

JUDICIARY AND THE RIGHT TO INFORMATION

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The Supreme Court in case of (*Secretary, Ministry of Information and Broadcasting, Government of India Vrs. Cricket Association of Bengal; AIR 1995 SC. 1236, 1995. 2 SCC 161*) narrowly expanded its view on the provision of article 19(1)(a) towards the right to information. It held that the right to freedom of speech and expression includes the right to receive and impart information. For ensuring the free speech right of citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an unaware citizen's diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them. This Court made more clear of the provision of right to information that is inferred itself in article 19(1)(a). It held in case of (*S.P. Gupta Vrs. Union of India, 1981. Supp SCC 87*) that right to know is implicit in right of free speech and expression. Disclosure of information regarding functioning of the government must be the rule.

In going back to 1975 this Court in case of (*State of Uttar Pradesh Vrs. Raj Narain, 1975.4 SCC 428*) observed that freedom of speech and expression includes right of citizens to know every public act, everything that is done in a public way, by their public functionaries. In

the year 1997 the Court also held that freedom of speech and expression includes right of the citizens to know about the affairs of government. (*Dinesh Tribedi Vrs. Union of India, 1997. 4 SCC 306*). The freedom of speech and expression, has been held repeatedly by the Supreme Court is basic to and indivisible from a democratic polity. It includes right to impart and receive information. The restrictions to the said could be only as provided in article 19(2). This article provides that nothing in sub-clause (i) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with the foreign States, public order, decency or morality. The grounds upon which reasonable restrictions can be placed upon the freedom of speech and expression are designed firstly to ensure that the said right is not exercised in such a manner as to threaten the sovereignty and integrity of India, security of State, friendly relations with the foreign State, public order, decency or morality. The existing laws providing such restrictions are saved and the State is free to make laws in future imposing such restrictions. The grounds aforesaid are conceived in the interest of ensuring and maintaining

conditions in which the said right can meaningfully and peacefully be exercised by the citizens of this country.

Hence the right to know or be informed is the foundation of democracy and is derived from the plenary provisions of article 19(1)(a) of the Constitution of India. The Supreme Court in another case of (*Peoples Union for Civil Liberties Vrs. Union of India, AIR 2003 SC 2363*) held that true democracy cannot exist unless the citizens have a right to participate in the affairs of the policy of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sided of issues in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and non-information all equally create uninformed citizens which makes democracy a farce when medium of information is monopolised either by a partisan central authority or by private individuals or oligarchy organisations. This is particularly so in a country like ours where 65% of the population is illiterate.

It is obvious from the Constitution that India has adopted a democratic form of government where a society has chosen to accept democracy as its creedal faith. It is elementary that the citizen's right to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if the people know how government is functioning that they can fulfill the role which democracy assigns to them and make

democracy a really effective participatory democracy.

A popular government without popular information or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both. The citizen's right to know the facts, the true facts about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world. The important role people can fulfill in a democracy only if it is an open government where there is full access to information in regard to functioning of government. Enlightened and informed citizens would undoubtedly enhance democratic values. In the absence of law on right to information, the Supreme Court observed in case of (*Union of India Vrs. Association for Democratic Reforms, AIR 2002 SC 2112*) wherein it gave the directives and that were included to operate only till the law was made by the Legislature and in that sense "pro tempore" in nature. Once legislation is made, the Court has to make an independent assessment in order to evaluate whether the items of information statutorily ordained are reasonably adequate to secure the right to information available to the citizens. The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

In a government of responsibility, 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. (*State of Uttar Pradesh Vrs. Raj Narayan, 1975 4 SCC 428*).

The Supreme Court earlier in 1950 also has observed that the freedom lay at the foundation of all democratic organisations, for without free political discussion on public education, so essential the proper functioning of the processes of popular government. A freedom of such amplitude might involve risks of abuse. But it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. (*Romesh Thapper Vrs. State of Maharashtra, AIR 1950 SC 124.*)

The fundamental rights involved are the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration (*Attorney General Vrs. Time News Papers Ltd., 1973 3 ALL ER 54*). The member of the democratic society should be sufficiently informed so that they may influence intelligently the decisions, which may affect them. Further the right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. (*Union of India Vrs. Association for Democratic Reform, AIR 2002 SC 2112*). The public interest in freedom of discussion stems from the requirement that members of a democratic society should be sufficiently informed. (*Indian Express News Papers (Bombay) Vrs. Union of India, AIR 1986 SC 515*).

It is apparent that from the opinions and observations of Supreme Court in "*Keshavanand Bharati*", that India is in need of law on the right to information. The Court in case of (*Union of India Vrs. Association of Democratic Reforms, AIR 2002 SC 2110*) issued the directives to Election Commission of India regarding voter's right to know the antecedents of the election candidates. Between

these periods a plethora of sensitive judgments followed the Supreme Court's concern on the right to know. In 2002 the Law Commission of India's 179th Report was public interest disclosure and protection of informer followed the Freedom of Information Act 2002 and finally Indian Parliament passed the law on Right to Information in May 2005.

Judiciary also not exempted from RTI purview

Besides the RTIA-05, there may be other statutes also where information may be withheld from a citizen. For instance, the report of an inquiry made against of justice of High Court under the provisions of the Judges Enquiry Act, 1968 may be withheld from the public by the Chief Justice of India. In *Indira Jaising Vrs. Registrar General, Supreme Court, of India* an inquiry report was made by the Committee to the CJI, in respect of alleged involvement of sitting judges of the High Court of Karnataka in certain incidents. The petitioner sought the publication of the inquiry report. The Supreme Court held that it is not appropriate for the petitioner to approach this court for relief or direction for release of the report, for what the CJI has done is only to get information from per judges of those who are accused and the report made to the CJI is woolly confidential. It is purely preliminary in nature, adhoc and not final. The Court further held that in a democratic framework free flow of information to the citizens in necessary for proper functioning, particularly in matter, which form part of public record. The right to information is however, not absolute. There are several areas where such information need not be furnished. Even the Freedom of Information Act, 2002 (Now RTIA-05) does not say in absolute terms that information gathered at any level, in any manner and for any purpose shall be disclosed to the public. The inquiry ordered and the report made to the CJI being confidential

and discreet is only for the purpose of his information and not for the purpose of disclosure to any other person. The court thus rejected the contention to release the said report. The Court, however, made it clear that if the petitioner can substantiate that any criminal offence has been committed by any of the judges mentioned in the course of the petition, appropriate complaint can be lodged before a competent authority for taking action by complying with requirements of law.

Now the big question is whether section 22 of the RTIA-05 will override any other provision to the contrary. If an application under RTIA-05 has been made to the High Court for obtaining certain information in possession of the High Court, the PIO of the HC cannot refuse the concerned information by contending that it should be obtained as per HC rules as the matter is Judicial. There is nothing “Judicial” about such information. One is not asking about any certified copies of a judgment or order. What he is doing is simply asking for information lying exclusively with the High Court. It is at most “administrative information” and the same cannot be refused on the basis of judicial argument. In fact, if something is “judicial” it becomes a “public document” and anybody can ask for it after complying with the procedural requirements.

However, since the case is “Pending”, the court may legitimately refuse its disclosure after giving reasons in writing. This is so because a premature disclosure may “prejudice the interest of the parties”. Perhaps, that must be the implied contention of the PIO. All that he/she wants is that a “judicial permission” and not a RTIA-2005 application is the correct procedure, in the peculiar facts and circumstances of the case. The information sought in the present case is two reports submitted by a Committee appointed by the High Court in a PIL (said case is pending) for which they applied as an RTI application.

Now a big question arises as to the immunity of Judiciary from the scope of RTIA-2005. There is nothing either under the Constitution or under any statutory enactment, including RTIA-2005 that exempts judiciary from such administrative disclosures. However, when it comes to “Judicial matter”, some leverage must be given to it. For instance, if a court is trying a case where the identity of the victim must not be disclosed, then none can ask for the same or any information related to it. This will be so irrespective of section 22 of the RTIA-2005, overriding force has been created in favour of that Act. But it must be harmoniously construed with other provisions of various statutes. The first attempt of the court should be to reconcile two conflicting provisions of two statutes. If such reconciliation is not possible then only the overriding provision u/s 22 can be invoked. Thus, RTIA-05 cannot be read in isolation and a holistic interpretation is the need of the hour.

Now whatever may be the interpretation, one thing is sure. The Judiciary is not out of the reach of RTIA-05 except on the limited grounds mentioned under the Constitution of India, RTIA-05 and other statutes. In fact, people of India have great faith in the Judiciary of India. This is natural as well since it is functioning as per the Constitutional norms. Now what is expected from the Judiciary at this stage is to throw away extraneous applications under the RTIA-05 at the threshold and to allow all other genuine applications to the maximum possible extent. The Judiciary must voluntarily come forward to meet this democratic ideal. The same is expected from the Judiciary and it will once again meet our expectations: WE, THE PEOPLE OF INDIA.

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