

THE UNRAVELLING OF IMPEDIMENTS TO RIGHT TO INFORMATION BY THE SENTINEL OF RIGHTS

Akash Chaudhary
Army Institute of Law, Mohali

ABSTRACT

“My notion of democracy is that under it the weakest shall have the same opportunities as the strongest”

- Mahatma Gandhi

This pearl of wisdom by the father of our nation stands with equanimity in the present world as the custodian of democracy; our apex court is playing its imperative duty in transforming the nation. Whether it is about the rights of the individuals or the protection of laws of the nation supreme court have its equal share in all of that; one such example is right to information. In the present domain the free fall of information is as easy as pie. However, the apex court through many landmark judgements have cleared the transparency of such plummeting information.

Through this research paper the author wants to highlight landmark supreme court judgements which muck in transforming right to information with leaps and bounds. The author focuses on right to information in the vantage of article 19 and 21 of Indian constitution that is freedom of speech and expression and right to life respectively. It also focuses upon how apex court through its various judgements expands the ambit of right to information? Moreover, author also dwell upon the interpretation of “public authority” and “information” in the pretext of right to information.

The issue of judicial independence and accountability is of prima facie importance hence author lay a hand on this topic as well. It is always argued that whether the parameters of right to information went up to the state and non-state entities? Author through this research gives answer to the same. Moreover, for the functioning of democracy its fundamentals that is political parties are needed hence, the author through this piece of research also emphasize upon the antecedents of political candidates and the author will give some suggestions related to extending the scope of right to information to BCCI as well.

KEYWORDS: - Right To Freedom Of Speech And Expression, Right To Life, Public Authority, Information, Judicial Independence, Accountability, Political Candidates, State And Non-State Entities.

INTRODUCTION

The above stated notion of democracy which is in modern democratic government means the government of the people, by the people and for the people¹ could be exercised in its true sense when, the government by the people is not ignorant of the issues to be resolved; When, the government for the people hold in high esteem the dissenting opinion of the people and when, the government of the people have equal participation in providing information and express opinion of the people. The background for right to information traces its evidence from the official secrets act, 1923.

THE OFFICIAL SECRETS ACT, 1923

This Act² of 1923, is India's anti-surveillance act that carried on from British colonial rule which states that the actions which involves any act helping other enemy states against India are strongly condemned. At first, to provide protection of official secrets in the country Indian Official Secrets Act was enacted in 1889 and was amended by the Indian Official Secrets (amendment) Act, 1904 Having two law in the country it was felt to consolidate the law which gives the adoption of unite law and accordingly, Indian official secrets bill was passed by the legislature which received its assent on 2nd April 1923. The act of official secrets deals with two aspects broadly.

Intelligence or spying activity and
Revelation of others secret official information.

For Intelligence or Spying Purpose-

Section 3³, of this act dealt with the penalties for spying it states that if a person with any means in accordance with espionage or spying purpose defy the safety or interest or the safety of friendly state in reference with the secretive information of the state shall be punishable with imprisonment of fourteen years and in some other cases to three years.

Revelation of Others Secret Official Information-

The disclosure of some secret official information is lead down under section 5⁴ of Official Secret Act, 1923 it can be divided into three broaden aspects which are as follows –

Dealt with the persons in possession of official information. – this act will cover those people who are in possession of any secretive official information or any person obtaining information violative of this act or any person entrusted with any confidential information by any person holding public office or any person in possession with any government secretive official information includes in the act.

The person who is receiving the information. – the person stated above who receives information is guilty of an offence under section 5 of Official Secret Act, 1923 not only this the person communicating the same is also liable in the act.

What is termed as the secret information – the parameter of the official information covered by the section is extremely comprehensive. however, nowhere the term ‘official secrets’ is defined under this Act but section 3(1) clause c of the Act clarifies password, sketch, plan, model, article or other documents as ‘official code’.

In the case of *R K Karanjia v. Emperor*⁵- the Hon’ble high court of Bombay said that the word official secrets is nowhere defined however we can define it under ss 3 and ss 10 of the Official Secrets Act, 1923. The court added one more connotation in the same that the private institutions should not be covered under the scope of this act.

The extent to which the secrecy in government transactions of the business is maintained is define under article 77 of the constitution in which the president has to make rules for the same.⁶

RIGHT TO INFORMATION IN LINE WITH ARTICLE 19 AND ARTICLE 21 OF INDIAN CONSTITUTION.

Fundamental rights are tottering in themselves subject to interpretation having no fixed content, most of them are like empty bowl into which different generation must pour its content in light of their experience.

These words of vivid constitutional and juristic mind justice Mathews in the case of *Keshavananda Bharti v State of Kerala*⁷ best anchored in the present context as in regards to the fundamental rights. The very onset of preface of our constitution starts with WE, THE PEOPLE OF INDIA and ending with five words that is GIVE TO OURSELVES THIS CONSTITUTION⁸. Specifically, indicates about how constitution is made for people of its nation and for the welfare of them? However, broadly showing the people of India are mostly living in the darker side of the governance of the country and are often not informed about the public affairs.

Article 23⁹ and Article 25¹⁰ of the universal declaration of human rights of the year 1948 and part III and part IV of the constitution of India which guarantees some rights like right to life, liberty, dignity and decent conditions of life and development foretell the jurisprudence of democracy in itself.

The one of the main objectives of the Right to Information Act, 2005 is to establish informal citizenry and transparency of information which are vital to the functioning of democratic

government and also to contain corruption and to hold the government and their instrumentalities accountable to the governments responsible for their act.

IN ACCORDANCE WITH RIGHT TO FREEDOM OF SPEECH AND EXPRESSION AND RIGHT TO LIFE AND PERSONAL LIBERTY

Judiciary is the ombudsman and curator of our Constitution. The one of the main objectives of judiciary is to spread its wings of justice to each and every individual of its nation and to bring down the growing corruption in the country.¹¹ An independent judiciary can be stated to be the cornerstone of a democracy.¹²

The custodian of fundamental principles i.e. constitution of India comes to the rescue of 'the very common man' by vouchsafe him certain fundamental rights given under part III of our constitution. These rights, bestowed upon our citizens represent the basic values of life in a courteous society which have been given a place of pride in our constitution.¹³

For many decades, there were no constitutional provisions regarding the right to information despite having established parliamentary democracy. There was no, legal right to information and our constitution doesn't use the word freedom of information under article 19. However, it was through some creative interpretation of article 19(1)(a) that the Supreme Court sculpted out a fundamental right to information as being implicit in the right to speech and expression.¹⁴ These rights cannot be breached except the procedure established by law, which are in accordance with the spirit of constitution.¹⁵ Hence, we can conclude that right to information is implicitly in consonance with the constitutional framework.

Article 21- 'Right to life and personal liberty' is an enormous sea of different rights and attributes subject to subjectivity and interpretation. Some of them also found in article 19 of Indian constitution and thus have two sources of one point. However, judiciary in several landmark cases has expressly held that right to information as a fundamental right is accompany by Article 19 and Article 21 of Indian constitution i.e. right to freedom of speech and expression with right to life of personal liberty.¹⁶

In case of *Romesh Thappar v. State of Madras*¹⁷- the petitioner challenged the ban on his journal by the madras procedural statutes the court held that the said provision is ultra vires to the article 19(1)(a) of constitution of India. Following this trend, the apex court in case of *Hamdard Dawakhana v. Union of India*¹⁸- the Supreme Court declared right to information to be the part of article 19(1)(a) of constitution of India. The Hon'ble apex court have played its large role in establishing right to information as a fundamental right via interpretation of article 19 of Indian constitution.

The strongest expression in this stance came from the case of *State of U. P. v. Raj Narain*¹⁹- it was held that the people of this country have every right to know about everything of public act that is done in a public way by the public representatives. The same fact was established in the case of *S.P. Gupta v. Union of India*²⁰- which is popularly known as the judge's transfer case it was held that when the citizens of the nation have chosen democracy as their elementary faith they now have right to know what their government is doing?

The apex court in its 'life and liberty' provision with respect to right to information held in the case of *Mr. Pratap Kumar Jena v. Central institute of Psychiatry*²¹- that the life and liberty clause of this article can only be applied if there is any threat to body, life, liberty or any imminent danger to life and liberty of a person.

In *Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd.*,²² the court while answering the question whether Reliance Petrochemicals was entitled to an injunction against the respondents held that right to know as emanating from the right to life.

Hence, the very concept of open government is implicit under right to information which is somehow related to both right to freedom of speech and expression and right to life and personal liberty.

THE EXPANDING HORIZONS: FROM A NEED TO KNOW TO “RIGHT TOKNOW”

The Indian citizenry had gained a lot over last few decades, from a need to know to a right to know. The Right to Information Act, 2005 is a unique one as it tends to strengthen the citizenry's right ranging from access to information to a more transparent and accountable governance system than ever before. It has preserved the paramountcy of democratic ideals of a fair, approachable and participatory democratic system.

It provides all the citizens the right to information;²³ however, such right is not absolute and is subject to the provisions of the Act. Any material in any form²⁴ will qualify for ‘information’ under the Act. It further includes any record, document, opinions, advices, circulars, reports, papers, samples, data material in e-form and information related to private body accessible by public authority under the law.²⁵ The legislature's intention is to provide the general public with all the information, relating to everything done in a public way, by the public authorities.²⁶

The public authorities are under an obligation to maintain record of information²⁷ and provide the same when information is sought through a request after the payment of the requisite fee²⁸ as expeditiously as possible but not later than 30 days from the date of receiving such request²⁹. The CPIO or SPIO can also reject the request for any of the reasons as specified in Section 8 and 9 which provide for exemption for disclosure of information and grounds for rejection in certain cases respectively.

SCOPE OF “INFORMATION” SOUGHT UNDER THE RTI ACT

The RTI Act provides access to all information that is available and existing,³⁰ i.e. the information required to be maintained under any law, rules or regulations. If the public authority has any information as per section 2 (f), an applicant may have access to it subject to exceptions under section 8. Further, the Act aims at promoting accountability and reducing corruption in order to strengthen the core constitutional values of a democratic republic.³¹ However, the competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use.³²

Personal notes of Judges

Personal notes, having not attached finality to their nature, are only meant for the use of the judges; therefore, it does not come under the ambit of the “records” held by public authority and cannot be held.³³

Information regarding personal assets of Judges

The Judges in India forms a very special hierarchy of the judicial institution which is independent of all influences and interferences whether from Executive or Legislature.

Higher the Judge is placed in the judicial hierarchy, the greater the standard of accountability and the stricter the scrutiny of accountability of such mechanism. However, it is essential to secure accountability at all the levels and the judicial magistrate at entry level is no less accountable than a judge of a higher judiciary. Therefore, declaration of personal assets is as per accepted behaviour and falls under the ambit of the term “information” under section 2(f).³⁴

Information as to reasons of opinions, advice etc in judicial decisions

An applicant can get any information held by a public authority under law; however, any information as to why a particular opinions, or advice was held by judicial officer in matters pertaining to a judicial decisions, not being accessible or available under law with the public authority cannot be provided under RTI.³⁵

Preventive Detention and Right to Know

The law validates both punitive as well as preventive detention, provided it was as per the procedure established by law.³⁶ Both the law and the procedure have to be valid. However, the state is not under an obligation to provide the detenu grounds of his detention prior to his arrest and detention.³⁷

Intellectual Property Rights and Right to Know

Intellectual property rights refers to a category of intangible rights protecting commercially valuable products of human intellect comprising primarily trade mark, copyright and patent right, as also trade secret rights, publicity rights, moral rights and rights against unfair competition.³⁸ The intellectual property, the disclosure of which has a tendency to harm the competitive position of a third party is exempted, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.³⁹

Information-dangerous to life and physical safety

Any information, the disclosure of which would endanger the life or personal safety of any person or identify, cannot be disclosed under the Act.⁴⁰ The information (name, address, individual marks) pertaining to the details of an interview with the interviewing body in confidence with the interviewers, which endangers the lives or physical safety of the interviewers or members of the interview body and can hamper their effective performance, could not be disclosed being opposed to section 8(1)(g).⁴¹

Further, where the answer books are disclosed under RTI, the same has to be done in accordance with 'rule of severability'⁴². All those pages of the answer book containing information as to the examiner, co-ordinator, scrutinisers or their identity with reference to their initials/name have to be removed or severed from the rest of the answer book.⁴³

PRIVACY VERSUS SECRECY: HOW MUCH IS TOO MUCH?

The RTI Act warrants that the information which cannot be denied to Parliament or a State Legislature should not be denied to any person. However, certain exceptions are being carved out, including the release of personal information, whose disclosure has no nexus to the public activity or interest. In afore said cases, the information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case.⁴⁴

Right of privacy: A fundamental right under Article 21

The right to privacy guaranteed to every citizen under Article 21 of the constitution includes in itself the "right to be left alone".⁴⁵ A citizen has a right to protect his personal⁴⁶ information of family, education, birth, marriage i.e. he is entitled to an intrusion-free zone. The same cannot be disclosed without his consent and if it is done it would be violating his right and he will be entitled to damages.⁴⁷

'Personal information' versus 'larger public interest'

The information which relates to an individual cannot be compared with, or equated to, the one of public activity. An individual under Article 19(1)(a) can insist that any information relating to him cannot be furnished to others unless it is in the realm of public activity or is required to be furnished under any law, for the time being in force.⁴⁸

Records of a person sentenced or convicted.

Details of medical facilities availed by SC Judges and their family members.⁴⁹

Details given by persons in his income-tax return.⁵⁰

Contents of asset declaration.⁵¹

Such personal information is 'held by' or is 'under the control of any public authority'⁵² to the exclusion of others, can only be sought by the citizenry by following the prescribed procedure from public funded hospital. This is so, because the public authority is under a statutory obligation to disseminate the same. However, Public authority is not legally obliged to give or provide information even if it is held, or under its control, if that information falls under Section 8(1)(j).⁵³ There is a need to harmonize the right to know with the personal privacy, confidential information and effective governance.

The Hon'ble Supreme Court in *Canara Bank v. C S Shyam and Anr*⁵⁴, justified the rejection of request by CPIO on the ground that information of individual employees working in the bank

(date of joining, designation, details of promotion earned, transfer orders etc) was personal in nature and no larger public interest was involved in seeking such information.

Third party information and public interest

Any information sought under section 6 relating to third party⁵⁵ which pleads the defence of privacy/ confidential, the information commission shall take the decision by following the procedure laid down in section 11(1) of the Act considering the larger interest of public.⁵⁶ The Disclosure must satisfy the proportionality test laid down in the case of *K.S. Puttaswamy*⁵⁷ and the individual's "reasonable expectation of privacy" be met with. In case an appeal has been preferred by the third party against such decision, the same has to be disposed off as per the principles of natural justice.⁵⁸ The two judge bench of the SC in *Union Public Service Commission Etc. v. Anesh Kumar & ors.*⁵⁹ held that Information sought by unsuccessful candidates with regard to marks (raw and scaled) in Civil Services Exam cannot be directed to be furnished mechanically.

INFORMATION HELD UNDER FIDUCIARY RELATIONSHIP

Section 8(1)(e) of the Act provides that an information held by a person in the capacity of his relationship (fiduciary) should not be disclosed unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information. The following are the instance where information was sought by the applicant under the Act:

Inspection and disclosure of Answer Sheets

The body conducting examination cannot be said to be in a fiduciary relationship in relation to the examinee whose answer sheets were to be evaluated. There is a principal-agent relationship between the examining body and the examiner where the examining body is 'principal' and the examinee is the 'agent' entrusted with the work of evaluation of answer sheets.⁶⁰ The examining body does not hold answer sheets in a fiduciary relationship and there is no question of breach of confidentiality, privacy, secrecy or trust.⁶¹ Therefore, examining bodies cannot take exemption under section 8(1)(e) and would have to allow the inspection of answer sheet, take notes, extracts or obtain certified copies thereof by the examinee under the Act.

Exemption under section 8(1)(e) available only to the recipient

The following section provides that the "information available to the person in fiduciary relationship" not to be disclosed. This means the exemption is available only to the recipient and not to others. It is the recipient with whom information is available in fiduciary relationship who can claim exemption when a disclosure is sought from him.

Chief Justice of India, not a fiduciary

The CJI cannot be fiduciary viz-a-viz judges of Supreme Court. All the judges are appointed independently and hold their office so. The all are equal in the absence of any hierarchy and the CJI is just 'first among the equals'. Asset Information of judges held by the CJI is not there in a capacity of a personal relationship but to maintain the judicial discipline. Such information is not covered under section 8(1)(e) of the Act and therefore, if directed to be revealed cannot be held as a breach of fiduciary duty.⁶²

PUBLIC AUTHORITY UNDER THE ACT

The flow of information is not to be an unregulated flood. It needs to be controlled just as the flow of water is controlled by a tap. Those empowered to handle this 'tap' of information are imbued with great power.⁶³ Under the RTI Act, this power is to be exercised by the public authority. The 'public authority'⁶⁴ is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories under Section 2(h) of the Act.

Reasons To Be Recorded While Disposing A Request

The Information Commission or the public authority, after applying their mind and forming the opinion must specifically record the finding for the disposal of the request. If there is failure on

part of such authorities, the same should be recorded if such default was persistent and without reasonable cause.⁶⁵

Nexus of control and finance of public authority over private institutions

The provisions of the Act have to be harmoniously construed with the aim & objective of the Act giving them widest meaning so that unscrupulous persons do not get benefits of concealment of their illegal activities or illegal acts by being exempted under the Act and are able to hide nothing from the public.⁶⁶ Any private body or organization having a finest of nexus of control and finance by public authority would fall under the provision of section 2(h) and will be under an obligation to provide information under RTI Act.

Public authority not to claim any information as personal

The public authority cannot claim that any information held by in relation to it is personal. The expression “personal information” used in the section covers personal information to any other person held by other public authority.⁶⁷ The other person may be natural or juristic. It is the information pertaining to that other person which the public authority can refuse to disclose under section 8(1)(j).

POLITICAL PARTIES VIZ-A-VIZ RTI: TOWARDS A MORE TRANSPARENT DEMOCRACY

Political parties play a very important role in the functioning of a healthy democracy. RTI Act aims at promoting transparency and there can be no better place for the same than the political parties. The trend of criminals occupying the public office poses a great danger to the very fundamentals of the democracy. The Hon’ble Supreme Court had dealt with the same proposition in no of cases discussed herein.

ANTECEDENTS OF POLITICAL PARTY CANDIDATE

The access of election related information is widely considered to be essential to the rectitude of electoral process in the democratic world. With the few exceptions the information disclosed by the parties usually to an esoteric governmental agency can be freely accessed by the general public.⁶⁸ The political parties coming under the provisions of Right to Information Act, 2005 has been one of the most debatable and discussed issue so far.

The righteous Supreme Court through the case of *Common Cause v. Union of India*⁶⁹ authorized the election commission of India to collect information from political parties and their candidates on their electoral lay out.

In *Union of India (UOI) v. Association for Democratic Reforms and Another*⁷⁰; With *People's Union for Civil Liberties (PUCL) and Another v. Union of India (UOI) and Another*, the Court ruled that the detailed information regarding the background of candidates, including their assets and any other pending criminal investigation should be provided to the voters.

Democracy needs transparency and accountability, which can only come by when the key collaborators through these political parties are explicable and unambiguous in their political activities as well.

SUBSTANTIAL FINANCING OF POLITICAL PARTIES

Political parties are indirectly financed by the central government and the state government whether it is allocation of plots or buildings or accommodation in prime locations or either it is free air on television screens during election time etc.

It will be a great irony to accept that those political parties which do not uphold democratic ideals in their internal functioning will respect those ideas of governance of the country.⁷¹ Considering the wide prospect of these political parties should they be exempt from holding accountable for public? Given that the entire political scenario is influenced by some handful of dominant political parties the central information commission held that *it will be a fallacy to hold the transparency is good for the administration but not good enough for the political parties to control that administration through political executives.*⁷²

Allocation of houses, real estate, exemption from tax and providing property on subsidized rate all amounts to 'indirect financing' within the ambit of section 2(h)(d)(ii) of the RTI Act⁷³. Political parties can't function without financing, funding and exemptions from government, and by this financial support we can't exempt these political parties from considering them as public authority.⁷⁴

Political parties are pre dominantly involves in public functions and receives substantial public financing by the governmental authority. It means to have agricultural plots, concessions, grants, subsidies as well as including other facilities involving in indirect financing and cash flow.⁷⁵

CIC in *Anil Bairwal v. Parliament of India*,⁷⁶ took the view that allotment on concessional rates and exemptions of income tax liabilities of political parties encapsulate to substantial financing. They got almost unbridled exemption from income tax, a benefit not enjoyed by any other non-profit non-governmental organisation.

Certain political leaders and venture are of the opinion that political parties must be exempt from income tax liabilities since they work for the 'strengthening the very nature of democratic polity'. However, if that to be a case the very nature of democratic polity also includes accountability and transparency in its own account the so called 'strengthening the democratic polity' must be made answerable to general public.

CONCLUSION

The judiciary is promoting and enforcing democratic accountability via. the RTI Act. All efforts are made to ensure accountability, deal with mismanagement and to direct administrative malpractices. However, it is well recognized that RTI is not the only sufficient way to improve governance and to usher in good and clean administration with the protection of whistle blowers. Therefore, we see that the RTI has been projected to strengthen participatory democracy and promoting people-centric governance. In a nut shell way, the brass tracks is that the RTI, if used and implemented judiciously, has the potential to unleash good governance and to make the governmental system more responsive to community needs, which is the basic premise of democracy until then the custodian of democracy- judiciary will keep taking on tracks for the same.

ENDNOTES

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