



# Judiciary and Right to Information

Prof. Priti Saxena & Sonali Roy Chaudhari

Kamlesh Kumari

One year LL.M 2<sup>nd</sup> sem.

Enroll. No. 828/19

Babasaheb Bhimrao Ambedkar University

Date of Submission: 16-12-2021

Date of Acceptance: 31-12-2021

## I. INTRODUCTION

Right to information act 2005 is one of the most important law in India because it helps to fixed the accountability of the government and also it plyas most important roll of transparancy of the governmental institutions. And this one is the best source to reduce corruption under the system.

India is a democratic country and every citizen have right to know about the function of the government and function of any public body as well. Article 21 of the Constitution of India especially provide the provision of the right to know which comes under the right to Information.

The citizen's right to know true facts about the administration of country in one of the vital ingredients of a democracy, which should be applicable to the institution of judiciary usher as era of judicial accountability.<sup>1</sup>

Judiciary is one of the most important organ of the government and also it is protector of fundamental rights of the people and citizen as mentioned under the Constitution of india.

Without judicial system we can't imagine the concept of democracy.

India has always taken pride in claiming its title of being the largest democracy in the world.

However, it wouldn't be wrong to state the fact that with a Democracy comes responsibilities, one of which among several others include transparency and responsiveness, which have also have been acknowledged of being one of the major drivers for the growth of a democracy.

The right to information is indisputably a fundamental right. It is facet of "right to speech and expression" as provided in art. 19(1)(a). Right to know has increased the efficiency of decision

making process. It has set a transparency and determent. Reduction in corruption in public department is due to the implementation of Right to Information Act 2005.<sup>2</sup>

The necessity of an informed people and a transparent government acts as keys for smooth functioning of a democratic government. People are the masters of any democracy as reiterated in the eternal words of Abraham Lincoln 'government of the people, by the people, for the people'. The Preamble of the Indian Constitution commences with the words 'We the people'. The term transparency can be mainly implemented by two principles – disclosure by public agencies and the citizen's right to seek information, which was realized due to the active intervention of several players to move towards a 'responsive and transparent democracy.'

## Judiciary and Right to Information:-

Under right to information judiciary plays most important roll because without judiciary the aim of RTI cannot be fulfil and right to know will be just myth, and the Act of Right to Information would never be possible to implement.

There are many leading case laws through which judiciary protect the right to information of the citizens time to time.

In the light of the Supreme Court judgement, CPIO, Supreme Court of India v. Subash Chandra Agarwal, it will be careful to observe and analyse the issues which were deliberated in detail pertaining to aspects of accountability and right to information being interconnected.

<sup>1</sup> SAMRRIDHI KUMAR "JUDICIARY AND RIGHT TO INFRMATION ACT: TO DISCLOSE OR NOT DISCLOSE?" available at: <https://cic.gov.in> ( visited on 1 July 2020)

<sup>2</sup> Amandeepkauradvocate, "Right to Know-Constitutional Prospective", available at: <https://www.legalservicesindi.com/articl/1743/Rig ht-to-Know-Constitutional-Prospec.....> ( visited on 2 July 2020).



Three categories of information are relevant to judicial transparency. These are namely –

- The first concerns the adjudicative work of the courts- including transcripts, documents filed with the court, trial exhibits, recordings, settlements, opinion and dockets. This information may be further categorized into whether the proceedings are criminal or civil in nature, whether information of a private of intimate nature is involved etc.
- The second concerns with information of administrative nature – court budget, human and personnel resources, contracts between courts and third parties & organizational matters.
- The third and most crucial type of information includes information about salaries, assets and liabilities, appointments, transfers and disciplinary actions pertaining to judges.<sup>3</sup>

It is very important to understand why access to judicial information is essential for transparency and good governance. The judiciary in today's world has had several controversies which amongst several others include impeachment charges on 'financial misappropriation' and abuse of judicial office, where such an action will further cultivate judicial confidence amongst the public, allowing public access to judicial proceedings and records, which would require judges to act fairly.

In the case of *Reserve Bank of India v. Jayantilal Mistry* in this case the interesting issue that was raised was whether all the information sought for under the Right to Information Act 2005 can be denied by the Reserve Bank of India and other banks to the public at large on the ground of economic interest, commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the others?

The RBI in the case took the stand that the information sought for was exempted under section 8(1) (a), (d) and (e) of the Right to Information Act, 2005. Moreover, as the regulator and supervisor of the banking system, the RBI has discretion in the disclosure of such information in public interest. While allowing the appeal the Supreme court held that in the case the RBI does not place itself in a fiduciary relationship with the Financial institutions because, the reports of the inspections, statements of the bank information related to the business obtained by the RBI are not under the pretext of

confidence or trust, in this case neither the RBI nor the banks act in the interest of each other.<sup>4</sup>

Time and again, Supreme Court has reiterated the right to information as a basic human right and fundamental right, where right to know is the basic right of citizens of a free country and Article 19(1)(a) of the Indian Constitution protects this right. The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression. Without suitable information, a person cannot form an informed opinion.

The strongest exposition in this regard came from Supreme court in the case of *state of U.P.*

*v. Raj Narayan*<sup>5</sup> who emphasized that in 'government of responsibility like ours where all the agents of the public must be responsible for their conduct, their can be but a few secretes. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries.'

*N N Dhumane v. PIO department of Posts (CIC, 2018)*

The order of CIC in this recent case is a remarkable one as it condemns the act of Department of posts in denying payment of pension for want of Aadhaar card. Other key observation made by the CIC in the case was that payment of pension is a matter of life or liberty under the RTI Act and applications relating to payment of pension shall be disposed by the Public Information Officers within 48 hours.<sup>6</sup>

The SC delivered a judgment on the need to give a reason to file RTI on high courts. That has not only harmed the Act but the basic principle of legal reasoning. In early March- before the Coronavirus pandemic had upended public life in India- the supreme court delivered a worrying judgment on the scope of the RTI Act, in requesting information under *Chief*

*Information Commission v. High Court of Gujrat* ruling on the Right to Information Act's applicability to the High Court of the country, the

<sup>4</sup> Satish Sharma, "important Judgments on right to information" available at: [https://www.vakilon1.com.cdn.ampproject.org/v/s/www.vakilon1.com/legal-news/important-judgments-on-right-toinformation ...](https://www.vakilon1.com.cdn.ampproject.org/v/s/www.vakilon1.com/legal-news/important-judgments-on-right-toinformation...) ( visited on 2 July 2020)

<sup>5</sup> AIR 1975 SC 885.

<sup>6</sup> Supra note3.

<sup>3</sup> Supra note 1.



judgment overturned a fundamental principle of the Act- that no reasons are required to be given for requesting information under the Act.<sup>7</sup>

In *Reliance Petrochemicals Limited v. Indian Express Newspapers*, the Apex Court read the Right to know under Article 21. While providing an extended meaning to the word liberty it provides that the right to hold a particular opinion and sustain it. In order for an opinion to be nurtured and sustained, information becomes necessary, where Article 21 provides to all persons the right to know and right to receive information.

The observations made in the case *Dinesh Trivedi v. Union of India* also reiterate the idea of right to information –

“In modern Constitutional democracies, it is axiomatic that the citizens have a right to know about the affairs of the government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute.” Right to impart and receive information is a species of the right to freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution.<sup>8</sup>

In the case of *Union of India v. Association of democratic reforms* the right to information highly elevated at the level of Human right.

Right to access public administration that is, information in the possession of state agencies and government, in democracies is an accountability measures empowering citizens to be aware of the actions taken by such state actors. This transparency value, at the same time, has to produce with the legal interests protected by law, such as other fundamental rights, particularly the fundamental right to privacy. This balancing or reconciliation becomes even more crucial if we take into account the effects of the technological challenges which arise on account of privacy.<sup>9</sup>

<sup>7</sup> PRANAY MODI, “SC judgment on RTI Act sets a dangerously low bar for what passes muster as law of land”, available at : [theprint.in/cdn.ampproject.org/v/s/theprint.in/opinion/sc-judgmnet/on-rti-act-sets-dangerousprecedent/395518/?amp\\_js\\_v=a2&usqp=mq331AQFKGwASA%3D#aoh=15936704336574&referrer=http%3A%2Fwww.google.com...](http://theprint.in/cdn.ampproject.org/v/s/theprint.in/opinion/sc-judgmnet/on-rti-act-sets-dangerousprecedent/395518/?amp_js_v=a2&usqp=mq331AQFKGwASA%3D#aoh=15936704336574&referrer=http%3A%2Fwww.google.com...) (visited on 2 July 2020)

<sup>8</sup> Secretary, Ministry of I & B v. Cricket Association of Bengal <sup>9</sup> Vijay Prakash v. Union of India.

In the past decades ever since the advent of the RTI Act, the SC has directed many applicants up until the stage of second appeal, and rather the Apex Court referring the applicants to its own rules may be seen as tool used to keep the RTI legislation at bay and thwart access to information through processes established by law.

#### **Judicial interpretation of freedom of speech and expression:-**

Judiciary is the watchdog and custodian of our constitution. It draws the boundaries of the public authority functioning. The primary object of the judiciary is to provide justice to each and every person in the country and impose restriction on corruption.

If we see the interpretation of right to freedom of speech and expression by the judiciary so it has been very widely which can be understand through important judgments which have been delivered by the supreme and high courts on right to protection of Article 19 (1) (a).

Some important case laws are as following:-

***Bennet Coleman & Co. v. Union of India*** in this case the import policy for newsprint for 1972-73 read with newspaper control order, 1962 issued under section 3 of the essential commodities act, 1955 was questioned, which imposed various restrictions, viz.

1. Bar on starting newspapers or editions by common ownership units, as also interchangeability within common ownership units,

2. It fixed the maximum number of pages i.e. 10 pages which a newspaper could publish with an allowance of 20% increase only to newspaper below 10 pages

The validity of the newsprint control order was challenged as violation of fundamental rights guaranteed under Article 19 (1) (a) and 14 of the constitution.<sup>9</sup>

The apex court held that the freedom of speech and expression, guaranteed under Article 19 (1) (a), means right to speak and to express ones opinions by word of mouth, writing, printing, pictures or in any other manner. It is to express ones convictions and opinions or ideas freely, through any communication, such as gestures, signs and the like.

<sup>9</sup> Anisha Gupta, “freedom of Speech and Expression Article 19 (1)(a) of the Constitution of India”, available at: <https://www.lawfinderlive.com/Articles-1Article2.htm?AspxAutoDetectCookiesSuppor...> (visited on 2 July 2020).



This freedom is essential for the proper functioning of the democratic process.<sup>10</sup>

***Brij Bhushan v. State of Delhi;*** ( AIR1950 SC 129):

The court struck down the order observing: “the imposition of censorship of a journal is an essential part of the press which is an essential part of the Freedom of Speech and Expression declared by article 19 (1)(a).”<sup>12</sup>

## II. CONCLUSION:-

Judiciary is the protector of the fundamental right of the people and also it is guardian of the constitution. And if we talk about the role of judiciary in the context of Right to Information Act 2005 so we can see the very vital role of the judiciary as above we have discussed through case by case.

As already we have mentioned there are many judgements has been given by the judiciary either it is High Court or Supreme Court on the right to information act, which helps to people make very aware and also it helps to maintain the freedom of speech and expression as given under article 19 (1) (a) of the part third of the constitution of India.

And further I would like to mention here that people also need to be more aware about the

Right to Information Act and also they need to go for reducing corruption through Right to Information. And also it needs to be noted that judiciary need to more accountable because it is the very important pillar of democracy so that judiciary should take suo-moto cognizance related to corruption and also highly interpret the Act.

A new period of information jurisprudence has been ushered, and this effort needs to be unwavering where the scope of higher constitutional representatives to be included under the ambit of RTI Act should be discovered.

Although judiciary has been delivered many important judgments regarding Right to Information Act 2005 but still it is very important to more conscious toward the Act and also try to interpret and helps to implement properly.

---

<sup>10</sup> Romesh Thappar v. State of Madras (AIR 1950 SC 124) <sup>12</sup> Supra note 9