

Right to Information – Constitutional Perspective

Rajanala Sowjanya Yamini

Assistant Professor, School of Legal Studies, REVA University, Bengaluru – 560 064

Abstract:

Freedom of speech and expression is the bulwark of the democratic government. This freedom is essential for the true spirit of democracy. In a democracy freedom of speech and expression opens up channels for discussion. Rightly as one of 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 can never be exercised until and unless the information regarding public matters is being circulated. Article 19(1)(a) of the constitution. The fundamental right to speech and expression can never be exercised until and unless the information regarding public matters is being circulated. Article 19(1) (a) of the Constitutional guarantees the fundamental rights to freedom of speech and expression. Besides Article 19(1) (a), the other articles which give right to information under Indian Constitution are Articles 311(2) and 22(1). Article 311(2) provides for a government servant to know why he is being dismissed or removed or being demoted and representation can be made against the order. By way of Article 22(1) a person can know the grounds for his detention. 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. 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.

Keywords: *Right to Information, Constitution, Speech and Expression, Democracy, Constitutional rights*

Introduction:

Right to information becomes a constitutional right, 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 capable of for the performance of these duties. Thus, access to information would assist citizens in gratifying these obligations. Fundamental rights themselves have no fixed content, most of them are unfilled vessels into which each generation must pour its content in the light of its experience. It is relevant in this contest to remember that in building up a just social order it is some time imperative that the fundamental rights should be subordinate to directive principles of state policy. From these languages if interpreted in need-based

approach, the article 19 can drive many states of right, article 19 (1) (a) which speaks the freedom of speech and expression as observed in *Indian Express Newspapers Bombay Ltd. Vs. Union of India*¹ also covers the following perceptions

- It assists an individual to obtain self-discharge

- It assists in finding of truth
- It strengthens the capacity of an individual in participating in decision making
- It provides a machinery by which it would be possible to establish a reasonable balance between constancy and social change

Judicial appreciation of right to information:

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 judgments of Indian courts.

In *State of Uttar Pradesh vs. Rajnaraian*² 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 operation 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.

In *Maneka Gandhi vs. Union of India*³ Bhagwati J..., has remarked that ‘Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to brightly exercise his right of making a choice, A Supreme Court judgment delivered by Mr. Justice Mathew is considered a landmark’.

In the celebrated case of *S.P.Gupta vs. Union of India*⁴ the claim for privilege was laid before the court by the Government of India in 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 that the 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).

The Supreme Court of India has emphasized 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.

Right to Privacy vs. Right to Information:

The conflict between right to know and the privacy by imaging relationship and situation applicable to both concluded that the right to know and right to privacy are two of the most ambiguous legal area today facing government the court, the public and individuals. The welfare of the society is the primary duty of every civilised state⁵ in *Mr.Y vs. Hospital J*⁶ the Supreme Court held that it was open to hospital authorities or the doctor concerned to revel such information to the person related girl whom he intended to marry and she had right to know about the HIV status of the appellatant. A three judge bench of the supreme court held that the discovery of HIV

positive status justified as a girl has right to know, there was no need to for this court to go further and declare in general as to what right and obligation arise in such perspective as to right to privacy.

An encroachment upon one`s privacy is only shielded if the offender is the state and not a private entity. If the offender is a private individual then there is no effective solution except in tort where one can claim damages for intruding in his privacy and no more. In *R.Rajagopal vs. State of Tamilnadu*⁷ the Supreme Court held that the right to privacy is a right to be let alone. None can publish anything concerning the above matters without his consent, whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right to privacy for the person concerned and would be liable in an action for damages.

The right to privacy is not however, absolute, reasonable restriction can be placed thereon in public interest under article 19(5). In India, the Constitution does not expressly recognise the right to privacy. The concept of privacy as a fundamental right first evolved in 1964 in the case of *Kharak Singh vs. State of Uttar Pradesh*⁸. The Supreme Court, for the first time, recognised that there is a right of privacy implicit in the Indian Constitution under Article 21. The Court held that the right to privacy is an integral part of the Right to Life, but without any clear-cut laws, it still remains in the grey area. Supreme Court of India struck down regulation which authorised domiciliary visits as being unconstitutional but upheld the other provisions of surveillance under that regulation.

Supreme Court of India struck down Regulation which authorised domiciliary visits as being unconstitutional but upheld the other provisions of surveillance under that Regulation. Their view was based on the conclusion that the infringement of a fundamental right must be both direct as well as tangible and that the freedom guaranteed under Article 19(1)(a) a right to freedom of speech and expression – was not infringed by a watch being kept over the movements of a suspect. At that time court did not recognise the right of privacy⁹ But in *Gobind vs. State of M.P.*¹⁰ also a case of surveillance, the Supreme Court, while upholding the regulation in question which authorised domiciliary visits by security personal, also held depending on the character and the antecedent of the person subjected to surveillance as also the object the limitation under which surveillance is made, it cannot be said surveillance by domiciliary visit would always be unreasonable restriction upon the right of privacy. Assuming that the fundamental right clearly guaranteed to a citizen of have penumbral zone and that right is itself a fundamental right that fundamental right must be subject to restriction on the basis of compelling public interest.

Basic object and Salient features of the Right to Information Act, 2005

Right to Information is a process to secure access to information and settling out unacceptable means in order to promote transparency in governance.

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government. Another objective is to contain corruption, and make our democracy work for the people in real sense. Further

- It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed.
- The Act is a big step towards making the citizens informed about the activities of the Government.

The salient features of the Act is that

- All citizens possess the right to information
- Information can be obtained within 30 days from the date of request in a normal case. If information is a matter of life or liberty of a person, it can be obtained within 48 hours from time of request.
- Every public authority is under obligation to provide information on written request or request by electronic means. Certain information are prohibited. Restrictions made for third party information.
- Appeal against the decision of the Central Information Commission or State Information Commission can be made to an officer who is senior in rank.

Conclusion:

The Right to information is the fundamental right received from the very spirit of the constitution of India by its citizens. It will be appreciated that the judiciary has used its craftsmanship to harness the right to information to achieve an extremely laudable social objectives, that preventing criminalisation of politics and to bring transparency in the administration. According to former Attorney General of India Soli Sorabjee – ‘It was in 1982 that the right to know matured to the status of a constitutional right’.

Those who our independence believed that the final end of the state was to make men free to develop their fullest faculties, they believed liberty to be the secret of happiness and courage to be secret of liberty. Right to information is the very essential of liberty. The honourable Supreme Court of India in particular and high courts in general have recognized the right to information as the constitutional right but this recognition was not reaching to the general masses as the weapon to fight the rising corruption. To bring more transparency and efficiency in the Indian administration the parliament enacted The Right to Information Act, 2005. This act is the tool in the hands of the Indian people to recognise the true democracy.

1. 1985 (001) SCC 641 SC

2. AIR 1975 SC 865

3. AIR 1978 SC 597

4. AIR 1982 SC 149

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4. AIR 1982 SC 149

9. Kbarak Singh vs. State of Uttar Pradesh, AIR 1963 SC 1296

10. AIR 1975 SC 1375

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2. Dr.Jyothi Rattan, Right to Information Act, 2005, 3rd edition 2016, Bharat`s publications