

Article 19 (1)(a) of Indian Constitution and Right to Information Act, 2005

*Dr. Sweety Phogat¹

ABSTRACT

India became independent in 1947 after many years of colonial rule and joined the liberal forces of the world on January 26, 1950, as a sovereign democratic republic. Under the Indian Constitution, India is a federal parliamentary democratic republic. In the Preamble to the Constitution of India, the people of India declared their solemn resolve to secure to all its citizen liberty of thought and expression. The Constitution affirms Fundamental Rights are the basic rights of the people and contained in Part III(Article 12 to 35) of Constitution of India. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste or gender. Article 19(1) (a) of the Constitution of India guarantees to all its citizens the right to freedom of speech and expression. The law states that, “all citizens shall have the right to freedom of speech and expression”. Under Article 19(2) “reasonable restrictions can be imposed on the exercise of this right for certain purposes. Any limitation on the exercise of the right under Article 19(1) (a) not falling within the four corners of Article 19(2) cannot be valid. These rights includes the right to voice one’s opinion, the right to seek information and ideas, the right to receive information and the right to impart information.

KEY WORDS : Right to Information, Fundamental Rights, Democracy, Government and Accountability.

INTRODUCTION

India is not only a republic but a democratic republic, the President of India is the head of country and the Prime Minister of India is the head of the government. India follows the dual polity system, i.e. a double government which consists of the central authority at the center and states at the periphery. The constitution defines the organization powers and limitations of both central and state governments, and it is well-recognized, rigid and considered supreme; i.e. laws of the nation must conform to it. The fundamental right to freedom of speech and expression is regarded as one of the most basic elements of a healthy democracy for it allows its citizens to participate fully and effectively in the social and political process of the country. The significant objectives of Indian Constitution as the preamble describes, is to secure liberty of thought and expressions to the citizens of India. The Article 19(1)(a) of the constitution, the fundamental right to speech and expression

¹ Assistant Professor in Law (C.R Institute of Law ,Rohtak ,Haryana)

can never be exercised until and unless the information regarding public matters is being circulated. The openness and accessibility about the Government functioning is an essential module of democracy. The Right to Information Act, 2005 is a landmark piece of legislation. It is a major step towards more accountable and transparent government. The Constitution gives the people ultimate control over the government, exercised through the election of the members of Parliament and State legislature. The Right to Information Act plays a vital role in enhancing the proper working of our representative democracy by giving individuals the right to demand that specific documents be disclosed. If the public is not informed, it cannot take part in the political process with any real effect. The public's right to know is an intrinsic aspect of informed political debate crucial to genuine democracy.

CONSTITUTIONAL ASPECT OF RIGHT TO INFORMATION

Article 19(1)(a) of the Constitution guarantees the fundamental right to free speech and expression². Its basic aim is "to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority"³

The right to information and the right to access information under the control of public bodies has now gained widespread recognition as foundation of democracy and as a basic human right throughout the world. The remarkable ones, deserving a special mention would be Article 12 of the Universal Declaration of Human Rights and also Article 14 of the International Covenant on Civil and Political Rights⁴.

In the international arena recognition was given to the Right to information. The Article 19 of the Universal Declaration of Human Rights, 1948 runs as follows

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Article 19(2) of the International covenant on civil and political rights states that

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”

² Secretary, Ministry of information and broadcasting v Cricket association of West Bengal (AIR1973 SC 106), Bennet Colman v. UOI (AIR1982 SC 149), SP Gupta v UOI (AIR 1995 2 SCC 161)

³ Right to Information Act, 2005, Bare Text.

⁴ India is a signatory to the above mentioned convention

The Indian parliament enacted the Act to make the public authorities bound by the provisions of the Act to furnish the information to the citizens as the rights of the citizens are classified as Fundamental Rights under Article 19(1) (a) of the Constitution.

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. The afore said Act of 2005 was extended to having applicability and force in connection with all of the States and Union Territories of India, however the areas which were comprising the State of Jammu and Kashmir were exempted from such extension. A law passed on June 15th, 2005 was on 12th day of October, 2005 brought into operation and effect as required by the Act itself. Earlier to the enactment of this Act of 2005 there was prevailing the Freedom of Information Act, 2002 and by enacting this Act of 2005 that enacted of 2002 was replaced. The aforesaid Freedom of Information Act, 2002 was enacted to provide for the freedom to every of the citizen of India for securing access to information under the control of public authorities, consistent with the public interest for promoting the openness and transparency in administration in relation to matters administration.

SALIENT FEATURES OF RIGHT TO INFORMATION ACT, 2005:

- The term Information includes any mode of information in any form of record, document, e-mail, circular, press release, contract sample or electronic data etc.
- Any citizen (excluding the citizens within J&K) may request information from a 'public authority' (a body of Government or 'instrumentality of State') which is required to reply expeditiously or within thirty days.
- Citizens have a right to: request any information (as defined); take copies of documents; inspect documents, works and records; take certified samples of materials of work; and obtain information in the form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode.
- The Act relaxes the Official Secrets Act of 1889 which was amended in 1923 and various other special laws that restricted information disclosure in India. In other words, the Act explicitly overrides the Official Secrets Act and other laws in force as on 15 June 2005 to the extent of any inconsistency.

- 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 computerise 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 organisation, 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; etc.
- The Act enumerates the types of information(s) that are exempted from disclosure⁵. However, these exempted information(s) or those exempted under the Official Secrets Act can be disclosed if public interest in disclosure overweighs the harm to the protected interest⁶. Also, the exempted information(s) would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates.
- 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/-
- 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.

RIGHT TO INFORMATION IS NOT ABSOLUTE ;

Exemptions from disclosure of information under RTI section :8

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,

⁵ Section 8(1) and section 9 RTI Act, 2005

⁶ Section 8(2) RTI Act, 2005

clearly classified by an appropriate authority. Section 8 of the RTI Act 2005, lays down certain qualified exemptions, which are subject to the Public Interest Test. Here, the public authority in possession of the information, must consider whether there is greater public interest in disclosing the information or withholding the information (popularly called- balancing the public interest or herein referred to as the Public Interest Test).

Section 8 in The Right To Information Act, 2005

Exemption from disclosure of information.—

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(a) 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 offence;

(b) 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;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) 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;

(e) 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;

(f) information received in confidence from foreign government;

(g) 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;

(h) information which would impede the process of investigation or apprehension or prosecution of offenders;

(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or

over: Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section: Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

CONCLUSION

Right to Information is an integral part of the freedom of speech and expression enshrined in Article 19(1)(a) of the constitution, which is regarded as the first condition of liberty. With the commencement of the RTI Act 2005, now the people have got right to take, see, check and inspect any information, which is not coming under the exemption list. The Right to Information recognizes that every person in India has guaranteed rights to access information held by government departments, such information which explains what they do, how they do it and how much it costs. The RTI ACT, 2005 has proved to be a strong weapon in the hands of people, for ensuring transparency in government departments and containing corruption. It is a major step towards more accountable and transparent government. The primary foundation for insisting upon openness in government rests upon the sovereignty of the people. Not only the status of right to information as a fundamental right has been recognized throughout the world and human rights law but countless instances from across the world testify the power of this right to information as a tool for ensuring transparency and accountability in governance as well as reduction of corruption.