

## RIGHT TO INFORMATION - A GENERALIZED EDUCATIONAL APPROACH

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### ABSTRACT

*The Right to Information Act 2005 (RTI) is an Act of the Parliament of India "to provide for setting out the practical regime of right to information for citizens." The Act applies to all States and Union Territories of India except the State of Jammu and Kashmir. Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 12 October 2005. Information disclosure in India was hitherto restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act now relaxes.*

*Keywords: RTI, Act, State and Laws.*

### INTRODUCTION:

Information means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

It includes the right to -

- I. inspect works, documents, records.
- ii. Take notes, extracts or certified copies of documents or records.

- iii. Take certified samples of material.
- iv. Obtain information in form of printouts, diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts.

#### NEED FOR RIGHT TO INFORMATION:

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.

#### CONSTITUTIONAL ASPECT OF THE RIGHT TO INFORMATION:

Article 19(1) (a) of the Constitution guarantees the fundamental rights to free speech and expression. The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matters of public interest will only encourage wild rumors 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. 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.

Right to Information is a Fundamental Right and guaranteed as per Article 19 and 21 of the Constitution of India. It is part of the Fundamental Right to Freedom of Speech and Expression recognized by the Constitution and various Supreme Court decisions. The Right to Information Act 2005 (Act No. 22/2005) is a law enacted by the Parliament of India giving citizens of India access to records of the Central Government and State Governments. The Act applies to all States and Union Territories of India, except the State of Jammu and Kashmir - which is covered under a State-level law. Under the provisions of the Act, any citizen (including the citizens within J&K) may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally.

#### ANALYSIS:

An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto. The Act consists of six chapters and two schedules – preliminary, right to information and obligations of public authorities, the central Information commission, the state Information commission, powers and functions of the Information Commissions, appeal and penalties, and Miscellaneous.

The Right to Information Act basically has two Parts-(a) Substantive law, and (b) Procedural law. Section 3 could coupled with some other provisions like sections 8, 9, 18, 19 and 20 of the Act deal with substantive law while section 6 along with some other provisions like section 7 of the Act deal with procedural law. Thus the Act is a completed Code in itself. The core of the

enactment is that the citizen can obtain such information he needed from public authorities. It is the mandate of sections 3 and 4 of the Act to provide information to the citizens.

#### RIGHT TO INFORMATION IN OTHER COUNTRIES:

In recent years, many Commonwealth countries like Canada, Australia, and New Zealand have passed laws providing for the right of access to administrative information. USA, France and Scandinavian countries have also passed similar laws. US Freedom of Information Act ensures openness in administration by enabling the public to demand information about issues as varied as deteriorating civic amenities, assets of senators and utilisation of public funds.

It is not only the developed countries that have enacted freedom of information legislation; similar trends are seen in the developing countries as well. The new South Africa Constitution specifically provides the Right to Information in its Bill of Rights--thus giving it an explicit constitutional status. Malaysia operates an on-line data base system known as Civil Services Link, through which a person can access information regarding functioning of public administration. There is thus a global sweep of change towards openness and transparency.

In USA, the first amendment to the Constitution provided for the freedom of speech and expression. The country had already passed the Freedom of Information Reform Act 1986, which seeks to amend and extend the provisions of previous legislation on the same subject. But this right is not absolute. Recently, the US Supreme Court struck down two provisions of the Communications Decency Act (CDA), 1996, seeking to protect minors from harmful material on the Internet precisely because they abridge the freedom of speech protected by the first amendment. Moreover, the vagueness in the CDA's language, the ambiguities regarding its scope and difficulties in adult-age verification, make CDA unfeasible in its application to a multifaceted and unlimited form of communications such as Internet.

Sweden has been enjoying the right to know since 1810. It was replaced in 1949 by a new Act which enjoyed the sanctity of being a part of the country's Constitution itself. The principle is that every Swedish citizen should have access to virtually all documents kept by the State or municipal agencies.

In Australia, the Freedom of Information Act was enacted in December 1982. It gave citizens more access to the Federal Government's documents. With this, manuals used for making decisions were also made available. But in Australia, the right is curtailed where an agency can establish that non-disclosure is necessary for protection of essential public interest and private and business affairs of a person about whom information is sought.

Even the Soviets, under Mikhail Gorbachev, have realised that "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.

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. However, the government recognises that access to information is an essential part of its accountability. A recent legislation governing access to public information includes Local Government (Access to Information) Act, 1985; the Environment and Safety Information Act, 1988, and the Access to Health Records Act 1990 are such laws. On the other hand, Data Protection Act, 1984; the Access to Personal File Act; the Access to Medical Reports Act, 1988, and the Consumer Credit Act, 1974, all provide some protection for different aspects of personal information

#### LANDMARK JUDGEMENTS:

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.

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 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.

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 judgment concerning access to information.



### IMPACT OF THE NEW LAW:

Now that the statute requires information about the pendency of the applications, reasons as to why they are not disposed of or the reasons behind the rejection of an application, there is bound to be improvement in the efficiency of the departments. Another important aspect is that in India we have not given respect and prominence to the rights of the individual Citizen. True democracy is impossible until we recognize the majesty of the individual Citizen. If individual Citizens are empowered to ensure greater accountability and transparency in governance, it can bring about a major change.

### CONCLUSION:

This Act is designed to facilitate and further its end i.e., empowerment of public to know what is going on under the guise of administration and should not be treated as an enactment providing penalties and punishments. Without any hesitation it can be said that this Act should be the voice of so called voiceless in our society. Lastly, remind everybody that one should not be crazy about rights only and one should also be mindful about ones duties. Rights and duties are the two sides of a coin.

In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by countries, intergovernmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. Moreover, the Right to Information Act is for the smooth functioning of the government by maintaining transparency between the government working and the public who are the beneficiaries. In nutshell it can be said that this piece of legislation is unique in many aspects. It entitled the citizen to know the details of governance subject to certain limitations. It will further reduce the gap between the rulers and ruled.

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