

A Study of Constitutional Provisions & Freedom of Information

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Introduction

The value of any freedom is determined by the extent to which the citizens are able to enjoy such freedom. Ours is a constitutional democracy and it is axiomatic that citizens have the right to know about the affairs of the Government which, having been elected by them, seeks to formulate some policies of governance aimed at their welfare. However, like any other freedom, this freedom also has limitations.

It is a settled proposition that the Right to Freedom of Speech and Expression enshrined under Article 19(1)(a) of the Constitution of India encompasses the right to impart and receive information. The Right to Information has been stated to be one of the important facets of proper governance. With the passage of time, this concept has not only developed in the field of law, but also has attained new dimensions in its application. The Indian courts have highlighted the need for the society and its entitlement to know and have observed that public interest is better served by effective application of the right to information. This freedom has been accepted in one form or the other in various parts of the world.

Freedom of information is an internationally recognized human right and is enshrined in numerous state constitutions, as well as various international covenants and treaties most notably the Universal Declaration of Human Rights [UDHR], the International Covenant on Civil and Political Rights [ICCPR] and the European Commission on Human Rights [hereinafter ECHR] among others.

The usual practice of the government is to treat an information secret, even though they may no longer be of any danger to national interest or public safety or any other public interest, merely because it may embarrass the government, in other words, the political party in power.

Constitutional Provision And Judicial Approach Relating To Right To Information -

Indian constitution is a source of all laws and has paramount status over all the laws. It is a supreme lex. It provides social, economic and political justice to the people of India. Constitution also enumerates different kinds of freedoms to free people of independent India. One such important right is - Right to Freedom under Article 19. This includes right to freedom of speech and expression, to assemble peacefully and without arms, to form associations and unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India, and to practice any profession, to carry on any occupation, trade or business/Mn the Indian Constitution, there are some clear provisions for strengthening and protecting the Right to Information. These provisions are in Chapter III as fundamental rights, especially under Article 19(1)(a). But this right is not absolute. The founding father of the Constitution imposed restriction on this right by Article 19(2). The Indian Judiciary expanded the scope of Article 19(1)(a) through the way of interpretation for the use of Right to Information in public interest.

The right to know relating to public affairs has been held up as a basic right under the constitution of India. The right to receive information may be deduced as a counterpart of the right to impart information, which is an ingredient of the freedom expression guaranteed by Art. 19(1)(a). it was held in that case, that people at large have a right to know in order to be able to take part in a participatory development of the industrial life and democracy.

In *Thalapalam Service Co-operation Bank Ltd. v. Union of India* Kerala High Court observed that the right to information is considered as a fact of the right to free speech and expression guaranteed under Art. 19(1)(a) of the Constitution of India. The said Constitutional right being a fundamental right could be enforced by invoking the writ jurisdiction of the Supreme Court and the High Court under Arts. 32 and Art. 226 respectively.

It has been held by the Supreme Court that right of speech and expression includes right to acquire and import ideas and information about the matters of common interests and to answer any criticism leveled against one's views through any media. This freedom also includes right to impart and receive information through telecasting.

In the case of *Sakai Newspaper Pvt. Ltd. v. Union of India*, the Supreme Court for the first

time said that readers had the right to read newspapers and this emanated from their right to know which was part of their right freedom of speech and expression. This principle even more clearly enunciated in *Indian Express Newspaper Bombay Ltd. v. Union of India*, the Court remarked, 'The basic purpose of freedom of speech and Expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here in is the people's right to know.'

In *Bennett Coleman & Co v. Union of India* Supreme Court observed that restriction on the use of the newsprint imposed an unreasonable restriction on the freedom of the press, because it could not give as much reading material to the reader as it wished. So not only the newspaper's right to freedom of speech was infringed but the reader's right to read was also curtailed. The reader's right to access to the reading material in a newspaper was his right to information which was implicit in the right to freedom of speech.

The judiciary gave the useful and elaborative shape to Article 19(1)(a) for the purpose of access to information. It has been held that this provision includes right to acquire information and disseminate the same.

The Right to Information got the legal support in 1975 in Supreme Court case of *State of U.P. v. Raj Narain*. A case in which the respondent had demanded information relating to the security expenses of the then Prime Minister of India, Indira Gandhi, the Court emphasized the importance of the public's right to know as a deterrent to oppression and corruption. In which Mr. Justice Mathew gave a landmark judgement, "In a government of responsibility like ours where all the agents of public must be responsible for their conduct, there can be but 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. They are entitled to know, the particulars of even; public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor, which should make one way when secrecy is claimed for transactions which can at any rate have no repression on public security.

Supreme Court have derived the right to information from two distinct Constitutional sources, one is freedom of speech and expression guaranteed in Article 19(1)(a) and the other fundamental right that is right to life and personal liberty guarantee under Article 21. Article 19(1)(a) of the Indian Constitution guarantees the fundamental right to freedom of speech and expression, which by implication includes within it the right to access to information, Therefore, the Right to Information becomes a constitutional right being and aspect of the right to free speech and expression, which includes the right to receive and collect information.'

Again full bend, of Supreme Court *In Re Mulgaoker's Case* through Justice V.R. Krishna Iyer and Kailasam, J.J. said it is the right of every man in Parliament or out of its in the press or over the broadcast, to make fair comment even outspoken comment, on matters of public interest. Those who comment can deal faithfully with all that is done in a Court of Justice.

The legal basis of the right to information was strengthened further by series of new cases. In *S. P. Gupta v. Union of India*, the Court declared that "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 interests so demands. The Court observed: "This is the new democratic culture of an open society towards which every liberal 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). 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.

Right To Information Act - Disclosure of information held by public authorities in India was governed by the Official Secrets Act (1923) enacted during the British rule. The Supreme Court of India had in several judgments prior to enactment of the RTI Act, interpreted Constitution to read RTI as the fundamental right as embodied in 'right to freedom of speech and expression and right to life.

The movement for the right to information received a fresh impetus from a courageous and

powerful grassroots struggle of the rural poor for the right to information, to combat rampant corruption in famine relief works. This struggle was led by a people's organisation, the Mazdoor Kisan Shakti Sangathan (which literally means .. organisation for the empowerment of workers and peasants). The movement spread to various parts of Rajasthan, leading to a nationwide movement for the RTI and related state legislations. The demand for national law started under the leadership of National Campaign on Peoples Right to Information (NCPRI). The FOI Bill 2000 was passed in the Parliament in 2002 but not notified, hence, never came into effect. The national campaign for RTI received a major boost when the UPA Governments Common Minimum Programme promised that the RTI Act will be made more progressive, participatory and meaningful. The National Advisory Council, which was set up to oversee implementation of the CMP since its inception, took a close interest in RTI. All this and many other factors, including pressure from the civil society groups led to the enactment of the RTI Act in India, which came into effect on October 12, 2005.

Any citizen, including overseas citizens of India and persons of Indian origin, can ask for information under this law. This right includes inspection of work, documents and records, taking notes, extracts or certified copies of documents or records, and taking certified samples of material held by the public authority or under its control and the authority has to give the information within the required time, which is generally 30 days but in case of Information concerning the life or liberty of a person information needs to be given within 48 Hours.

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 public information officer. 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.

Conclusion - The source of right to information does not enumerate from the right to information act. Right to information is a concomitant of the right to Freedom of Speech and expression as guaranteed by our constitution as a fundamental right. The right to receive information may be deduced as a counterpart of the right to impart information, which is an ingredient of the freedom of expression guaranteed by Art. 19(1)(a). Also Article 21 of the Indian Constitution is the guarantee of the right to life and personal liberty, which includes the right to know about things that affect our lives. But the right to speech and publish does not carry with it an unrestricted right to gather information. A reasonable restriction is always permissible on the said right in the interest of security of State.

It is indisputable that a statute of the nature of the Official Secrets Act, 1923 is an indispensable requirement of a Nation in order to facilitate protection of matters of National Security. It is however equally indisputable that the Fundamental Rights of Citizens of a Democratic Republic cannot be comprised and that a statute doing so must necessarily constitute a mere ..reasonable restriction keeping in mind the judicial dictum that nothing which is arbitrary can be reasonable.

The right to information is an integral part of fundamental right to freedom of speech and expression guaranteed by the constitution. The right to information Act, 2005 merely recognizes the constitutional right of citizens to freedom of speech and expression.

References

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