Right to Information: Issues and Challenges

*N.M.Khirale

*1 Associate Professor & Head, Department of Law, Dr.Ambedkar College, Nagpur (Maharashtra), India.

Abstract: The right to information is a unique human right and is a potent tool in the hands of the general public who can use it to keep a check on the bodies that govern them. Information is power. Information provides us the knowledge to demand political, economic and social rights from our government. Right to Information is central to all human rights and denial of this right would mean denial of all human rights. The framers of the constitution incorporated right to speech and expression under Article 19 (part III of the Constitution) for citizen of the India. Ultimately, it is the effort of the Indian judiciary who treat right to Information as a fundamental to all citizens under Article 19 of the constitution. During the last decade or so, many countries have enacted new legislations, thereby giving their citizens access to government information. At present Right To Information Act, 2005 and recently Right To Information Act, (Amendment) 2019 has been passed by the Parliament by amending important provision for appointment of Central and State Information Commissioners.

1. Introduction

'Information' as a term has been derived from the Latin words ‘Formation’ and ‘Forma’ which means giving shape to something and forming a pattern, respectively. The right to information is a right incidental to the constitutionally guaranteed right to freedom of speech and expression. The value of any freedom is determined by the extent to which the citizens are able to enjoy such freedom. Ours is a constitutional democracy and it is axiomatic that citizens have the right to know about the affairs of the Government which, having been elected by them, seeks to formulate some policies of governance aimed at their welfare. However, like any other freedom, this freedom also has limitations. It is a settled proposition that the Right to Freedom of Speech and Expression enshrined under Article 19(1)(a) of the Constitution of India. It encompasses the right to impart and receive information. The Right to Information has been stated to be one of the important facets of proper governance. With the passage of time, this concept has not only developed in the field of law, but also has attained new dimensions in its application. This court while highlighting the need for the society and its entitlement to know has observed that public interest is better served by effective application of the right to information. This freedom has been accepted in one form or the other in various parts of the world.

The right to information is a right incidental to the constitutionally guaranteed right to freedom of speech and expression. The international movement to include it in the legal system gained prominence in 1946 with the General Assembly of the United Nations declaring freedom of information to be a fundamental human right and a touchstone for all other liberties. Freedom of information was recognized as a fundamental right within the United Nations (UN). In 1946, at its First Session, the UN General Assembly adopted the Resolution 59(1) which stated: “Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated.” In ensuing international human rights instruments, freedom of information was set out as a part of The United Nations officially came into existence on 24 October 1945.

It culminated in the United Nations Conference on Freedom of Information held in Geneva in March 1948, the UN proclaimed a Universal Declaration of Human Rights (UDHR) which was followed by the adoption of the International Covenant on Civil and Political Rights (ICCPR), 1966. Article 19 of the said covenant guarantees freedom of opinion and expression. Similarly, the International Covenant on Civil and Political Rights was adopted by the UN General Assembly in 1966. The Covenant formally guaranteed that: (a) Everyone shall have the right to
freedom of opinion; (b) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information of all kinds. Article 19 of the Indian Constitution also provides every citizen the right to freedom of speech and expression. However, the word ‘information’ is conspicuously absent. But, as the highest Court has explicated, the right of information is integral to freedom of expression. The parliament of India enacted Right to Information Act 2002, 2005 and recently Act of 2005 is amended by the parliament. The RTI Amendment Bill, 2019 proposes to amend Sections 13 and 16 of the RTI Act, 2005. The sections laid down the tenure and salaries of the Chief Information Commissioner and Information Commissioners at both the central and state level. The RTI Amendment Bill, however, proposes that the Central Government will decide the tenure, salaries and allowances of all Information Commissioners.

In the case of Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Anr. [(1995) 2 SCC 161] The supreme Court through justice P.B. Sawant observed that, The democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. if the citizens are well informed on all sides of the issues, they can participate in in the affairs of the country if they are called upon to express their views. The court further observed, in a country like ours where about 65 per cent of the population is illiterate and hardly 1 ½ per cent of the population has an access to the print media which is not subject to pre-censorship. Commissioner In this article, an attempt has been made to analyze the constitutional provisions, judicial verdicts to protect the right to Information as a fundamental right within the meaning of Article 19 of the Constitution of India.

1.1. New philosophy of information

In modern times a new philosophy of Right to Information has been recognized by the Indian Judiciary which may be read as follows:

1. Right to Information is a basic natural Human right
2. Right to Information is an integral part of development
3. Right to Information is central to the concept of dignity of life
4. Right to Information is a tool for promoting development
5. Right to Information is a tool for strengthening the democratic governance
6. Right to Information is a tool for effective delivery of socio-economic services.
7. Right to Information is a world-wide goal.

1.2. Problem of the study

The right to Information is one of the basic human rights of human being. The Constitution of India under Article 19 has provisions on Right to Freedom of speech and expression. Universally, recognition is given to this Right. Indian parliament enacted The Right to Information Act 2005 but the people of this country are not aware about their basic legal rights. Situation in some states, districts, and areas shows that there is ineffective right to Information system particularly in rural areas. Non-awareness is cause behind denial of right. Recently parliament of India amended the right to Information Act, (Amendment) 2019 Act inserted some new Provisions in the Act of 2005. The present amendment has become the issue of criticism as it damage the basic foundation of Right to information Act.

1.3. Objectives of the study

In the light of above introduction researcher has following objectives namely:
1. To study the various provisions of Indian Constitution relating to Right to Information
2. To focus responsibility of the State to protect Right to Information.
3. To study and analyse various judgments of Indian Supreme Court of India

1.4. Significance Of The Study

The Indian Constitution guarantees certain fundamental freedoms and rights to its citizen under chapter III. Article 21 guarantees ‘Right to Life and personal liberty to all persons’ and Right to Fundamental Freedom under Article 19 of the constitution of India. It is correct to say that it does not provides expressly for the Right to Information however the Indian Supreme Court has given due recognition to right to life including Right to Information within the ambit of right to life and personal liberty & Right to Fundamental Freedom. Parliament of India enacted the Right to Information Act 2005. The Supreme court declared Right to Information as a basic Natural, human right and is available to every citizen of India. Indian judiciary is playing significant role while
interpreting the provisions of the Constitution taking into account the International Mandate and Right to Information Act.

1.5. Scope Of The Study

In this present research, researcher focused on the Constitutional provisions and International mandate on Right to Information, Provisions under The Right to Information Act 2005, and interpretation of these provisions by the Supreme Court of India. And also newly inserted provisions in the present Right to Information Act 2005 by Amendment Act 2019. The scope of the study was limited to New Amendment Act 2019. The Researcher has studied and analyzed the new Amendment particularly taking into account the previous history behind passing of The Right To Information Act, 2005.

1.6. Hypothesis

The Role of public demand is Significant in Interpreting Constitutional Provisions and amendment to Right to Information, and the State under Article 12 of the Constitution of India is under Constitutional Duty to provide protection and strengthen the Act of 2005 in its older spirit.

1.7. Materials And Methods

Law lays down certain norms and standards for human behaviour in a specified situation. Doctrinal research involves analysis of case laws, legal propositions and study of legal institutions national and internationally. The objective and philosophy of this present doctrinal research is sociologically is a social engineering through law. In this present research researcher has relied upon various research articles, Supreme Court Cases and previous historical background of Right to information Act 2005 for doing research in the present subject researcher have adopted following Methods

1. Study of Constitutional Provisions etc.
2. Analysis of new amendment to Right to Information Act, 2005

2. Introduction

In 1996, Justice P.B. Sawant, the Chairman of the Press Council of India, drafted the bill keeping in view the dire need of the day and the observations made by eminent persons. The Bill enumerates the procedure for the enforcement of this right. The officer in charge will be held responsible in the event of refusal of information, and information must be furnished within 30 days of application. The purpose and object was to make the government more transparent and accountable to the public and to provide freedom to every citizen to secure access to information from the office and under control of public authorities, the Right to Information Act was passed in 2002.

After the Act of 2002 came into force, there was a definite attempt to exercise such freedom but it did not operate fully and satisfactorily. The Civil Services (Conduct) Rules and the Manual of the Office Procedure as well as the Official Secrets Act, 1923 and also the mindset of the authorities were implied impediments to the full, complete and purposeful achievement of the object of enacting the Act of 2002. Since, with the passage of time, it was felt that the Act of 2002 was neither sufficient in fulfilling the aspirations of the citizens of India nor in making the right to freedom of information more progressive, participatory and meaningful, significant changes to the existing law were proposed. The National Advisory Council suggested certain important changes to be incorporated in the said Act of 2002 to ensure smoother and greater access to information. After examining the suggestions of the Council and the public, the Government decided that the Act of 2002 should be replaced and, in fact, an attempt was made to enact another law for providing an effective framework for effectuating the right to information recognized under the Article 19 of the Constitution.

The Right to Information Bill was introduced in terms of its statements of objects and reasons to ensure greater and more effective access to information. The Act of 2002 needed to be made even more progressive, participatory and meaningful. The important changes proposed to be incorporated therein included establishment of appellate machinery with investigative powers to review the decision of the Public Information Officer, providing penal provisions in the event of failure to provide information as per law, etc.

3. Analysis Of Act Of 2005

The first and the foremost significant change was the change in the very nomenclature of the Act of 2005 by replacing the word ‘freedom’ with the word ‘right’ in the title of the statute. The obvious legislative intent was to make seeking of prescribed information by the citizens, a right, rather than a mere freedom. There exists a subtle difference when people perceive it as a right to get information in contra-distinction to it being a freedom. Upon such comparison, the connotations of the two have distinct and different application. The Act of 2005 was enacted
to radically alter the administrative ethos and culture of secrecy and control, the legacy of colonial era and bring in a new era of transparency and accountability in governance.

The Act of 2005 makes the definition clause more elaborate and comprehensive. It broadens the definition of public authority under Section 2(h) by including therein even an authority or body or institution of self-government established or constituted by a notification issued or order made by the appropriate Government and includes anybody owned, controlled or substantially financed by the Government and also non-governmental organization substantially financed by the appropriate Government, directly or indirectly. Similarly, the expression ‘Right to Information’ has been defined in Section 2(j) to include the right to inspection of work, documents, records, taking certified samples of material, taking notes and extracts and even obtaining information in the form of floppy, tapes, video cassettes, etc. This is an addition to the important step of introduction of the Central and State Information Commissions and the respective Public Information Officers.

4. Constitutional Aspect

Right to free speech and expression under Article 19 is declared as a fundamental right by the judiciary. The prerequisite for exercising and enjoying this right is true knowledge and Right information. 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. The Right to Information Act, 2005 is an important tool in the hands of any citizen to keep checks and balances on the working of the public servants, every law has to pass through the test of constitutionality which is stated to be nothing but a formal test of rationality. The foundation of this power of judicial review, as explained by a nine-Judge’s Bench is the theory that the Constitution which is the fundamental law of the land, is the ‘will’ of the ‘people’, while a statute is only the creation of the elected representatives of the people; when, therefore, the ‘will’ of the legislature as declared in the statute, stands in opposition to that of the people as declared in the Constitution - the ‘will’ of the people must prevail.. In determining the constitutionality or validity of a constitutional provision, the court must weigh the real impact and effect thereof, on the fundamental rights. The Court would not allow the legislature to overlook a constitutional provision by employing indirect methods.

This Court mandated without ambiguity, that it is the Constitution which is supreme in India and not the Parliament. The Parliament cannot damage the Constitution, to which it owes its existence, with unlimited amending power. An enacted law may be constitutional or unconstitutional. Traditionally, this Court had provided very limited grounds on which an enacted law could be declared unconstitutional. They were legislative competence, violation of Part III of the Constitution and reasonableness of the law. The first two were definite in their scope and application while the cases falling in the third category remained in a state of uncertainty. With the passage of time, the law developed and the grounds for unconstitutionality also widened.

5. Right To Information Is Not Absolute

The value of any freedom is determined by the extent to which the citizens are able to enjoy such freedom. Ours is a constitutional democracy and it is axiomatic that citizens have the right to know about the affairs of the Government which, having been elected by them, seeks to formulate some policies of governance aimed at their welfare. However, like any other freedom, this freedom also has limitations. It is a settled proposition that the Right to Freedom of Speech and Expression enshrined under Article 19(1) (a) of the Constitution of India encompasses the right to impart and receive information. The Right to Information has been stated to be one of the important facets of proper governance. Even the single most barrier to information can be responsible for corruption in society. In People’s Union for Civil Liberties v. Union of India - (2004) 2 SCC 476, this Court held that right of information is a facet of the freedom of “speech and expression” as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions.

The supreme court in Namit Sharma v. Union of India (writ petition (civil) no. 210 of 2012) decided by court on 13 September 2012 while highlighting the need for the society and its entitlement to know, has observed that public interest is better served by effective application of the right to information. This freedom has been accepted in one form or the other in various parts of the world. With the passage of time, this concept has not only developed in the field of law, but has attained new dimensions in its application.

6. Right To Information And Good Governance In India

Accountability, transparency, freedom of speech and expressions etc. are inalienable feature of any democratic system. And the importance of these becomes more when it comes to such a diverse country like...
India. Right to Information Act, 2005 is a step ahead in achievement of these ideals. The success in good governance is possible only if the citizens of the country have right and access to information of and participation in the governance. RTI, not only brings transparency, accountability in governance but also act as the deterrent against the arbitrary actions, policies, and decisions of public authorities. Therefore, RTI, undoubtedly strengthen the governance.

7. Conclusion

Right to know is also closely linked with the powers of final authorities such as Central and State Information Commissioner. Its independent existence as an attribute of mandate of the constitution of India cannot be disputed. Viewed from this angle, information or knowledge becomes an important resource through these authorities. An equitable access to this resource and their independent existence must be guaranteed. In light of the law guaranteeing the right to information, the citizens have the fundamental right to know what the Government is doing in its name. The freedom of speech is the lifeblood of democracy.

The Hon'ble Apex Court of India has declared right to information is a fundamental right under Article 19 of the Constitution of India. The term ‘right to information’ is nowhere mentioned in the Indian Constitution yet the Supreme Court has interpreted It as a fundamental right under Article 19. ‘Right to Life’ with dignity enshrined in Article 21 can be meaningfully enjoyed if right to know is available. The word ‘information’ is conspicuously absent. But, as the highest Court has explicated, the right of information is integral to freedom of expression. The parliament of India enacted Right to Information Act 2002, 2005 and recently Act of 2005 is amended by the parliament.

8. Suggestions

The Indian Judiciary has made unique and valuable contribution to declare the right to information as a human right and fundamental right under the Constitution of India. It is also stated that right to information is the most important aspect of social and political justice so there should be more changes for strengthening the position of final authorities in the Act of 2005. If the present amendment to the Act of 2005 by Central Government is to improve right to information Act, There is a need to initiate a movement to enrich and strengthen the right to information Act. To build a strong and powerful nation, the right to Information should be recognized in spirit of the constitution and it should be implemented properly and efficiently.

REFERENCES

1. Article 19(1) (a) of the Constitution
2. Article 51A of the Constitution
3. Article 19 of the Universal Declaration of Human Rights
4. Universal Declaration of Human Rights (UDHR), 1948
5. International Covenant on Civil and Political Rights (ICCPR), 1966
6. L. Chandra Kumar vs. Union of India and Ors (1997) 3 SCC 261
7. Supreme Court Advocates on Record Association & Ors. v. Union of India [(1993) 4 SCC 441],
8. Secretary, Ministry of Information and Broadcasting, GOI & Ors. v. Cricket Asso. of Bengal & Anr. [(1995) 2 SCC 161]
9. People’s Union for Civil Liberties v. Union of India - (2004) 2 SCC 476,
10. Minerva Mills Ltd. & Ors. v. Union of India & Ors. [(1980) 3 SCC 625],
12. This Bill was passed by both the Houses of the Parliament and upon receiving the assent of the President on 15th June, 2005; it came on the statute book as the Right to Information Act, 2005.
13. This Bill was passed by both the Houses of the Parliament and upon receiving the assent of the President on 25th July, 2019; it came on the statute book as the Right to Information,( Amendment) Act 2019.