

Right to Information: Constitutional Analyzes

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Abstract

The Right to Information Act, 2005, given the citizens a formalized platform to access information. The paper talks about the history of information, how the right evolved in India and constitutionally analyzing pertinent sections of the Act. Move over, transparency, freedom of speech and expression, open government, right to privacy—the fundamentals to our basic structure to accessing information has been briefly examined in this paper. The author has not developed into the Right to Information (Amendment) Act, 2019 as the Act has not yet come into force. Hence, this paper will primarily focus on the fundamentals and the pillars of the Act that officially grants right to information to the Citizens of India.

Keywords: democratic state, freedom of speech and expression, right to privacy, transparency

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INTRODUCTION

“Access to information and broad public participation in decision-making are fundamental to sustainable development” [1].

UN General Assembly, 1997

Information is necessary to make sensible choice or wise judgements. In order to think or make decisions we apply categories of thought such as quality, causality, or “prior intuitions” such as space and time. These are categories or intuitions which, according to Immanuel Kant, inhere in the working of the mind itself in order to collect and dissimilate information [2].

A Democratic State will have to be open and accountable for its commission and commission activities and a well-informed citizenry can keep a check on the arbitrary exercise of power by a democratic government. Ironically, freedom of information could make us a very unprincipled society—indeed a more callous one [3]. Disasters are avoided at a more realistic level; injuries are prevented, and help given by our use of information. Although information itself is vital, our ability to identify the degree of reliability of the information provided is critical in the misuse of resources or relations hips, or in the disclosure of scam that has occurred or may occur in the near future [4].

INTERNATIONAL CONVENTIONS

In Sweden, the Freedom of the Press Act, 1766 [5], the struggle to access information started long ago, providing public access to records of government [6]. The fundamental premise of the public access principle is that the general public is assured an unhindered view of the activities and undertakings conducted by the government and further guided by local authorities within their respective jurisdictions; a crucial point to be taken into consideration is that all records/documents handled by the authorities are public unless the law is expressly informed or specified otherwise, for potentially confidential information on each request must be addressed separately and the rejection is subject to appeal. Access to information from local authorities become really necessary as these are the ones who are responsible at grassroots. Subsequently, the Swedish precedent was followed by the US, which passed its first legislation in 1966 and then Norway in 1970. In due course, many western democracies (France and Netherlands 1978, Australia, New Zealand and Canada 1982, Denmark 1985, Greece 1986, Australia 1987, Italy 1990) [7] adopted their own laws.

According to Article 10 of the European Convention for the protection of Human Rights and Fundamental Freedom [8],

guaranteeing freedom of expression, the European Court of Human Rights (ECHR) held that, “*It basically prohibits a government from restricting the receipt of information that the public authority wishes or may wish to confer to him*” [9].

Furthermore, it was held that Article 10 “*does not include an obligation on the government to supply the individual with such information*” [10].

Indian Position

Right to Information is an index which measures a country’s growth and development. Moreover, there is no explicitly stated right to knowledge as a constitutional right in the Indian Constitution. In India, people simply had no means of accessing information under the public domain or managed by the public authority until 2005. Nevertheless, in several landmark judgements, the judiciary held that the right to know is inherent in the constitutionally guaranteed right to freedom of expression and speech [11]. Moreover, it was not easy for a common man to get exposure to problems concerning the public interest. Thus, it was difficult for a person to engage in any social, political or economic discussions about the gray areas of the society without having relevant information. It is also to be noted that the Central or the State government made no efforts whatsoever to introduce or implement a legislature or an effective way for free following of information before the launching of campaigns for Freedom of Information by Civil Societies [12].

India’s judiciary has played a critical role in strengthening India’s spirit of democracy. In *S.P. Gupta v. Union of India* [13], a case decided by Justice Bhagwati [14], who not only endorsed the view that under a democratic framework, people are entitled to know about the undertakings undertaken by the government, but also struck the government’s claim for publication and directed the Union of India to disclose the documents and data containing reliable information [15]. For the functioning of an open and effective participatory democracy

there requires accountability and access to information by the public [16]. In an open government, exposure to the public gaze will ensure clean and healthy administration, and is a powerful check against corruption, oppression, and abuse of authority [17]. The idea of an open government is an emanation directly from the right to information, implied in the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution [18].

Again, in *Prabhu Dutt v. Union of India* [19], the Supreme Court held that the right to know news and information regarding administration of the government is included in the freedom of press. The Supreme Court in many such decisions reiterated the fundamental right to know and access information.

Many more such judicial decisions affirmed the basic fundamental right to know and access information. Such judicial pronouncements led the Indian Government to pass The Freedom of Information Act, 2002. There were major restrictions in the Act, which hampered the achievements objective of transparency and accountability objective that was set forward in the Act. So, the 2002 Act was repealed by the Right to Information Act, 2005. The Object of the Right to information Act is to promote transparency, openness and accountability in administration [20].

In India the significance of information and access to information started with the Mazdoor Kisan Shakti Sangathan (MKSS) [21] movement which aimed to add transparency to villages accounts through rural India’s demand for minimum wages. Corruption was spreading throughout the system like epidemic, causing MKSS to demand official information recorded in government files. Soon the movement spread across India.

Finally, India as a party to the International Covenant on Civil and Political Rights (ICCPR) [22], was under an international obligation to effectively guarantee the right to information pursuant to Article 19 of the ICCPR which it did in 2005 with the Right to Information Act, 2005.

Freedom of Information, Open Government, Transparency and Freedom of Speech and Expression

“Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing.”—Justice P.N. Bhagwati

Freedom of Information means access by the citizens as a suppositional right to information that is held by the public authority. Although, transparency has a much wider meaning; the access to information is just a component of transparency; it also entails and takes conducting affairs in the open or subject to public scrutiny into consideration. Making public processes and law making as accessible and as comprehensive as possible also comes under the ambit of transparency. *Features that transparency seeks to combat are complexity, disorder and secrecy* [23].

When government is restricted, regardless, in the nature of a certain trust or belief on behalf of a community, such assumptions of dictatorship which inform the relationship between state and society, government and community, can no longer prevail [24].

Our Constitution has declared India to be a democratic Republic. Democracy is the vein in the system of our governance. The very concept of democracy requires on informed citizenry and transparency of information. The entire administrative set up, subject however to some exceptions, should be transparent. The subject (Citizen) has a right to know what is going on within the functioning of a country. Information which is accessible will make people aware and alert in the functioning and helps in containing corruption and controls the Public Authorities who acts in a whimsical fashion.

According to Soli Sorabjee, “Lack of transparency was one of the main causes of all-pervading corruption and Right to Information would lead to openness, accountability and integrity”. The barrier to information, as P.B. Sawant remarks, “is the single most cause responsible for corruption in society.” It facilitates, among other things,

arbitrary decisions, manipulations and embezzlements. Transparency in dealing should go a long way in curtailing corruption in public life.

The right to Information itself is an outcome of the freedom of speech and expression [25], a constitutionally guaranteed right under the Indian Constitution. Although, this right is not absolute and imposes certain restrictions and limitations [26]. So, any argument in support of access to information as absolute and unfettered loses its ground, whatsoever, be its claim. The grounds outlined for such reasonable restrictions [27] which includes in the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. In such a case, the need is to effectively harmonize these conflicting interests. What needs to be analyzed and looked into is the information relating to strategic concerns such as national security and international relations. The logic being that the public interest to maintain the secrecy outweighs the public interest in disclosure.

Third-Party Challenges and Right to Privacy

What constitutes to public interest amounts to a fairly large extend is subjective and matter of interpretation. On the hand, if we very strictly follow the principle of not allowing the information of the Third-Party to be discussed that might affectively foreclose around 70-80% of the RTI case. It is necessary to consider the fact that any information that comes in the public domain would have a positive barrier on the public interest and also to consider that only information which is thoroughly private and confidential should not be disclosed.

Sumit Mullick [28]

Very frequently, the party who supply information to departments or authorities will want to be reassured that any confidential or commercial sensitive information will not be disclosed without that party having any role to pay in their defense. The government resisted

calls to provide a third-party procedure to facilitate challenge to decision. Such a procedure is mentioned under Section 11 of the Right to Information Act, 2005. This includes consultation with persons to whom the information requested relates or persons whose interests are likely to be affected by the disclosure of information. Directly consulting the party may be necessary in order to determine whether an exemption applies or whether the obligation in section arises. The Act says that it will be in good faith to do so to take them into consideration; 'for example where a public authority proposes to disclose information relating to third-party, or information which is likely to affect their interests, reasonable steps should, where appropriate, be taken to draw it to their attention afterwards'.

In the USA, the "arbitrary, capricious and substantial evidence" standard is applied to review 'third-party notice' decisions. The process of decision-making and discovery (disclosure) rights for a requester to help assess the process is being authorized by the court. This is distinguished from the *de novo* review where a requester challenges a refusal to hand over documents by the department. The courts can examine documents on merits *in camera* if it wishes to assist in its decision [29].

In India, Section 11 of the RTI Act, 2005 defines "Third-Party Information" [30] while Section 8 (1), Section (1)(j) and Section 11 deals with exemptions and privacy from disclosure of certain information [31]. RTI is a requisite for the very exercise of democracy, but it is said that this right also brings about issues of privacy [32].

CONCLUSION

Due to the implementation of the RTI Act various scams came into light and led the government to make stronger policies. A few of them are the 2G Scam [33] Coal Scam, etc. at the Central level; Delhi Commonwealth Games Scam, Assam's public distribution system Scam, Maharashtra Irrigation Scam, etc. at the state level exposed the mutual corruption taking place in the country due to

the nexus of politicians and corporate. A majority of all the documents that led to the unravelling of all these scams were obtained due to the effective utilization of the tool of RTI Act by active and aware citizens. The information gathered through RTI on the utilization of Member of parliament/ Member of legislative assembly local area development funds have kept the representatives on their toes and increase the benchmark of accountability and level of transparency.

REFERENCES

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2. They are the starting point, he argues, of our organisation of confused data. They are the most basic forms of information. But, coming to the importance of information with regards to the functioning of the society and its pragmatic effects we have to take a historic turn.
3. This could have happened if the information given would be used for personal gains and hence creating a more insensitive and intolerant society.
4. Patrick Birkinshaw. *Freedom of Information*. Cambridge University Press; 2010.
5. Government offices of Sweden. The Swedish Press Act—250 Years of Freedom of Press, 2nd June 2016, Available at <https://www.government.se/articles/2016/06/the-swedish-press-act-250-years-of-freedom-of-the-press2/> (last accessed on 11th February, 2020).
6. Lennart Weibull. *Freedom of Press Act*. Britannica Swedish Legislation, December 2, 2019 <https://www.britannica.com/topic/Freedom-of-the-Press-Act-of-1766> (last accessed on June 6, 2020).
7. Briefing Paper, *Analyzing the Right to Information Act in India*, CUTS International, (last accessed on 11th February 2020), http://www.cuts-international.org/cart/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf.
8. One has the right of freedom of expression. This right shall include the freedom to hold views and to obtain and impart knowledge and ideas without

- interference from the public authority and regardless of frontiers. This article shall not prevent states from requiring broadcast, television or cinema undertakings to be licensed. available at <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1/part/I/chapter/9> (last accessed on 25th February 2020).
9. *Leander v. Sweden*, 9 EHRR 433, para. 74. See also, *Gaskin v. United Kingdom*, 12 EHRR 36. <https://ukhumanrightsblog.com/2012/03/21/the-right-to-receive-information-journalists-and-inquiries/>.
 10. *Leander v. Sweden*; para. 74.
 11. Constitution of India, 1950; Article 19(1)(a).
 12. It is important to note that RTI legislation is important even where a constitutional right exists because it ensures that people do not have to go to court every time they want to exercise the right, an puts it in simple, clear and regular procedures that can be used by everyone.
 13. (1993) 4 SCC 441.
 14. The disclosure of information in regard to government functioning must be the rule of secrecy the exception, justified only where the strictest requirement of public interest demands it. <http://globalfreedomofexpression.columbia.edu/cases/s-p-gupta-v-union-of-india/> (last accessed on 11th February 2020).
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 24. *Ibid*.
 25. Art 19 (1)(a).
 26. Art. 19 (2) of the Indian Constitution
 27. For concept of reasonable restrictions, see the Supreme Court decisions *J-stor Good Governance and Right to Information*, <https://www.jstor.org/stable/pdf/43953611.pdf?casatoken=XFjWtfxMnbEAAAAA:isnJAa5r7fundQiUUgqi93FYsdtEn7pv> (last accessed on 20th February 2020).
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