

RIGHT TO INFORMATION AS A FUNDAMENTAL RIGHT IN THE ERA OF CIVILIZATION: GLIMPSES FROM INDIA

Dr. Ved Pal Singh Deswal

Faculty of Law

M.D. University Rohtak (Haryana) INDIA

Email: vpdeswal@gmail.com, Mobile No: +91-9991122631

1. Introduction

“The Government wants to share power with the humblest; it wants to empower the weakest. It is precisely because of this reason that the Right to Information has to be ensured for all”.¹

The State does not claim monopoly of truth any longer. Glasnost has cast away the cloud of secrecy and stresses the priority of human values. Even as steps are taken to ensure openness in matters affecting the public, there has to be a greater sense of responsibility on the part of users of information in the media and elsewhere. Journalists must ensure that they seek information in public interest and not as agents of interested parties.**Mikhail Gorbachev**

The word Information has been derived from the Latin words ‘Formation’ and ‘Forma’ which means giving shape to something and forming a pattern, respectively. Information adds something new to our awareness and removes the vagueness of our ideas. The Right to Information has already received judicial recognition as a part of the fundamental right to free speech and expression. An Act is needed to provide a statutory frame work for this right. This law will lay down the procedure for translating this right into reality. Information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues – political, social and economic. Free exchange of ideas and free debate are essentially desirable for the Government of a free country. In this Age of Information, its value as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is important because every developmental process depends on the availability of information. Right to know is also closely linked with other basic rights such as freedom of speech and expression and right to education. Its independent existence as an attribute of liberty cannot be disputed. Viewed from this angle, information or knowledge becomes an important resource. An equitable access to this resource must be guaranteed.

"Lack of transparency was one of the main causes for all pervading corruption and Right to Information would lead to openness, accountability and integrity".² "The barrier to information is the single most cause responsible for corruption in society. It facilitates clandestine deals, arbitrary decisions, manipulations and embezzlements. Transparency in dealings, with their every detail exposed to the public view, should go a long way in curtailing corruption in public life."³ The government recognises that access to information is an essential part of its accountability.⁴ In pursuance of The Freedom of Information Bill 2000; Information means any material in any form relating to the administration, operations or decisions of a public authority. It will be interesting to mention that Press Council of India prepared a draft Bill in 1996 to make a provision for securing right to information. This draft Bill was named Right to Information Bill, 1996. The Institute of Rural Development, Hyderabad also prepared a bill in 1997. Both the bills initiated a national debate on the issue of Effective and Responsive Administration. The Govt. of India appointed a working group on January 2, 1997. The terms of reference of the Working Group included the examination of feasibility and need to introduce a full fledged Right to Information Bill. This group recommended that a legislation in this regard is not only feasible but is also vitally necessary. The Working Group recommended

¹ Ex. Prime Minister of India, Sh. Atal Behari Vajpayee said these lines.

² Solicitor General of India, Sh. Soli Sorabjee said these lines while stressing on the need of Right to Information aim at bringing transparency in administration and public life.

³ Mr. P.B. Sawant made this statement with respect to the importance of information.

⁴ India has so far followed the British style of administration. In Great Britain, Official Secrets Act, 1911 and 1989 are intended to defend national security by rendering inaccessible to the public certain categories of official information.

that the bill should be named as Freedom of Information Bill as the Right to Information has already been judicially recognised as a part of the fundamental right to free speech and expression.

2. Constitutional Aspect of the Right to Information

The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matters of public interest will only encourage wild rumours and speculations and avoidable allegations against individuals and institutions.⁵ Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizens perform their fundamental duties as set out in Article 51A of the Constitution. A fully informed citizen will certainly be better equipped for the performance of these duties. Thus, access to information would assist citizens in fulfilling these obligations.

3. Restrictions on Right to Information

As no right can be absolute, the Right to Information has to have its limitations.⁶ There will always be areas 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 properly, clearly classified by an appropriate authority. The usual exemption permitting Government to withhold access to information is generally in respect of the these matters: (1) International relations and national security; (2) Law enforcement and prevention of crime; (3) Internal deliberations of the government; (4) Information obtained in confidence from some source outside the Government; (5) Information which, if disclosed, would violate the privacy of an individual; (6) Information, particularly of an economic nature, when disclosed, would confer an unfair advantage on some person or subject or government; (7) Information which is covered by legal/professional privilege, like communication between a legal advisor and his client and (8) Information about scientific discoveries and inventions and improvements, essentially in the field of weapons. These categories are broad and information of every kind in relation to these matters cannot always be treated as secret. There may be occasions when information may have to be disclosed in public interest, without compromising the national interest or public safety. For example, information about deployment and movement of armed forces and information about military operations, qualify for exemption. Information about the extent of defence expenditure and transactions for the purchase of guns and submarines and aircraft cannot be totally withheld at all stages.

4. Role of Indian Judiciary

The courts in India have played a very important role through a creative interpretation of Article 19(1) (a) of the Constitution that the Supreme Court carved out a fundamental right to information as being implicit in the right to free speech and expression. This right is of special importance to the media whose lifeline is information and whose business it is to communicate information to the electorate so that the latter may make informed choices. One of the earliest cases where the Supreme Court laid emphasis on the people's right to know was *Romesh Thappar v. State of Madras*.⁷ There the petitioner had challenged an order issued by the then Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the circulation of the petitioner's journal *Cross Roads* was struck down as violative of the right to freedom of speech and expression under Article 19(1)(a). Again in *Indian Express Newspapers (Bombay) Ltd. v. Union of India*⁸ the Court relied on the following decision (Per Lord Simon of Glaisdale in *Attorney General v. Times Newspapers Ltd.*)⁹ said that:

“The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decisions which may affect themselves.”

⁵ Article 19(1) (a) of the Constitution guarantees the fundamental rights to free speech and expression.

⁶ Absolute power corrupts absolutely, is a part of Natural Law theory.

⁷ 1950 SCR 594

⁸ (1985) 1 SCC 641.

⁹ (1973) 3 All ER 54

In *Judges Transfer* case¹⁰ a seven-Judge Bench of the Supreme Court followed *Raj Narain* case and observed thus:

“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. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only if people know how Government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy.”

In *Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd.*¹¹ Justice Mukharji recognized the right to know as emanating from the right to life. In a later judgment, *Tata Press Ltd. v. MTNL*¹² the Supreme Court, while considering the scope of Article 19(1)(a) in the context of advertising or commercial speech, held that the public has a right to receive information.

After a long struggle and battle a bill was introduced in the parliament and was passed and came to be known as Freedom of Information Act 2000. This act committed same mistake as done by various state legislations. Shortcomings of the statute made the legislators to build up a new one which repealed the old act and came to be known as Right to Information Act 2005. Critics to the bill sense it as *old wine with a new label*, whereas for others it is overwhelming success which came after hectic lobbying and struggle by civil society. Whatever we say its shows commendable job by government to realize that power is a social trust not a slave of an absolute monarch.¹³ Right to Information Bill, 2004 was introduced before lower house on 23rd December 2004 and sent to standing committee.¹⁴ It was tabled on 10th May 2005 and passed by Lok Sabha on subsequent date. After a day's scrutiny in Rajya Sabha it was sent for presidential assent which was given on 15th June 2005. The Act came into force on 12th Oct 2005 (*after 120 days*).¹⁵ The Act is really a landmark in the history of legislation but the point to be clarified is the accountability of the Act. The Act which came to curb corruption has yet to prove the stand. The corruption index still ranks India in 85th position.¹⁶ This shows the ineffectiveness of the implementation of the Act. So again the judiciary has become the last resort for the people for achieving the objectives set forth by the Act.

The need for Right to Information has been widely felt in all sectors of the country and this has also received judicial recognition through some landmark judgements of Indian courts. A Supreme Court judgement delivered by Mr. Justice Mathew is considered a landmark. In his judgement in the state of UP vs. Raj Narain (1975) case, Justice Mathew rules-In a government of responsibility like ours, where all the agents of the 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 their public functionaries. They are entitled to know the particulars of every 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 wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security. But the legislative wing of the State did not respond to it by enacting suitable legislation for protecting the right of the people. According to Attorney General Soli Sorabjee - It was in 1982 that the right to know matured to the status of a constitutional right in the celebrated case of S P Gupta vs. Union of India (AIR) 1982 SC (149), popularly known as Judges case. Here again the claim for privilege was laid before the court by the Government of India in respect of the disclosure of certain documents. The Supreme Court by a generous interpretation of the guarantee of freedom of speech and expression elevated the right to know and the right to information to the status of a fundamental right, on the principle that certain unarticulated rights are immanent and implicit in the enumerated guarantees. The court declared - The concept of an open

¹⁰ S.P. Gupta v. Union of India, 1981 Supp SCC 87

¹¹ (1988) 4 SCC 592

¹² (1995) 5 SCC 139

¹³ PM's intervention in the Lok Sabha on the right to information bill debate, 11th May' 2005, New Delhi, accessed from, <http://www.parliamentofindia.nic.in>; see also, Charmaine Rodrigues & Aditi Datta, 'Road ahead for access law', The Hindu, 31 May, 2005, available at <http://www.hindu.com/op/2005/05/31>.

¹⁴ Siddharth Narain, 'The Right to Know', Reddy, <http://www.flonnet.com/fl2212/stories>

¹⁵ Received the assent of the President on June 15, 2005 and published in 'The Gazette of India', dated 21st June, 2005, pp. 1-22.

¹⁶ Transparency International Corruption Perception Index, 2008, available at www.transparencyinternational.com

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). The Supreme court of India has emphasised in the SP Gupta case (1982) that open Government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. In a country like India which is committed to socialistic pattern of society, right to know becomes a necessity for the poor, ignorant and illiterate masses.

In 1986, the Bombay High Court followed the SP Gupta judgement in the well-known case Bombay Environmental Group and others vs. Pune Cantonment Board. The Bombay High Court distinguished between the ordinary citizen looking for information and groups of social activists. This was considered a landmark judgement concerning access to information. Simultaneously very significant development has taken place. The demand for Right to Information has taken the form of mass movement at the grassroot level. A mass based organisation called the Mazdoor Kisan Shakti Sangathan (MKSS) took an initiative to lead the people in a very backward region of Rajasthan - Bhim Tehsil- to assert their right to information by asking for copies of bills and vouchers and names of persons who have been paid wages mentioned in muster rolls on the construction of schools, dispensaries, small dams and community centres. On paper such development projects were all completed, but it was common knowledge of the villagers that there was gross misappropriation of funds with roofless school buildings, dispensaries without walls, dams left incomplete and community centres having no doors and windows. After years of knocking at officials' doors and despite the usual apathy of the State government, MKSS succeeded in getting photocopies of certain relevant documents. Misappropriation of funds was clearly obvious. In some cases, the muster rolls contained names of persons who either did not exist at all or died years before. This incident is more than sufficient to show the importance of the ability of information for eradicating mal-practices. With so many scandals emerging from time to time, it becomes vital for the management of public fund and survival of democracy. MKSS organised a *Jan Sunwai* (People's hearing), the first ever in the history of Rajasthan. Politicians, administrators, landless labourers, private contractors were all invited to listen, respond and, if willing, to defend themselves. Popular response was phenomenal, but village officials and politicians stayed away and remained silent, and thereby weakened their position and darkened their image. Between December 1994 and April 1995, several other public hearings were organised. People's anger made one engineer of the State Electricity Board to return in public an amount of Rs.15,000 he had extracted from a poor farmer. This grassroot movement is fast spreading to other areas of Rajasthan and to other States establishing firmly that information is power and people should have the right to official information.

In early 1989, the then the Prime Minister Mr. VP Singh declared the attitude of the new Government on the Right to Information and transparent government. He said, "An open system of governance is an essential prerequisite for the fullest flowering of democracy. Free flow of information from the Government to the people will not only create an enlightened and informed public opinion but also render those in authority accountable. In the recent past, we have witnessed many distortions in our information system. The veil of secrecy was lowered many a time not in the interest of national security, but to shield the guilty, vested interests or gross errors of judgements. Therefore, the National Front Government has decided to make the Right to Information a Fundamental Right..... A large area of information dissemination also relates to development programmes, their progress and their impact. This will need to be done at the Panchayat and Municipal levels, not only to encourage multi-level planning but also the common man in the villages." This is the age of information affluence.¹⁷ Technology, with its capacity for storing simplifying and communicating information with astonishing speed, has, more than ever, put information at the centre of development. Individual personality, political and social identity and economic capability are all shaped by the information that is available to each person and to society at large. The practice of routinely holding information away from public creates subjects rather than citizens and is a violation of their rights. The United Nations General Assembly has resolved that "Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated".¹⁸ Enshrined in Universal Declaration of Human Rights,¹⁹ the right's status as a legally binding treaty obligation was affirmed in

¹⁷ All human rights depend on the basic right to know, to demand accountability and it is Fundamental Human Right. Lack of information denies people the opportunity to develop their potential to the fullest and realize the full range of their human rights.

¹⁸ UN General Assembly (1946) Resolution 59(1), 65th Plenary Meeting, December 14, 1946.

¹⁹ Article 19, Universal Declaration of Human Rights, 1948 "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 (ICCPR)²⁰ and made it as a legally binding treaty obligation on the member states. Similar right is conferred to every individual by European Convention on Human Rights and Fundamental Freedoms too.²¹

The legislature and the judiciary, the two wings of government, function out in the open to which people has access. The ambiguity is often raised towards the executive, who works within the four walls of government building which is totally inaccessible to general public. In the welfare state the executive apart from discharging its traditional function of executing laws, performs delegated legislative functions and adjudicates on controversies. Justice K.K. Mathew in *Indira Gandhi v. Raj Narain*²² noted that ‘a government where all the agents of public must be responsible for their conduct, there can be but few secrets. The people have a right to know every public act, everything that is done in a public way, by their public functionaries’.

A corrupt administrative is the worst enemy of a state, and a corrupt government that rejects both transparency and accountability is not likely to respect human rights. The right to information is a fundamental human right, which is crucial to human development and therefore is important for the every human being. It is essential that people have as much information about government as possible. Openness in government is bound to act as check on abuse or misuse of power.

Indian Constitution has no specific provision for the right to information but envisages objective of freedom of thought and expression to the citizens of India. In practice citizens had no such right for administrative transparency. Urgent need was required for a law to combat corruption, transparency and accountability in administrative action. This started the movement for the Right to Information in Rajasthan where the Mazdoor Kisan Shakti Sangathan, an NGO focused on protection of labour, and other affected people, agitated against the corruption in the works undertaken and required on accessing the bills, vouchers and muster rolls of expenditure incurred in their Panchayat and verified them against the work actually carried out on the ground, the workers employed, and the wages actually paid to them.²³ They came to know about the misappropriation of fund by the government with the help of the private parties. This alerted centre and the state for the need of a legislation to battle the corruption and right to information. We should always remember

“Nobody has a more sacred obligation to obey the law than those who make the law”²⁴

5. Right to Information specifies that citizens have a right to

- Request any information (as defined).
- Obtain copies of documents.
- Inspect documents, works and records.
- Take certified samples of materials of work.
- Obtain information in form of diskettes, floppies, tapes, video cassettes 'or in any other electronic mode' or through printouts.

At a glance we can say that this Act is useful to know the position of various facilities available to them

- Government policies
- Infrastructure

²⁰ Article 19 (2) of ICCPR provides: “Freedom of Opinion, Expression and Information. Everyone shall have the right to freedom of expression; the right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally in writing or in print, in the form of art, or through any other media of his choice.”

²¹ Article 10(1), European Convention on Human Rights and Fundamental Freedoms: “Everyone has the right to freedom of expression, this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”

²² AIR 1975 S.C 865.

²³ Mander H. & Singhal A.J. (2007), “The Movement for Right to Information in India: Peoples Power for Control of Corruption”, p 25

²⁴ These lines were said by Lawrence J. Petters. See also P.K. Das (2010) “The Right to Information Act” Universal Law Publishing Co. New Delhi p vii.

- Education facility
- Health facility
- Sports facility
- Functioning of Food Supply Depot
- Transport facilities
- Sanitation facilities
- Insurance facility
- Status of service documents

6. Conclusions

Information is as necessary as oxygen for the body. Information is a focus point for all kind of development in the society. We can know about the policies framed by the Government and their implementation. As a citizen of the nation one should know what kind of administration is going on in the territory of the state. Being a welfare state we should exchange the informations sought by the citizens, because it is going to helpful in eradication of corruption types of problems. The media, Non- Governmental Agencies and Government servants should make use of this tool in the human development. One should be aware about the informations which are going to be the path of the development in the nation. We should always remember these lines

*Where the mind is without fear and head is held high; where knowledge is free; Where the world has not been broken up into fragments by narrow domestic walls; Where workds come out from the depth of the truth; where tireless striving stretches its arms towards perfection; where the clear stream of reason has not lost its way into the dreary desert sand of dead habit; where the mind is led forward by the ever widening thought and action into that heaven of freedom.*²⁵

²⁵ Verse xxxv of Gitanjali by Rabindra Nath Tagore; see also Versha & Jyoti (2011) “Indian Case Laws on Right to Information” Allahabad Law Agency p iii.