

“INDIAN JUDICIARY ON RIGHT TO INFORMATION”

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ABSTRACT

In this paper, I look to analyse the Indian Judiciary on Right to Information. The Judiciary is considered to be the guardian of fundamental rights because it interprets and protects the constitution. So, the Judiciary has played a vital role in ensuring a process of fairness, accountability and transparency in governance and administration. Right to know and right to access information is not expressly conferred by the constitution of India, but the Judiciary while interpreted the Fundamental Right to Freedom of Speech and Expression under Article 19(1)(a) and Right to Life under Article 21 started receiving acknowledge and recognized. In this paper the Judicial activism towards access to information has been discussed in details.

INTRODUCTION

The Right to Information (RTI) in India has evolved through the judicial interpretations, which provides citizens of India to access the information. The Indian Judiciary has played a vital role in upholding and expanding the Right to Information in India because it helps to fixed the accountability and transparency of governmental institutions. It is one of the best sources to reduce corruption under the system of Government. The citizen's right to know true facts about the administration of country is one of the vital ingredients of a democracy, which should be applicable to the institution of Judiciary usher as era of Judicial accountability.

In this democratic system, the citizens of India have the right to know about the function of the Government as well as Public Body. So, Article 19 and 21 of the constitution of India provide the provision of Right to Know which comes under the Right to Information.

In the democratic setup, Judiciary is one of the most important organs because it is charged with the great responsibilities for administering justice, one of the core needs of a citizen. As the guardian of the rights of a country's citizen's, the judiciary is entrusted with the task of fully realizing the constitutional values in furtherance of the constitutional maker's vision. The supreme Court has no left any area while delivering the judgement and played a significant role in contribution of good governance- whether it be environment, human rights, gender justice, education, ministers, police reforms, elections, formation of government, limits on the constituent powers of parliament to amend the constitution etc..., the list is endless.

Indian constitution does not explicitly refer to Right to Information but Judiciary supported the principles of transparency and accountability in all spheres of governance. The Judiciary while

interpreting Article 19(1)(a) of the Constitution include “Freedom of Information”, the Supreme Court of India have access to information the status of “Fundamental Right”.

Supreme court is the final interpreter of law and it reflected in various judgements. Right to Information which is known as the brain child of Indian Judiciary found its existence through various decisions of judiciary. The court have derived Right to Know from two distinct constitutional sources, they are the Fundamental Right to Freedom of Speech and Expression guaranteed in Article 19(1)(a) and the Fundamental Right to Life and Personal Liberty under Article 21 of the Constitution.

JUDICIARY AND RIGHT TO INFORMATION

Judicial activism is found to be the most evident in the matter of interpretations of the Fundamental Rights guaranteed in Part -III of the Constitution. In India, Judiciary has given many new dimensions of these basic valuable rights. The Indian Judiciary has recognized people’s right to Freedom of Information as a Fundamental Right under Chapter III of the Constitution. Without the Indian Judiciary the aim of Right to Information cannot be fulfilled and right to know will be just myth, and the Act of Right to Information would never be possible to implement.

The Indian Judiciary has addressed the Right to Information Act in several significant cases, seeking to balance transparency with Judicial independence. The Indian Judiciary plays a dual role both as an interpreter of the law and as an institution subject to the Right to Information Act.

The first decision which has adverted to this right in *State of U.P. v/s Raj Narain*, the court ruled that the public has a right to know how the government functions. It is the responsibility of the government like ours where all public officials have to be accountable for their actions. The people of this country have the right to know about every public act, all that the public functionaries do in a public way.

Perhaps the next milestone case which is popularly known as “Judges transfer case” *S.P. Gupta vs Union of India*. The Supreme court of India said that an open and effective participatory democracy requires accountability and access to information by the public about the functioning of the government. The concept of an open government is the direct emanation from the right to know, which is implicit in the Right to Freedom of Speech and Expression guaranteed under Article 19(1)(a) of the Indian Constitution. Therefore, the disclosure of information in regard to government functioning must be the rule and secrecy the exception, justified only where the strictest requirement of public interest demands it.

In another landmark case in *Reliance Petrochemicals Ltd. Vs Proprietors Indian Express Newspapers Bombay Pvt. Ltd.*, 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 natured and sustained, information becomes necessary, where Article 21 provides to all persons the right to know and right to receive information.

Another landmark case in Indian Constitutional law concerning the Right to Freedom of Speech and Expression Article 19(1)(a), *Secretary, Ministry of Information & Broadcasting Govt. of India vs Cricket Association of Bengal*. The court said that right to impart and receive information is fundamental under Article 19(1)(a). The right to participate in the affairs of the country is meaningless unless citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views.

The Indian Judiciary were also concerning on the subject of the right of the voters to know about the candidates for election in the landmark case *People's Union for civil Liberties (PUCL) vs Union of India*. India is a democratic form of government where the voters must be aware of the antecedents of the candidates. A well-informed voter is the foundation of democratic structure.

The Supreme court play a crucial role in order to expand the Right to Freedom of Speech and Expression so that the right to know acquired the status of fundamental right under Article 19(1)(a) and Article 21. With the different cases decided by the Supreme court we can find that Fundamental Right to Freedom of Speech and Expression includes a number of rights which are directly or indirectly related to right to information.

A. Official Documents permissible under Right to Information

Sec 123 of the Indian Evidence Act, 1872 prohibits the sharing of unpublished official records related to State affairs without the permission of the head of the relevant department and Sec 162 provides production of documents in court even if there are objections to its production or admissibility.

The decision of the Supreme court in *State of Punjab vs Sodhi Sukhdev Singh*. The court concluded that the discretion to permit or withhold the production of document lies primarily with the head of the concerned department, and the Judiciary's role is to oversee the validity of such claims. The court is bound to hold a preliminary enquiry and determine the validity of the objections to its production whether the evidence relates to an affair of the state under sec 123 or not. If it comes to the conclusion that the document does not relate to affairs of state then it should reject the claim for privilege and direct its production, and if it related to state affairs than leave it to the head of department to decide whether he should permit its production or not.

After the Sodhi Sukhdev decision, in *Amar Chand Butail vs Union of India*, a constitutional Bench of the Supreme Court recognized the power of the court to inspect a document. The Supreme Court in *State of U.P. vs Raj Narain* observed as it is the responsibility of the government likes ours where all public officials have to be accountable for their actions. The people of this country have right to know about every public act, all that the public functionaries do in a public way. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.

B. Right to get information and have access to telecasting

The right to information and access to telecasting is crucial for democracy, governance and individual freedoms. The right to broadcasting, freedom of expression and the right to privacy are interconnected under media law.

The right to circulate information is a part of right guaranteed under Article 19(1)(a). The content of the right reaches out to protect the information of the viewers also. Thus, the right to inform and right to be informed are co-extensive. The Supreme court stressed the relevance of a central agency, representing all sections of the community to inform the public and to ensure the viewers right to be informed adequately and truthfully.

C. Right to Information and Environmental Matters

The Right to Information play a vital role in the field of Environmental matters, it ensures transparency, public participation and accountability in environmental governance. Right to Information empower citizens, activists, journalists and organisations to obtain critical environmental data, enabling them to monitor pollution levels, ensure compliance with environmental laws, scrutinize environmental impact assessments, expose corruption and illegal activities, ensure government accountability and strengthen climate action. Thus, governmental plans of construction of dams or information of the proposed location of hazardous projects and nuclear power stations or thermal power plants and hazardous industries, which directly affect the lives and health of the people of that area must be widely published.

D. Consumers Right to Information

Consumers Right to Information is a fundamental right. It is essential for ensuring transparency, fairness and safety in the marketplace. This right is essential to making informed choices, preventing fraud and ensure corporate accountability. The consumer is entitled to seek details regarding ingredients and components of products, expiry and manufacturing dates, quality and certification marks, usage instructions and warnings and pricing and billing transparency, advertising and marketing transparency, digital and e-commerce consumer rights.

E. Freedom of Press

Freedom of Press is a fundamental pillar of democracy, ensuring that public has access to information. In the democratic society it is only the Press which serves the citizens interest in receiving information. It encourages independence journalism and promoting democracy by letting the people voice their opinions for or against the government's actions. It allows journalists to investigate and report on matter of public interest without fear of censorship or retaliation.

Article 19 was brought to light after the *Romesh Thappar vs State of Madras* highlighted the importance of media being the fundamental basis of all democratic organisations. However, it recognized the public safety and public order under Article 19(1-A).

The Supreme Court of India in *India Express Newspaper Pvt. Ltd. Vs Union of India*, Justice Venkataramiah has stated "In today's free world, freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible on a large scale, particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is to advance the public interest by publishing facts and opinion without which a democratic government cannot make responsible judgements. Newspapers being purveyors of news and views having a bearing on public administration very often carry material which would not be palatable to governments and other authorities".

F. Voters Right to Information

The Preamble of the Constitution of India begins with the words "we, the people of India", signifying that the constitution derives its authority from the citizens of the country. It then continues with the declaration "having solemnly resolved to constitute India into a sovereign, socialist, secular and democratic republic".

The Preamble outlines the key foundational principles on which the Indian State is built and declares India as a Democratic Republic: Power is derived from the people through elected representatives, and the government operates based on democratic principles.

Election carries the people's will to the parliament. Elections need to be free and fair for the democratic process to be meaningful. Transparency is the foundation stone for free and fair elections.

According to Supreme court in *Union of India vs Association for Democratic Reforms and Another* stated that "Voters right to know including criminal past of his candidates is much more fundamental and basic for survival of democracy.

The Supreme court rightly mentioned in another case *People's Union for Civil Liberties vs Union of India* that the best person should be chosen as the people's representatives for the proper

governance of the country and the voters have a right to know about their antecedents, assets and other aspects.

The voters right to information is a fundamental aspect of democracy. It ensures that citizens have access to accurate, relevant and timely information about candidates, political parties, policies and government actions, expenditure of candidates need to be monitored and there are limits on such expenditures, electoral rolls, EVMs, election papers, video footages and so forth is vital for ensuring the integrity, fairness and transparency of democratic elections.

CONCLUSION

The Indian Judiciary is one of the most important organs as it is entrusted with the great responsibility of administering justice and it is one of the core needs of the citizen. Judiciary in India is considered to be the final interpretation of law, so the task of the judiciary is to bring the constitutional values to its fullest extent, in furtherance of the vision of the constitutional makers. Judiciary has expanded the integral part of fundamental rights and in the process, re-written some parts of the constitution through a variety of techniques of judicial activism.

The Indian Judiciary have played a vital role in ensuring a process of fairness in governance and administration. Thus, while interpreting Article 19 and 21 Judiciary recognized Right to Information under this Article through different cases. The Supreme Court and High Court have reinforced that transparency and accountability are the bedrock of democracy and the RTI is a critical tool to achieve this.

The Indian Judiciary has firmly upheld the Right to Information as a Fundamental Right, essential for democracy, good governance and accountability. Through landmark rulings, it has ensured that RTI strengthens democracy by empowering citizens, government transparency must be the rule and secrecy the exception, voters have the right to know about candidates and public officials, even the judiciary must be accountable to RTI.

On the above discussion, it can fairly conclude that judicial activism is playing an important role in the growth and development of right to information. While exercising its jurisdiction and power, the judiciary have taken up new strategies, new tools and broadly interpreted the law to ensure the protection of human rights specially the right to information.

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