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Right to Information Act, 2005: A Response to Privileged Class Deviance

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ABSTRACT

In our digitalised world, information is the key to every lock and before such digitalisation era also, it was the key to numerous locks. Information empowers a person in ways more than one can imagine. It ensures one's right to freely express and disseminate information as well as to put a check upon the public authorities by making them more responsible and accountable. This is why a constitutional guarantee has been accorded upon the right to information by our constitutional Courts by including the same within the purview of the fundamental right of freedom of speech and expression. The Parliament has also obliged such interpretation of this human right and enacted the Right to Information Act, 2005. The mere presence of guarantee of such fundamental right restraints, to a considerable extent, the public authorities from indulging in any deviance including corrupt practices. However, this guarantee has also not been made absolute and reasonable restrictions have been imposed for maintaining the public interest, security of the State as well as for effective working of the government. The researcher will discuss the abovementioned aspects, including the procedural aspects as well as the limitations of the Act in his research paper.

I. INTRODUCTION

John Locke in his Natural Law and Natural Rights Theory emphasized duties of the State and privileges or claims of an individual respectively. Through his theories, he reasoned about putting limitations upon the unlimited power of the State. It was basically to distinguish between legitimate and illegitimate use of power by the State. He argued for the safeguarding of individual liberty from the unfettered powers of the State and to save individuals from any oppression and tyranny illuminating from the State.² Therefore, there is a constant need to monitor the unregulated powers of the State which can be done sometimes by imposing a duty upon the State and sometimes by guaranteeing certain rights upon the citizens.

If this overarching power of State remains unchecked, then only, it results in privileged class

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² LOCKE'S POLITICAL PHILOSOPHY, <https://plato.stanford.edu/entries/locke-political/#SepaPoweDissGove> (last visited March 6, 2022).

deviance, wherein a range of offences is committed by the bureaucrats and the legislators. Corruption, among such offences, has become a major problem that has penetrated itself in every state of a government authority. It goes beyond taking of mere illegal gratification and results in violation of the fundamental rights of the citizens. To restrain the same and at the same time to bring accountability after nearly fifty-five years of independence Parliament gave another fundamental right to the citizens, i.e., the right to information through the enactment of a law.

We can understand the importance of the right to information by referring to the work of Karl Vasak. He was a pioneer in human rights who divided human rights into three generations depending upon its essentiality and enforceability by the State. According to him, first-generation rights are most essential and crucial as it guarantees the civil and political liberty of an individual, and once State has guaranteed the first generation rights, then, State can go on to guarantee the second and third generation rights which are in the nature of socio-economic rights and other broad class rights.³ One of many first-generation rights include freedom of speech and therefore, it has to be given utmost importance by the State. This freedom of speech not only includes the right to speak and express but also the right to be informed.⁴ This right to information has also been considered to be part of the human rights by United Nations⁵ as well as in various International Covenants and Conventions including UDHR⁶, International Covenant on Civil and Political Rights⁷ and International Covenant on Economic, Social and Cultural Rights⁸.

Such is the importance of freedom of speech and expression that the Parliament had to enact the Freedom of Information Act, 2002 to guarantee greater and effective access to information. However, this Act was not well-equipped to cater to the rights of the citizens to be informed and therefore, Parliament enacted The Right to Information Act, 2005 (hereinafter to be referred as 'RTI Act') to ensure maximum disclosure of information by the public authorities with the least possible exemptions.

RTI Act was enacted with the sole purpose of strengthening the fundamental rights enshrined upon the citizens of our country in the form of freedom of speech and expression recognized under Article 19. This Act secures access to the citizens, information which is under the control

³ Lindsey Reid, THE GENERATIONS OF HUMAN RIGHTS, <https://sites.uab.edu/humanrights/2019/01/14/the-generations-of-human-rights/> (last visited March 6, 2022).

⁴ Bennett Coleman v. Union of India, AIR (1973) SC 60.

⁵ United Nation General Assembly, 1946, Resolution 59(1), 65th Plenary Meeting, 14th December.

⁶ Universal Declaration of Human Rights art. 19.

⁷ International Covenant on Civil and Political Rights art. 19(2), Dec. 16, 1966.

⁸ International Covenant on Economic, Social and Cultural Rights art. 13, Dec. 16, 1966.

of public authorities which forms part and parcel of freedom of speech and expression guaranteed by the Constitution. Such access to information ensures that the citizens are well-informed of the functioning of the state machinery which further fulfils the democratic values which were inculcated in our Constitution by our forefathers. In addition, it also ensures to contain corruption and to hold concerning public authorities accountable for their public acts. Thereby, ensuring that any class of privileged class deviance does not go unchecked.

II. RIGHT TO INFORMATION VIS-À-VIS FREEDOM OF SPEECH AND EXPRESSION

In numerous landmark judgments, the Hon'ble Supreme Court has held the right to information to be a fundamental right and to be part of freedom of speech and expression under Article 19(1)(a).⁹ This proposition has been developed by our Constitutional Courts which earlier emancipated from various judgments relating to freedom of the press and their right to disseminate information and corresponding rights of the citizens to know and remain well-informed. Finally, this guarantee has led to the validity of the fact that the right to know is part and parcel of Article 19(1)(a).

In *Indian Express v. Union of India*,¹⁰ the Hon'ble Supreme Court specifically held that the right to know regarding public affairs of the state is a basic right guaranteed by the Constitution of India. This right to information is necessary so as to enable the citizens to participate in the decision-making process of the government and further enrich the democratic values embodied in our Constitution. It also strengthens the concept of open and inclusive government by catering to the needs of the citizens' freedom to seek information from the public authorities.

In addition to Article 19(1)(a), the right to know can also be said to be deriving its validity from Article 21 by putting the right to life of the citizens of this country at a broader perspective. This broader perspective can be said to establish a connection between the right to know and Article 21 wherein decisions of the government may affect the life, livelihood and health of the citizens at large and consequently, citizens shall get the right to know those decisions.¹¹

However, such right is not absolute as Constitution also provides for reasonable restriction upon such freedom which may be imposed upon citizens if it concerns national security, sovereignty and integrity of our country, friendly relations with foreign states or public order.¹² The same has been recognized by the Parliament and reasonable restrictions upon the right to information have been imposed within the Act itself in the form of Sections 8, 9 and 23 of the

⁹ Hamdard Dawakhana v. Union of India, AIR 1960 SC 554.

¹⁰ AIR 1986 SC 515.

¹¹ Essar Oil Ltd. v. Halar Utkarsh Samithi, AIR 2004 SC 1834.

¹² The Constitution of India, 1950, art. 19(2).

RTI Act, 2005.

However, the above restrictions shall not be arbitrarily put in one of the categories created for the same and this was well recognized by Hon'ble K.K. Mathew, J speaking on behalf of five judges bench in *State of Uttar Pradesh v. Raj Narain*,¹³ in which he very well laid down that: *"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... The right to know... 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."*

The above obligation was further fortified by Hon'ble Supreme Court in *Gupta v. President*,¹⁴ in which Hon'ble P.N. Bhagwati, J. speaking on behalf of seven judges bench held that any open government cannot subsist without the right to know being guaranteed as a part of the fundamental right of speech and expression under Part III of the Constitution. Hence, disclosure of information to the citizens shall be the rule and exemptions an exception and such exemptions must only be allowed where there is the strictest necessity of public interest and not otherwise.

III. ADVANTAGES OF RIGHT TO INFORMATION

Statement of Objects and Reasons of the Bill along with Preamble of the RTI Act, 2005 underlines various advantages of this Act which can be summarized as:

(A) Strengthening of Democratic Processes

For any democratic setup to fully recognize its potential, it is very essential that its citizens are able to participate in different processes of the government. It includes informing citizens about its policies and other activities which can be done by giving them greater and more efficient access to information. It further empowers them to insist the government deliver its promises and fulfil its obligation. Consequently, it leads to better functioning of the government as decisions taken by the government tends to be more justifiable and reasonable, thereby promoting transparency and accountability.¹⁵

(B) Empowerment of citizens

It empowers every citizen in its own private capacity to seek accountability from the

¹³ AIR 1975 SC 865.

¹⁴ AIR 1982 SC 149.

¹⁵ SUDHIR NAIB, THE RIGHT TO INFORMATION ACT 2005: A HANDBOOK 3 (2d. ed. 2012).

government in every public function that it performs, irrespective of the fact whether it affects the right of the applicant or not. It does not only provides a tool in the hands of people to question the government but provides them with a tool to pave the way for various democratic processes. It has developed into such a right that it is considered on par with other fundamental human rights. This right makes an individual a part of the governing process.¹⁶

(C) Containing Corruption

One of the goals of our Constitution as envisaged by the framers of our Constitution was the socio-economic development of our country and to date, corruption has proved to be the biggest obstacle in achieving that goal. Removal of corruption has been one of the ideals and objectives behind the enactment of the RTI Act, 2005¹⁷ as because of guarantee provided under this Act to the citizens, the documentation in awarding contracts and other financial transactions is being kept in an upright position, thereby, reducing the chances of public authority indulging in corrupt practices.

(D) Avoid Whistleblowing

Earlier when there was no such law for getting information from public authority as a right, then people used to rely on two sources- investigative journalism and whistleblowing against illegal and corrupt practices of the public authorities within the government. It increased the risk for such right-minded persons and hence, made it difficult for anyone to uncover any unlawful activity. After the enactment of the RTI Act, this risk has diminished substantially as it empowers each and every citizen to inquire from the public authorities as prescribed under the Act.

(E) Supporting Independent Media

It is a well-known fact now that freedom of speech and expression includes within itself the right to information as well as the right to disseminate such information through any means of media including print, electronic or audio-visual media. For a democracy to flourish, there must be aware citizens and diversity of opinions, ideologies and views among them, and this function can be very well fulfilled by the free and efficient working of independent media houses.¹⁸ The RTI Act has only added one more feather to achieve the above constitutional goal and further strengthened the freedom of speech and expression by guaranteeing plurality of thoughts in our

¹⁶ *Hindustan Times v. High Court of Allahabad*, (2011) 13 SCC 155.

¹⁷ *Namit Sharma v. Union of India*, (2013) 1 SCC 745.

¹⁸ *Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal*, (1995) 2 SCC 161.

country.

(F) Inclusive Definition of Information

Information, as defined under the RTI Act, means any material in any form and it includes records, documents, emails, memos, opinions, advice, logbooks, press releases, circulars, orders, certified samples of materials, contracts, etc. held in any electronic form. It even includes information relating to the private body which can be accessed by a public authority under any other law.¹⁹ Therefore, there has been a mandatory duty imposed upon the public authority under the RTI Act to give the above-mentioned formations to the applicants except very information is exempted under Section 8 of the Act.

Moreover, Section 2(f) Of the RTI Act uses the word “means” and not “means and includes”, this fact particularly implies the legislative intention to not make the definition of ‘information’ exhaustive.

(G) Inclusive Definition of Public Authority

The definition of public authority under the RTI Act, 2005 is wider than the definition of State under Article 12 of the constitution. The RTI Act defines public authority to be inclusive of any authority or body established under the constitution or by any law made by parliament or state legislature, a body substantially financed by the government and NGOs substantially financed by the government.²⁰ On the basis of this definition, we can very well deduce the fact that there may arise situations in which a body do not classify as State under Article 12 may still be a public authority under the RTI Act.²¹

Whenever an application is filed to seek information from a public authority, if a dispute arises whether a body classifies to be Public authority, then the burden to proving the same lie upon the applicant under the RTI Act. However, the burden, in this case, is not to qualify the instrumentality test which is to be satisfied under Article 12 of the Constitution as the RTI Act does not define public authority to be inclusive of deep and pervasive control by the state and therefore, it will be sufficient for the applicant to show that the authority was being controlled by the government.²²

Even an NGO or any other body not under control by the government which has not been established under any Act or notification may fall under the definition of public authority if it

¹⁹ The Right to Information Act, 2005, § 2(g).

²⁰ *See id.* § 2(h).

²¹ *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*, (2013) 16 SCC 82.

²² *Central Government Indian Railway Welfare Organisation v. D. M. Gautam*, (2010) 169 DLT 508 (Del).

is substantially financed directly or indirectly by the funds of the government.²³

In a recent case, even the Supreme Court, Chief Justice of India and other judges of the Supreme Court has been held to be a public authority in their administrative capacity. On the same basis, High Courts have also been held to be falling under the definition of public authority under the RTI Act.²⁴

IV. PROCEDURAL SETUP

Duty to Proactively Disclose / Duty to Maintain Record

Section 4 of the Act puts an obligation upon the public authorities to maintain and publish all its records in a manner that can facilitate the right to information to the citizens. In addition, an additional duty has been imposed to maintain such recording and computerised manner so that access to such records can be made through a network all over the country. It further prescribes the nature of the information that public authority is compulsorily obligated to publish. It includes information such as Procedures followed in the decision-making process, norm set for discharge of its functions, statement of boards, councils, committees or other bodies, all relevant facts while formulating any policy or announcing their decisions which affect the public at large and reasons for its administrative or quasi-judicial decisions. The above categories of information are required to be disseminated *suo moto* by the public authorities and in turn, it strengthens the transparency and accountability of the public authorities. Ultimately, dissemination of this kind of information deters corrupt practices. Here, dissemination can be done through various means which includes putting information on notice boards, newspapers, the internet, public announcements or any other means of communication.

The applicant can also seek information regarding opinions, advice, circulars, etc. but it has been held that he is not entitled to seek information as to how and why such opinions were framed.²⁵ However, Public authorities are not obligated to disseminate information which are not accessible to them or which are not available to them.

Friendly Procedure

Any person who seeks information may give an application in writing or through electronic means accompanying the prescribed fee to the concerned public authority. If the applicant is not able to make the request in writing, then the duty has been imposed upon Central Public Information Officer or State Public Information Officer to provide all reasonable assistance to

²³ D.A.V. College Trust and Management Society v. Director of Public Instructions, (2019) 9SCC 185.

²⁴ Supreme Court of India v. Subhash Chandra Agarwal, (2020) 5 SCC 481.

²⁵ Khanapuram Gandaiah v. Administrative officer, (2010) 2 SCC 1.

the concerned person who is making an oral request for the same so that he can get the required information.²⁶

The applicant even need not specify any particular reason for seeking such information from the concerned authority. In case, the information sought is available with another public authority or relates to functions of another public authority, then such application shall be transferred to the appropriate public authority within five days from the date of receipt of application and the applicant shall be informed regarding such transfer immediately.²⁷

When the concerned authority makes a decision to provide information to the applicant and the applicant is sensorily disabled, then, the concerned authority is duty-bound to provide assistance to the applicant to enable access to such information.²⁸

When the concerned officer rejects a request for information, then in such a case he has also to furnish the reasons for the rejection, particulars of the appellate authority and the period within which appeal can be preferred against such rejection.²⁹ If the applicant prefers an appeal against the denial of the request, then the burden to prove that the denial was justified would lie upon such officer and not the Applicant.³⁰ Furthermore, if the rejection is on the basis that information was exempt from disclosure, but such information can be severed from the information which can be disseminated, then the severed information except the exempted part can be given to the applicant, and the details regarding the same shall also be communicated to the applicant.³¹

Strict Timeline

On receipt of any request of information, the concerned authority shall, within 30 days of such receipt, either provide the information requested by the applicant on depositing of the prescribed fees or, reject the request specifying the reasons as provided under Sections 8 and 9 of the Act. However, if the required information concerns the life or liberty of any person, then the same has to be disseminated within forty-eight hours of the request.³²

If a public authority fails to comply with the prescribed time limit under the Act, then the Applicant shall get the information free of charge.³³

²⁶ The Right to Information Act, 2005, § 6

²⁷ *See id.* § 6.

²⁸ *See id.* § 7(4).

²⁹ *See id.* § 7(8).

³⁰ *See id.* § 19(5)

³¹ *See id.* § 10.

³² *See id.* § 7(1).

³³ *See id.* § 7(6).

If an applicant prefers an appeal against the decision of refusal of providing the information is preferred, then, such Appeal shall be disposed of within thirty days of receipt of the appeal or within the extended time limit of forty-five days.³⁴

An exhaustive list of Exemptions

The Parliament has made a balance between the right to information and preservation of confidentiality on account of privacy or other supervening public interest. The purpose of such balancing of rights is only to protect the public interest and democratic ideals prescribed in our Constitution. Such balancing has been done under Section 8 of the Act, wherein a list of information has been prescribed under which the concerned public authority is not obligated to give such information to the citizens. The list includes:

- Information affecting sovereignty and integrity of India, relation with a foreign state, security or economic interest of the State.
- Information is forbidden to be published by the Court.
- Information obtained in a fiduciary relationship, Trade Secrets, Intellectual Property, unless disclosure serves the larger public interest.
- The information may affect the life or safety of any person.
- Information affecting investigation proceedings.
- Cabinet Papers, but such decisions must be disclosed in the public domain once the matter is complete.
- Information relating to personal information which has no relation with any public activity or public interest.

Nonetheless, the above provision shall not be interpreted strictly and narrowly so as to put unreasonable restrictions upon the right to information. The purpose of this Act as well as of Section 8 is to preserve and protect democratic values and public interest and hence, harmonious and purposive interpretation shall be done when an Application is preferred under the Act.³⁵ On this basis only, disclosure of information even in case of exemption has been allowed if the public interest outweighs the exemption.³⁶

As far as Official Secrets Act, 1923 is concerned, it has not been repealed, and rather, it has been declared that the 2005 Act will override the 1923 Act to the extent of the inconsistency.

³⁴ *See id.* § 19 (6).

³⁵ *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

³⁶ *Supra* 23.

This has been done to remove the façade of secrecy that was being provided under the 1923 Act to bring openness in the functioning of the State.³⁷

Penalties

Where it is found that the Central Public Information Officer or the State Public Information Officer refused to receive an application or has not furnished information without any reasonable cause or has malafidely rejected the application or provided wrong or misleading information or destroyed the information which was sought by the applicant or obstructed in disclosure of information, then the Central Information Commission or the State Information Commission shall impose a penalty of two hundred and fifty rupees per day till the information is furnished by the concerned public authority, though, the total penalty has been limited up to the amount of twenty-five thousand rupees. In addition to the penalty, disciplinary action can also be recommended against such an officer.³⁸

Scope of Judicial Review

If the Central Public Information Officer or the State Public Information Officer declines access to information to the applicant, then the applicant can prefer an Appeal under the Act before the officer who is senior in rank from the officer denying the request of information.³⁹ The Act further gives the right to prefer a second appeal before the Central Information Commission or the State Information Commission whose decision shall be binding.⁴⁰ Even when the Act provides for the finality of the decision of the Central Information Commission or the State Information Commission in the Second Appeal, the writ and supervisory jurisdiction of High Courts and the Supreme Court would still lie.⁴¹

V. CONCLUSION

Before the enactment of the RTI Act, 2005, a tenacious procedure was laid down under the Freedom of Information Act, 2002, in which to seek information, the applicant had to prove to the authorities that such information would affect his life and there was also no penal provision provided in case of failure to provide information without any reasonable cause. Additionally, the cloak of the Official Secrets Act, of 1923 was always in existence to very easily deny the information to the citizens. However, now after the 2005 Act came into being, the above impediments seem to have diminished to a considerable extent and governance has become

³⁷ *Supra* 16.

³⁸ The Right to Information Act, 2005, § 20.

³⁹ *See id.* § 19(1).

⁴⁰ *See id.* § 19(3) & 19(7).

⁴¹ *Supra* 16.

more transparent and accountable to the people and in so doing, it has also fulfilled the democratic goals. Now, any public authority before deviating and taking the recourse of corruption has no option but to think twice about it just because of the presence of the RTI Act. In a true sense, therefore, the RTI Act has become a response to privileged class deviance.

However, there may be noted a few limitations of the Act, wherein, there is no as such procedure prescribed for suo moto disclosures to be made by public authorities and there is also no check upon the quality of information which is being provided in such process. What is more distressing is that there has not been prescribed any penalty for non-disclosure of such information which any public authority is mandatorily obligated to publish under the Act. Additionally, a specific time limit has been prescribed for disposal of appeals under the Act, however, the same time limit has not been prescribed in cases of disposal of the second appeal. If the Parliament can provide any resolution for the above-mentioned challenges, then, the Act would, in a real sense achieve its true purpose.
