over dues of public financial institutions or governmental dues. From this information's, it would be to some extent, easy to verify whether unaccounted money is utilized for contesting election and whether a candidate is contesting election for getting rich or after being elected to what extent he becomes richer. Exposure to public security is one of the known means for getting clean and less polluted persons to govern the country. A little man- a citizen – a voter is master of his vote. He must have necessary information so that he can intelligently decide in favour of a candidate who satisfies his criterion for election as M.P. or M.L.A. On occasions it is stated that we are not having such intelligent voters. This is no excuse, in any case for having free and fair election and not to convert democracy, into a monocracy and mockery or farce. Information about the candidate to voters is necessary.

Justice Venkatarama in *Peoples Union case* held that for the first time the right to know about the candidate standing for election has been brought within the sweep of **Article 19 (1) (a)** of the Constitution. There can be no doubt that by doing so, a new dimension has been given to the right embodied in **Article 19 (1) (a)** of the Constitution through a creative approach dictated by the need to improve and refine the political process of election. The voters right to know about the antecedents of the candidate contesting for election falls within the realm of freedom of speech and expression guaranteed by **Article 19 (1) (a)** of the Constitution and can be justified on good and substantial grounds.¹¹

In the matter of *T.N. Sheshan, CEC of India vs. Union of India*¹², the Hon'ble Supreme Court observed that the Preamble of our Constitution proclaims that we are in a Democratic Republic. Democracy being the basic structure of our constitutional set up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth or healthy democracy in the country. Hence the right of a voter to know the bio-data of a candidate is the foundation of democracy.

The right to vote for the candidate of one's choice is the essence of democratic polity. This right is recognised by the Constitution and is given effect to in specific form by the Representation of the People Act. However cases after starting from *Punnuswami case*¹³, characterized it as a statutory right. The right to vote or stand as a candidate for election it was observed in

¹¹ Ibid.

¹² (1995) 4 SCC 611

¹³ (1952) SCR 218

this case is not a civil right but is a creative of a statute or special law and must be subject to the limitations imposed by it.

Further the Hon'ble Supreme Court issued the 5 point guidelines to the Election Commission on the matter of voter's right to know about the candidate's necessary information. By this guidelines the Election Commission of India was directed to call for information on affidavit by issuing necessary order in exercise of its power under **Article 324** of the Constitution of India from each candidate seeking election to Parliament or State Legislature as a necessary part of his nomination papers furnishing therein, information on the following aspects in relation to his/her candidature about:

- (i) His (candidate's) conviction, prosecution and/or, acquittal in previous cases if any.
- (ii) Whether any pending case before 6 months of filling of nomination, on any case pertaining to imprisonment for two years or more or its cognisability
- (iii) His assets and of his spouses or of dependents.
- (iv) His liabilities to any public financial institution or government dues.
- (v) His educational qualifications.

Besides the Government of India in 2002 became more sensitized on the right to information. **The Representation of the People Act, 1951** was added with two new provisions viz. **Section 33A** and **Section 33B** in this year. The **Section 33A**, *i.e.*, right to information provides that besides other information a candidate has to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case and whether he has been convicted of an offence and sentenced to imprisonment for one year or more. The candidate or his proposer shall also deliver to him an affidavit sworn by the candidate verifying the information act.

The **Section 33B**, *i.e.*, candidate to furnish information only under the Act and the rules provides that no candidate shall be liable to disclose or furnish any such information which is not required to be disclosed. The provision later was declared by the Hon'ble Supreme Court as unconstitutional. The Election Commission had also issued the guidelines in 1998 for publication and dissemination of results of opinion polls during 1998 election. This has made more transparent to the subject. It is clear from these provisions and the Hon'ble Supreme Court guidelines that before the enactment of the **Right to Information Act of 2005** there was necessity of the provisions or catena of law of right to information.

III. Judicial Intervention

The need for Right to Information has been widely felt in all sectors of the country and this has also received judicial recognition through some landmark judgements of our Indian Courts.

In the very first instance Judgement delivered by the Hon'ble Supreme Court in *Raj Narain vs. State of U.P.*¹⁴ stands an apt one, where the Hon'ble Court held that in a democratic country like ours citizens has the full right to know every public act that is done in a public way by their public functionaries. Their right to know, which is derived from the concept of freedom of speech, though not transactions, which can at any rate have no representation on public security. But it failed to attract the attention of the legislations.

In 1982 for the very first time with the judgement delivered in *S.P. Gupta vs. Union of India*¹⁵, the concept of Right to know get its judicial as well as constitutional status. Here again Government of India in respect of the disclosure of certain documents laid the claim for privilege before the Hon'ble Court. The Hon'ble Supreme Court by a generous interpretation of the guarantee of freedom of speech and expression elevated the right to know and the right to information to the status of a fundamental right, on the principle that certain unarticulated rights are immanent and implicit in the enumerated guarantees. While delivering judgement in *S. P. Gupta case*, it was found that the Hon'ble Court has relied very strongly with the ideas of the constitutional framers and laid down 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)** and subsequently they have inducted Right to Information within the gamut of **Article 19** as which forms Part III of our Constitution.

After the case Right to Information got its constitutional status and thereafter it was considered as "duty" rather than "direction" of the public authority. The Hon'ble Court held that government if wants to establish or retain its democratic features must implement this right as fundamental right otherwise it may ignite the cause of unequal treatment.

Thereafter the Hon'ble Bombay High Court in a similar situation in *Bombay Environmental Group and others vs. Pune Cantonment Board*¹⁶ case reiterated the judgement given by the Hon'ble Supreme Court in *S.P. Gupta case*, by stating Right to Information as most fundamental one. The

¹⁴ 1975 (4) SCC 428

¹⁵ AIR 1982 SC 149

¹⁶ AIR 1986 SC.

Hon'ble Court followed it with a similar judgement in *Secretary, Ministry of I & B vs. Cricket Association of Bengal and others*¹⁷.

Thereafter in *Union of India vs. Association of Democratic Reforms*¹⁸, the Hon'ble Supreme Court held that the Right to Information in a democracy is recognized all throughout and it is a natural right flowing from the concept of a democracy and subsequently in *Peoples Union for Civil Liberties and Another's vs. Union of India*¹⁹.

As a recent effort the Union Parliament passed the Freedom of Information Act, 2002. It obtained President assent but could not come in force for want of a notification by the Central Government. Bill was inadequate and merely ensured freedom not right to information.

IV. Conclusion

This Act of the Right to Information, 2005 forms the shape of special legislation imposing the obligations on every public authority to provide information to the person seeking it. This is unprecedented legislation so far the Act embodies strict and statutory provisions for the implementation in the informative aspects of democratic form of governance. The Hon'ble Supreme Court of India and some Hon'ble High Courts while interpreting some sensitive cases pertaining to fundamental rights observed and suggested for enactment of a special law on Right to Information.

The Right to Information Act, 2005 is not to be read and understood in the light of the other Codes, Rules, Regulations, and guidelines. The enforcement of the right can create confusion and at initial stage this right cannot be placed in the pedestal of the basic or fundamental right but when citizen will go to a department or organization then only such right will take a crisis in many a cases for both citizen seeking information and authority supplying it with a rightly sharpened sword over his head at the point of heavy of its implements and punishment. Hence the whole Act can be judged at the point of its implementations and contemporary development wherein each citizen is involved in plethora of information and each organisation is pre-occupied with abundant work burden.

¹⁷ 1995 (2) SCC 161

¹⁸ (2002) 5 SCC 294

¹⁹ 2003 (2) SCC 528

V. Recommendations

First of all Right to Information as guaranteed by the Right to Information Act, 2005 should be imparted in the local language to the general mass seeking for any part of it.

Secondly, it is necessary to impart rigorous training to the Public Information Officers and to make people in general and particularly those living in rural areas and those belonging to socially disadvantaged sections of the society, aware of various provisions in the Act and how to use it to increase their participation in the functioning of our democratic institutions.

Thirdly, expanding the vision of Right to Information related activism to include social change processes and internal democracy and information sharing within people's movements and organizations without which citizenship of a democratic state is impossible to actualize. The Right to Information movement in the country needs to deepen its understanding and activities by giving special consideration to these groups.

Fourthly, non-compliance by any institution or organization to the provision of the Right to Information Act, 2005 should be strictly construed.