



VIOLATION OF HUMAN RIGHTS WITH REFERENCE TO RIGHT TO INFORMATION ACT, 2005

Angel Mary Mathew

LLM

GITAM Deemed to be University, Visakhapatnam

Abstract: Good governance and accountability of government towards its citizens has become the greatest challenge in any democratic country. Good governance is the basic essential of democracy. The freedom of expression, an inalienable right of citizen, which are guaranteed by many International covenants and national legislations. In the modern World, the right to information has become a basic or fundamental right in most of the civilized and democratic countries. The upsurge of killings of RTI activists, has raised a question about effective implementation of human rights and the right to information.

Hence, in this paper, the author concentrates on the violations of human rights and implementation of RTI Act, 2005.

Keywords: Human Rights, Right to Information, RTI a Human Rights, Violation of Human Rights

INTRODUCTION:

In every democratic country, freedom to express one's ideas, opinions, and speech is fundamental to citizens. Information is an inalienable right of a citizen. The availability of relevant information assists citizens in their dignified lives in society. Good governance is the basic essential of democracy. The right to information can be related to good governance. Good governance must be such that it balances the system of the Government. In other words, the good governance makes the Government accountable and responsible towards citizens.

In the modern World, the right to information has become a basic or fundamental right in most of the civilized and democratic countries. As the former President of the United States, Abraham Lincoln, said, "Democracy is the government of the people, by the people and for the people." People are the only representative form of the Government. Therefore, it is necessary for the people to have access to all the information concerning the functioning of the Government.

However, we look into human rights, the most simple words yet the powerful words for the existence of every human being. Human rights are simply a right that one has because one is a human being. The unique characteristics of this right are that it is equal rights, inalienable rights, and universal rights. The human rights are equal rights in the sense that one either is or is not a human being and therefore has the same human rights as everyone else. As V.R. Krishna Iyer J. rightly points out, "Human rights are those irreducible minima which belong to every member of the human race which pitted against the state or public authorities or groups and gangs and other oppressive communities."

Through this article, the author points out the importance of the Right to Information concerning human rights violations.

HISTORICAL DEVELOPMENT OF RIGHT TO INFORMATION:

The first Right to Information law was enacted by Sweden in 1766 to access the information held by the King¹. The Freedom of the Press Act 1766 was passed and became the oldest piece of freedom of information legislation in the World. The purpose of the Act was to abolish the political censorship of public documents and to ensure the right for everyone to publish written documents. Anders Chydenius was a Finnish enlightenment thinker and politician. They played a crucial role in creating this law and gave the World an insight into the benefits of a transparent democracy. Sweden's Freedom of the Press Act became the basis for the more than 120 countries to introduce the right to information into their country, thus, making Government more transparent, responsible, and accountable towards their citizens.

It can be seen from Article 14 of the French Constitution, Declaration of Human and Civic Rights of 1789 that there is an element of 'right to know of a French citizen as to where the taxes that he pays are being spent. Article 14 thus states, "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection, and duration."²

Freedom of Information is a fundamental right and is the touchstone of all the freedoms to which the United Nations is consecrated. It is an essential factor in any serious effort to promote the peace and progress of the World. In 1948, the Universal Declaration of Human Rights was adopted, which was the most remarkable historical moment as fundamental human rights were universally protected and recognized. The Universal Declaration of Human Rights³ is a milestone document in the history of human rights. One of the crucial provisions under the Declaration is Article 19, which states, "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."

¹Stephen Lamble, Freedom of Information, a Finnish Clergyman's Gift to Democracy <https://www.access-info.org/2009-07-25/history-of-right-of-access-to-information/> (Jan. 18, 2021, 12:14 AM)

²Stephen Lamble, Freedom of Information, a Finnish Clergyman's Gift to Democracy <https://www.access-info.org/2009-07-25/history-of-right-of-access-to-information/> (Jan. 18, 2021, 12:14 AM)

³Universal Declaration of Human Rights, 1948

Therefore, it is to be concluded that the right to information has been adopted and protected universally as a fundamental human right.

DEVELOPMENT OF RTI IN INDIA:

Many regulations have existed from the period of the British Empire that has restricted the application of the right to information. One such law was Official Secrets Act, 1923, which prevented any public servants from disclosing any information to the public. The need for a right to information was felt during the early 1970s, and the access to information was the indispensable tool for curtailing Corruption. In *Mr. Kulwal vs. Jaipur Municipal Corporation*⁴, the Supreme Court stated unequivocally that Article 19 of the Constitution⁵ guarantees citizens' freedom of speech and expression, which includes the right to information. Without information, citizens' freedom of speech and expression cannot be fully exercised. Similarly, in 1990 Prime Minister VP Singh stressed on the importance of the Right to Information as a legislated right. However, his Government could not enact such legislation because of the political instability in the country⁶.

In 1994, Mazdoor Kisan Shakti Sangathan (MKSS) started a campaign in Rajasthan for Right to Information. Such a campaign resulted in the Government of Rajasthan enacting a law on the Right to Information in 2000⁷. In 1996, The National Campaign for People's Right to Information (NCPRI), one of the numerous civil society organizations, was formed with the goal of passing the RTI law. Due to the increased need for information, the Press Council of India prepared legislation, which was then amended and changed at a workshop called "The Press Council–NIRD Freedom of Information Act, 1997," under the leadership of its Chairman Justice P B Sawant. The Freedom of Information Bill of 2000 was proposed in Parliament and referred to a Parliamentary Select Committee. On January 6, 2003, the President of India signed the Freedom of Information Bill, which became law like the Freedom of Information Act, 2002.

Mrs. Sonia Gandhi established the National Advisory Council (NAC), popularly known as the shadow government. The Council's principal goal was to oversee the implementation of government programmes and provide policy and legal advice to the Government. The NCPRI drafted revisions to the Freedom of Information Act of 2002 and presented them to the National Advisory Committee. The National Advisory Committee supported the bill with minimal amendments and recommended it to the Government. Politicians and bureaucrats were hesitant to implement these reforms. An attempt was made to re-notify the previous Freedom of Information Act, but this was met with significant opposition from individuals and civic society.

Finally, on December 23, 2004, the UPA Government introduced the RTI Bill 2004. The RTI Bill was passed by both the Parliament and received the assent of the President on June 15, 2005. The RTI Act of 2005, also known as the Right to Information Act of 2005, went into effect on October 12, 2005.

⁴ AIR 1988 Raj 2, 1987 (1) WLN 134

⁵The Constitution of India, 1950

⁶Sanjeet Kumar, History of RTI Act 2005 in India: Evolution and Challenges <https://pskpedia.com/history-of-rti-act-2005-in-india-evolution-and-challenges/> (Jan. 19, 2021, 05:30PM)

⁷Debashish Sankhari, Right to Information as a Human Right and Developments in India

<https://www.humanrightsinitiative.org/programs/ai/rti/india/articles/RTI%20as%20a%20Human%20Right%20and%20Developments%20in%20India.pdf> (Jan. 19, 2021, 06:12PM)

IS RTIA A HUMAN RIGHT?

There is an important point to note that there is a slight difference between fundamental rights and human rights. It is evident from the paragraph mentioned earlier that Human rights are those rights that are universal and available to all human beings. In other words, human rights are the rights that all global men and women should have. Fundamental rights are those rights that are protected through the Constitution of every concerned country. In other words, fundamental rights are awarded to all citizens of the country protected through the Constitution⁸. All the fundamental rights are absolute and enforceable in the Court of Law. These rights have been safeguarded by the Constitution so that they cannot be abridged by any person or organization. An individual must enjoy these fundamental rights without creating a rift in society so that there must not be any kind of Human Rights issue. Therefore, the Right to Information is a human right. However, the Right to Information is implicitly included under Freedom of Speech and Expression guaranteed under Article 19 (1) (a) of the Constitution of India. Thus, it can be said that the Right to Information under India is a fundamental right. Like all other fundamental rights, the right to information also has certain reasonable restrictions. The legal position concerning the right to information has developed through several Supreme Court decisions given in the context of the Right to Freedom of Speech and Expression. The exciting aspect of these judicial pronouncements is that the scope of the right has gradually widened, taking into account the cultural shifts in the polity and in society.

JUDICIAL DECISIONS:

In the landmark case, Bennett Coleman & Co. v. Union of India⁹, the petitioners challenged the limitations imposed under the 'Import Control Order 1955' on acquisition, sale, and consumption of newsprint. The Court struck down the newsprint control order saying that it directly affected their right to freedom of speech and expression. The judges also remarked, "It is indisputable that by freedom of the press meant the right of all citizens to speak, publish and express their views" and "Freedom of speech and expression includes within its compass the right of all citizens to read and be informed."

Similarly, in State of Uttar Pradesh v. Raj Narain, Mathew¹⁰J., stated: It is not in the interest of the public to cover with a veil of secrecy the common routine business the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and Corruption.

In Secretary, Ministry of I&B, Government of India v. Cricket Association of Bengal¹¹, the Supreme Court held that the right to impart and receive information from electronic media was included in the freedom of speech.

In People's Union for Civil Liberties v. Union of India¹², the right to information was further elevated to the status of a human right, necessary for making governance transparent and accountable. It was also emphasized that governance must be participatory.

⁸B Prabhakaran & Dr. AR Saravanakar, Difference between Human Rights and Fundamental Rights, https://www.researchgate.net/publication/341051809_DIFFERENCE_BETWEEN_HUMAN_RIGHTS_AND_FUNDAMENTAL_RIGHTS#:~:text=Fundamental%20Rights%20are%20the%20rights (Jan 09, 2021, 10:00PM)

⁹AIR 1973 SC 106

¹⁰AIR 1975 SC 865

¹¹AIR 1995 SC 1236

¹²AIR 1997 SC 568

HUMAN RIGHTS VIOLATIONS:

According to the data by Commonwealth Human Rights Initiative (CHRI)¹³, a total of 95 activists have been killed, 175 cases of assault have been registered, and 186 cases of harassment and threats have been reported from across the country since the implementation of the Right to Information Act in 2005. The number of RTI activists killed is higher in Maharashtra. The essential point to note here is that all the RTI activists were killed for exposing information about the Corruption, illegal mining, opposing the illegal construction, real estate scams. The miserable fact is that in none of the cases, the accused has been identified and proven guilty. The report notes that both the state and the judiciary have failed to implement the safeguards for the activists. Thus, the report observes: "The most worrisome discovery in this study is the failure of the criminal justice system to identify and punish the murderers. In at least four cases, the accused were acquitted for lack of sufficient evidence. So, while the fact of murder is undeniable, nobody has been found guilty of committing the crime. In a majority of other cases, the trial has not been completed".

However, the report also recommends implementing the Whistleblowers Protection Act¹⁴ to prevent heinous attacks on RTI activists and take necessary measures to safeguard their interests. The report further recommends that the Courts, as custodians of the fundamental rights guaranteed by the Constitution, should ensure fair and speedy trial of criminal cases pertaining to attacks on RTO activists and whistleblowers. Additionally, police departments must work along with State Information Commissions to develop training programmes for investigating officers to explore linkages with the victims of RTI activists before filing their final reports or chargesheets before the Courts for further action.

CONCLUSION:

The author would like to conclude that the Public Interest Litigation has been an effective tool to check on the protection of human rights through the judiciary. However, the upsurge of killings of RTI activists has raised a thought about the poor implementation of the Right to Information Act, 2005. This is an appalling situation in a country whose national motto is Satyameva Jayate (truth alone will win). The objective of the Right to Information Act is to empower its citizen promotes transparency and accountability on the Government. Restrictions on the free flow of information, particularly between the Government and citizens, have eroded not just the democratic values preserved in the Indian Constitution but have also resulted in the failure of government programmes and development projects aimed at improving the poor's lot. The law just becomes a mere document if not executed properly. The only issue that emerges is the effective application of the RTI Act. The interests of the information seekers must be duly protected in order to maintain the ideals and principles of democratic Government.

¹³Life & Death in the time of RTI Case studies from Maharashtra, Commonwealth Health Rights Initiative, 2020
<https://www.humanrightsinitiative.org/download/1585041950LifeAnd20DeathInTheTimeRTIpdf> (Jan. 21, 2021, 07:03AM)

¹⁴ Whistleblowers Protection Act, 2014

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