

## Right to Information: The Basic Need of Democracy

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### Abstract

*The term Democracy refers to a government chosen by the people, whether it is direct or representative. This word “democracy” (Demo (people) and (Crates (rule) was coined in ancient Greek called Athenian democracy, originally has two distinguishing features: firstly the allotment of ordinary citizens to government offices and courts and secondly the assembly of the citizens. Accountability and transparency are the two eyes of democracy. People are the master and they have right to watch the performance and business of the government. They have right to know that how they are being governed. Veil of secrecy restricts the vision of the citizens to see the working of government. In the present scenario knowledge has become the most valuable resource. Corruption and abuse of power are the inevitable fall outs of an unaccountable system of governance. The right to information when vested in people can act as a deterrent against corruption and abuse of power. The right to information is a means to ensure open government and to empower the people. The Right to Information Act, 2005 has categorically disclosed information’s related to public authorities to provide for setting out the practical regime of right to information for citizens in order to promote transparency and accountability in the working of every public authority.*

### Introduction

Until the 20<sup>th</sup> century, formal censorship not right to know was the common practice of most states. Autocrats frequently imprisoned critics, shutdown the process, forced author’s into exile, or censored written and artistic works. The struggle against licensing requirements in Great Britain in the 17<sup>th</sup> century, the American Bill of Rights, and the French Declaration of the Rights of Man expanded standards of freedom in a way that inspired new realms of independent expression and thought not especially in Europe in the 19<sup>th</sup> and early 20<sup>th</sup> centuries but also in other parts of the world.

Freedom of speech and expression could be considered one of the most fundamental of all freedoms. While it is of dubious value to rate one freedom over another, freedom of expression is a basic foundation of democracy. It is a core freedom without which democracy could not exist. The term encompasses not only freedom of speech and media but also freedom of thought, culture and intellectual inquiring. Freedom of expression guarantees everyone’s right to speak and write openly without state interference, including the right to criticize injustices, illegal activities and incompetence’s. It guarantees the right to know and right to inform the public and to offer opinions of any kind, to advocate change, to give the minority the opportunity to be heard and became the majority and to challenge the rise of state tyranny by force of words.

In such regimes the State not only exerted full control over freedom of speech and expression and right to know, it also used the media to direct citizen’s thoughts and opinions through propaganda, indoctrination, denunciation, and social conformity. After the defeat of Nazi Germany, freedom of speech and expression joined realm of core freedoms that are now protected as universal standards. United Nations accepted right to information right from its beginning in 1948. Today, we are living an information based society. Access to information has become inevitable to the individuals as well as for the institutions.

Information revolution has been brought today by communication and computer technology, particularly via internet, websites and e-mail, at the doors of the common people.

Enactment of Right to Information Act, 2005, has ushered a new era leading us towards the development of the participatory democracy. It has led to a series of debates among the public spirited persons, NGOs, intellectuals and has also stirred common masses. Right to Information implicitly forms part of fundamental rights guaranteed by the Constitution of India. Article 19 (1) (a) dealing with freedom of speech and expression is deemed to contain the basis of right to information. Democracy in real terms requires public to act as a sovereign force. Abraham Lincoln in his famous Gettysburg Address said that “*democracy is government of the people, for the people and by the people*”. In this regard Dr. Ambedkar told in Lok Sabha during Constitutional Assembly Debate that the people have fed up with the concept, of the people and for the people and they really want government by the people. This postulation can be materialized only by an informed citizenry.

The conceptual roots of democracy lie in Articles 23 and 25 of the Universal Declaration of Human Rights, 1948 and in Part III and Part IV of the Constitution of India. In this regard, right to information is part of the constitutional framework enshrined as freedom of speech and expression. Explicit exercise of this right was not possible due to its derivative and implicit existence within the Constitution. This facilitated the need of a specific legislation enabling the citizens to enjoy the right available to them. Therefore there was an immediate need of a specific legislation to provide information to the citizens as a matter of right and to create a climate and culture for the right to information. The same message echoed in the juristic exposition by Justice Mathew in *Kesavananda Bharati v. State of Kerala*<sup>1</sup> stated in these prominent words like:

*"Fundamental rights themselves have no fixed content; most of them are empty vessels into which each generation must pour its content in the light of its experience."*

Access to information held by a public authority was not possible until 2005. Lack of information precluded a person to realize his socio - economic aspirations, because he had no basis to participate in the debate or question the decision making process even if it was harming him. Official Secret Act, 1923 acted as a remnant of colonial rule shrouding everything in secrecy. The common did not have any legal right to know about the public policies and expenditures. It was quite ironical that people who voted the persons responsible for policy formation to power and contributed towards the financing of huge costs of public activities were denied access to the relevant information.

This culture of secrecy resulted in prolific growth of corruption. In face of non-accountability of the public authorities and lack of openness in the functioning of government, abuse of power and unscrupulous diversion of the public money was the order of the day. Under such conditions, public and various NGOs demanded greater access to the information held by public authorities. The government acceded to their demand by enacting RTI Act 2005.

## ***Origin of Right to Information***

### **Global Overview**

The world in the 21<sup>st</sup> century has marked many a strides and paradigm shifts in the understanding, analysis and contextualization of the various cultures of the world affairs. RTI which is the cynosure of this discourse is not something new. In fact there is a long history at international level towards the attainment of this right and mobilization of the masses for achieving it. With development of human ideals and establishment of democratic governments in most of the civilized countries, this topic came to the fore. Many international organizations and regional groups recognized this right to be part of their systems.

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<sup>1</sup> AIR (1973) SC 1461 2

## Position in Sweden

Swedish Freedom of Information Law (a literal translation of the native term indicates the Freedom of Printing Act) passed in the year 1766 is considered to be the oldest and earliest legislative recognition of RTI<sup>2</sup>. This law was passed by Sweden. A large number of countries have followed the same line and have enacted access laws after it. For example, Finland in 1950, Denmark in 1950, Norway in 1970, and United States of America in 1966 enacted such laws in order to facilitate information access.

Before discussing the various international provisions, let us first analyze the status of RTI in the two most developed democracies of the world U.S.A and England. This analysis is very essential because India was colony of England and U.S.A.is oldest democracy.

## Position in United Kingdom

India was the colony of Britain and many laws are the creation of that very time, so it is very obvious to see the position in England. Democracy has been the basic tenet of England since ages but 'secrecy' is emphasized rather than openness. This is due to the innate tendency of legislature and executive to enshroud policies instead of making it transparent. England has enacted Freedom of Information Act, 2005<sup>3</sup>. But basically, the present law is contained in the Official Secrets Acts of 1911, 1920, 1939<sup>4</sup>. Judiciary in England has approved of openness in Government. The same is reflected in the decision of House of Lords where it established its jurisdiction to order the disclosure of any document<sup>5</sup>. In this case the court refused the crown privilege. Deciding this case Justice Lord Reid, said that "*The document must be produced in the court for deciding the case and held that it is not crown privilege but it is public interest privilege*". However, it was also emphasized that balance between conflicting interests of secrecy and publicity should be maintained. The court held that the entire class of the document cannot be pleaded as privileged document and first time classified the document in two parts as class document as a privileged document and content document as non privileged one.

Keeping in view the desirability of "openness" of government affairs in a democratic society, the Franks committee recommended a repeal of section 2 of the 1911 Act, and its replacement by the Official Information Act .The United Kingdom has enacted Freedom to Information Act 2000. Most of the countries of the Western Europe have now such legislations. Importance of freedom of expression in English law can be ascertained by the observation of Lord Steyn in a case<sup>6</sup> which goes as following:

*"Freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country...."*

## Position in United States of America

India and America is very common in one thing that India has the largest democracy in the world and America has the oldest one. America and democracy are generally synonymous. America apparently proclaims it to the torchbearer of the plethora of democratic rights that ought to be the part of a true democratic framework. The same applies on the dispensation of information too. Antipathy towards the inherent secrecy is therefore not a surprising attribute exhibited by the Americans. Schwartz observes, "Americans firmly believe in the healthy effects of publicity and have a strong antipathy to the inherent secretiveness of government agencies."<sup>7</sup>

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<sup>2</sup> Prof. (Dr.) S. V. Joga Rao, Law Relating to Right to Information, 1st Edition (2009)

<sup>3</sup> S.P. Sathe, Right to Information, Lexis Nexis Butterworths.

<sup>4</sup> Avinash Sharma, "Right to Information : A Constitutional Perspective", Vol. VIII Nyayadeep, see at pg. 121.

<sup>5</sup> Conway v. Rimmer, (1968) A. C. 910.

<sup>6</sup>R. v. Secretary of State for the Home Department Ex P. Simms, (2000) 2 LR 115(AC).

<sup>7</sup> Schwartz, Administrative Law, p. 129, (1984).

The Freedom of Information Act, 1966 and The Administrative Procedure Act, 1946 are two main statutes which confer RTI.

The Constitution of America does not deal specifically with RTI. However, such right is considered to be corollary of the First Amendment freedoms<sup>8</sup>. A provision of a statute was held to be a restriction on the unfettered exercise of First Amendment Rights<sup>9</sup> and hence was declared invalid by the Supreme Court. Similarly in *Stanley v. Georgian*<sup>10</sup> it was observed that freedom of speech necessarily protects the right to receive information. The American government passed Freedom of Information Act, 1966 which gives every citizen a legally enforceable right to access to government files and document which the administrations may be tempted to keep confidential. If any person is denied this right, he can seek injunctive relief from the court. The Act ensures access to government information in three broad ways:

- (a) *Publication in the Federal register;*
- (b) *Making available for inspection and copying certain certified information and*
- (c) *Making available reasonably described records on request.*

### **RTI in Various International Legal Instruments**

Various international instruments such as treaties, charters etc have recognized RTI as right that ought to be available to the people. All the citizens have a right to decide, either personally or by their representatives, as to necessity of the public contribution, to grant this freely, to know to what use it is put; and to fix the proportion, the mode of assessment and of collection and the duration of taxes<sup>11</sup>. Modern International law is not confined to relations between the states but devises upon matters of social concern also e.g. information, human rights, health, education and like. Within the UN, Freedom of Information was recognized at the early stages, as fundamental rights.

#### **United Nations**

The right to access information is firmly set in the body of international human rights law. It is enshrined in Article 19 of the Universal Declaration of Human Rights (UDHR). United Nations accepted right to information right from its beginning in 1946. The General Assembly resolved that: "freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated."<sup>12</sup>

#### **United Nation Principle on the Freedom of Information:**

These are the following principles propounded by the UNO in order to ensure the freedom of information:

1. Maximum disclosure
2. Obligation to publish
3. Promotion of open government
4. Limited scope of exceptions
5. Processes to facilitate access
6. Costs
7. Open meetings
8. Disclosure takes precedence
9. Protection for whistle blower

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<sup>8</sup> Thomas Emerson, Legal Foundation of Right to know, Washington University Law Quarterly, p.2 (1976).

<sup>9</sup> Lamont v. Post Master General, 14 Lawyer Edition 2d. 398 (1965).

<sup>10</sup> 22 L. Ed. 2d. 24. 542 (1969).

<sup>11</sup> Article 14 of the Declaration of the Rights of Man, cited in S. P. Sathe, Right to Information, p. 11.

<sup>12</sup> United Nations General Assembly, resolution 59(1), 65m plenary meeting, 14 December 1946.

## **Universal declaration of Human Rights, 1948**

Right to information is a human right under Article 19 of Universal Declaration of Human Rights. Article 19 of the Universal declaration of Human Rights of 1948 states that, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

## **The International Covenant on Civil and Political Rights, 1968**

Article 19 of the Covenant states as following:-

*"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."*

## **The Commonwealth**

The Commonwealth association of 54 countries affirmed the existence of RTI by emphasizing the participation of people in the government processes. The law ministers of the Commonwealth at their meeting held in Barbados in year 1980 stated that 'public participation in the democratic and government process would be most meaningful when citizens had adequate access to official information'.

## **Organization of American States (OAS)**

American Convention on Human Rights was adopted by the Organization of American States (OAS) in 1969. This international treaty is legally binding in nature. Article 13 of the convention reads as follows:-

(1) Everyone has the right to freedom of thought and expression. This right shall include freedom to work, receive and impart information and ideas, of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

Clause 2 states that exercise of such right may sometimes be subject to liabilities or restrictions if it compromises the national security or contravenes the right available to others.

## **European Convention on Human Rights**

Clause 1 of Article 10 of the Convention states that, 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions, and to receive and impart information and ideas without interference by public authority and irrespective of frontiers.

However, clause 2 provides that such right is subjected to such formalities, conditions, restrictions or such penalties as are prescribed by law, and are necessary in a democratic society, and if it harms the national interest or territorial integrity.

However European Court of Human Rights interpreted Article 10 strictly<sup>13</sup>. That is to say it was held that freedom to information prohibited the Government from restricting a person from receiving information. But, at the same time it does not provide any positive right to a person for obtaining the information. This interpretation was based on the difference between 'freedom' and 'right'.

Most of the above discussed international instruments do not deal with RTI directly. Their role however is not diminished at all by this fact. Like a first step they showed the world community a direction to be explored in order to materialize the democratic value of RTI, thereby making the systems transparent and world more amicable for the people.

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<sup>13</sup> See EHRR 433, Para 74, cited in S.P. Sathe, Right to information, p. 15.

## Constitutional Provisions Relating to RTI in Various Countries

Constitutional recognition stands paramount specially when relating to the fundamental human rights such as RTI. In this regard various countries have given place to RTI in their respective constitutions. Some of them are as following:

- Article 20 of the 1987 Constitution of Austria;
- Article 32 of the Constitution of Belgium as amended in 1993.
- Article 41 of the Constitution of Bulgaria;
- Article 23 of the Constitution of Albania;
- Article 38 of the Constitution of Croatia;
- Article 44 of the Constitution of Estonia;
- Article 10 (3) of the Constitution of Greece;
- S. 32 (1) of the Constitution of Republic of South Africa pursuant to the Constitution Act 106 of 1996.

## Statutory Provisions Relating to RTI in Various Countries

Apart from the constitutional recognition, specific statutes are sometimes necessary to be formulated in order to effectuate proper exercise of rights. This is so because mere recognition sometimes is not sufficient to provide results. Statutes here come to the rescue by providing optimal output through an elaborate mechanism, As stated earlier that Sweden enacted the first legislation in this regard. The Freedom of Information Act is now part of the Constitution of Sweden. Therefore, let us now see some of the important statutes providing RTI to the people. They are as following:

- 1888 Code of Political and Municipal Organization of Columbia enabled the individuals to request documents held by the government;
- The Freedom of Information Act, 1966 of U.S.A.;
- The Freedom of Information Act, 1982 of Australia;
- The Access to Information Act, 1983 of Canada;
- The Official Information Act, 1982 of New Zealand;
- The Freedom of Information Act, 2005 of England; and Legislations passed by many Asian countries such as The Philippine, Hong Kong, Thailand, South Korea, Japan etc.

## Constitutional Provisions facilitating Right to Information in India

The incorporation of fundamental rights as enforceable rights in the modern Constitutional documents as well as in the internationally recognized charter of human rights, emanate from the doctrine of natural law and natural rights. In India at the time of national movement, freedom fighter promised to the people of India that they will provide the natural rights as fundamental rights through the “*Suprema lex*”, that is Constitution to the people of India. These fundamental rights are similar to human rights as declared by the United Nation in 1948<sup>14</sup>. In this context, Supreme Court said in *Chairman, Railway Board v. Chandrima Das*<sup>15</sup> that “the applicability of Universal Declaration of Human Rights and principals thereof may have to be read, it need to, into the domestic jurisprudence.” It traces the events that expedited the passage of the 2005 Act, which provided the citizens of our country an important instrument to ensure transparency in governance.

Rights are the interests which are recognized and protected by law. The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only hopes that can ensure freedom of all sorts. Information has a pivotal role in strengthening public by making them knowledgeable.

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<sup>14</sup> S.D. Sharma and Priti Saxena, Right to Information, Implementation Problems and Solutions, 2013,p.55

<sup>15</sup> AIR (2000) SC 988 at 997

Accessing information, however in a developing country like India is a cumbersome task to be accomplished by majority of less educated and illiterate citizenry oblivious of its rights. Red tapism and bureaucratic supremacy is highly hesitant in empowering people. Moreover the colonial legacy which was copious with policy of secrecy still haunts the system. Here the Constitution of India comes to protect the common masses by providing them certain fundamental rights within Part III. It is not easy to violate these fundamental rights except the procedures laid down by the law, which must be in the consonance with spirit of Constitution, Similarly, RTI is a right imbibed within Article 19 (1) (a)<sup>16</sup> of the constitution.

The Constitution of India although incorporates provisions of various leading democracies, is primarily founded on bedrock of Government of India Act, 1935. The system of governance therefore is not free from many vestiges of past which constituted a stumbling block in the free flow of information to the people.

### Various Legislations that Permits Secrecy

There is some legislation which license secrecy in India but after the enactment of Right to Information Act some of having overriding effect. These legislations are as following:

- The Official Secrets Act, 1923
- Rule 11 of the Central Civil Services (conduct) Rules, 1964
- Section 123 and 124 of the Indian Evidence Act, 1872
- Council of Ministers advice to maintain secrecy
- Privilege to withhold Documents from Courts
- Oaths under the Constitution
- Atomic Energy Act, 1962
- Commission of Inquiry Act, 1952
- Section 123 and 124 of Indian Evidence Act, 1872 and the Official Secrets Act, 1923 and in present time section 52 of the Competition Act, 2002 which says that information relating to any enterprise, being an information which has been obtained by or on behalf of the commission without the previous permission in writing shall not be disclosed, are examples of such techniques.

The right to information has not been expressly provided in the constitution. It is derived from the Article 19 (1) (a). That is to say, it is implicitly imbibed within the constitutional framework. However, judiciary in several landmark cases has expressly held RTI as natural concomitant of Article 19 (1) (a). Let us now see some important cases which raised RTI to the status of a constitutional right because of the juristic interpretation of the learned judges. Judicial activism has carved the sculpture out of Article 19 (1) (a) - which is the bedrock of democracy. Upon a thorough analysis it can be safely stated that direction towards the realization of RTI within the constitutional ambit incepted right from the verdict in *Hamdard Dawakhana v. Union of India*<sup>17</sup>. Supreme Court for the first time declared RTI to be part of Article 19 (1) (a) in *Bennett Coleman v. Union of India*<sup>18</sup>, where it held Newsprint Control Order of 1972-1973 issued under the Essential Commodities Act, 1955 to be ultra virus Article 19 (1) (a) of the constitution. Ray, CJ in the majority judgment opined that, "It is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of press embodies the right of the people to read." Here what is referred as 'right of the people to read' refers to the right of the readers to get the information. In *Dinesh Trivedi v. Union of India*,<sup>19</sup> the apex court dealt with the right to information. Emphasizing the importance of this right, Court observed "*Democracy expects openness and openness is concomitant of a free society and the sunlight is the best disinfectant.*" In this Case, while considering the questions of the disclosure of the Vohra Committee Report the Supreme Court once again acknowledged the importance of open government in a participative democracy.

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<sup>16</sup> Protection of certain rights regarding freedom of speech, etc- (1) All citizens shall have the right (a) to freedom of speech and expression.

<sup>17</sup> AIR (1960) SC 554.

<sup>18</sup> AIR (1973) SC 106.

<sup>19</sup> AIR (1994) 4SCC 306,314

The court observed that, “In modern constitutional democracies, it is axiomatic that 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”. The strongest exposition in this regard came from Justice K. K. Mathew in *State of U. P. v. Raj Narain*<sup>20</sup> who emphasized that in “government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. 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.” The facts of this case were that Raj Narain who challenged the validity of Mrs. Gandhi's election required disclosure Blue Books which contained the tour program and security measures taken for the Prime Minister. Though the disclosure was not allowed, Mathew, J. held that the people of country were entitled to know the particulars of every public transaction in all its hearing.

The major breakthrough was attained in *S. P. Gupta v. Union of India*<sup>21</sup> when the apex court imparted constitutional status to RTI. The point of contention in this case was again with regards to the claim for privilege laid by the government of India in respect disclosure of certain documents including correspondence between Chief justice of India and the Chief Justice of Delhi High Court in connection with the confirmation of Justice Kumar who was an additional Judge of the Delhi High Court. Justice Bhagwati, in his case opined that the concept of open government stating it to be 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) of the Constitution. It was held by the learned Judge that, RTI or access to information is essential for an ideally successful democratic way of life. Hence, it is imperative that disclosure of information regarding the functioning of Government must be the rule and secrecy is justified only where the strictest requirement of public interest demands.

In *Sheela Barse v. Union of India*<sup>22</sup> the court issued directions for release of information to her relating to under trials kept in different parts of country. Point to be noted here is that such direction was not issued by invoking Article 19 (1) (a). Therefore, it can be inferred that a person having proper stand can seek information from the government. Similarly, the court was unequivocal of the importance of people's participation and upheld their right to know in *Pune Environmental case*<sup>23</sup>. Supreme Court in *Reliance Petrochemical Ltd. V. Indian Express Newspapers, Bombay Pvt. Ltd.*<sup>24</sup> Case made an illuminating observation: “We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the Industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broaden horizon of the right to live in this age on our land under article 21 of our Constitution. The right has reached new dimension and urgency.” Kavaljit Singh rightly observed that in the case of Bhopal gas tragedy, many lives could have been saved if citizens living near the plant site had been informed of how they can protect themselves by just putting a wet cloth over the nose any face against MIC gas. Furthermore, non-information related to the treatment of patients affected by the MIC led many more preventable deaths. Supreme Court further in a historic decision provided the voter's right to know the antecedents of the candidates<sup>25</sup>. Scope of Article 19(1) (a) was widened and it was affirmed that the right to know of the candidate contesting election to a House of Parliament or a state legislature or a panchayat or a municipal corporation is a pre- condition to the exercise of a citizen's right to vote. Thus people have a constitutional right to know the antecedents of the candidates contesting election for a post which is utmost importance in democracy. Later Government brought an ordinance followed by an Act to nullify effects of the judgment. The Act was declared unconstitutional by the Supreme Court in *People's Union of Civil Liberties v. Union of India*<sup>26</sup>.

<sup>20</sup> AIR (1975) SC 885.

<sup>21</sup> AIR (1982) SC 149,

<sup>22</sup> AIR (1986) SC 1773.

<sup>23</sup> *Bombay Environmental Action Group v. Pune Cantonment Board*, SLP (Civil) 11291/1986 (13th October, 1986), unreported, but reproduced in A. Rosencranz. *Environmental Law and Policy in India, Cases, Materials and Statutes*, p.149 (Tripathi Publication, Bombay, 1991) cited in Avinash Sharma, "Right to Information: A Constitutional Perspective", *Nyaya deep*, Vol. VIII, Issue 3.

<sup>24</sup> AIR (1989) 190, (1988) SCR Supl.(3) 212

<sup>25</sup> *U.O.I. v. Association for Democratic Reforms*, AIR (2002) SC 2112.

<sup>26</sup> (2002) 5 SCC 399

An important observation was made by the court that “*the fundamental rights enshrined in the Constitution... have no fixed contents. From time to time, this court has filled in the skeleton with soul and blood and made it vibrant.*”

Freedom of speech and expression and its relation with RTI has been vividly described by the apex court in *Secretary, Ministry of I & B, Government of India v. Cricket Association of Bengal*<sup>27</sup> in the following words: “The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates on moral and social issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy.” In this case the Supreme Court made it clear that the right to acquire information and to disseminate it is included in Article 19 (1) (a) of the Constitution. Right to information is only vehicle of political discourse also essential to democracy. This right has various shades in the context of democracy. Voters right to know antecedents of contesting candidates is also a facet of Article 19 (1) (a) of the Constitution. In this case the right to impart and receive information from electronic media was included in freedom of speech. So by this way, the Judiciary has by interpretative craftsmanship evolved the right to information as a fundamental right.

By this way we can analyze the judicial decisions which have played a major role in granting RTI constitutional status via interpretation of Article 19 (1) (a) and assimilation of the spirit with which framers of the Constitution dedicated it to the people of India. Democracy thrives on RTI which is the foundation of democracy. The same is aptly echoed in the words of apex court as; 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 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 make democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchy organizations. This is particularly so in a country where a large bulk of the population is illiterate<sup>28</sup>.

### **Other Relevant Provisions Facilitating RTI in Constitution**

RTI is not exclusively traceable in Article 19 (1) (a) only. There are some other provisions too, which in some or the other way provide right to access the information or to obtain the information to concerned persons. Article 22 (1) of the Constitution of India entitles every person who is detained to know the grounds of his or her detention. Similarly, Article 311 (2) of the Constitution provides that a government servant is entitled to know why he or she is being dismissed or removed or reduced in rank and to be given an opportunity to make representation against the proposed action. The horizon of RTI has expanded so much so that Supreme Court in a recent judgment has considered RTI to be the offshoot of Article 21 of the Constitution of India<sup>29</sup>.

### **Movement for Right to Information in India**

Paradoxes are galore in our system. But movements by the masses for a right to which they are entitled by the virtue of bring the part of democracy is a disturbing aspect. However it is true that, while the common public has been aware of the importance of RTI, those wielding the political clout have been reluctant in transforming the right into practical legal reality. It all began in 1990 when the Mazdoor Kisan Shakti Sangathan (MKSS), a collective of farmers and labourers, was formed in Devdungri, Rajasthan. Members of the collective were working for a state employment generation scheme, yet were being paid significantly less than the guaranteed minimum wage<sup>30</sup>.

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<sup>27</sup> (1995) 2 SCC 161

<sup>28</sup> People’s Union for civil liberties vs. Union of India, AIR (2003) SC 2363.

<sup>29</sup> Essar Oil Ltd. V, Halidar Utkarsha Samiti, AIR (2004) SC 1834.

<sup>30</sup> Tarunabh Khaitan, “Dismantling the walls of secrecy”, Front line, 44 (February 27, 2009).

This enticed them to demand their legal entitlement. In response they got an answer that the official documents are not consonant with the necessary work that ought to be done by them. Such official documents were wrapped in the walls of bureaucratic 'secrecy' unavailable even to the persons, to which they were related. However, some clues by the sympathetic officer indicated towards enormous anomalies. Tackling these discrepancies required some unique medium to sensitize the people directly and easily for this purpose; MKSS adopted the means of placing the disclosed information in the public domain through village based public hearing called as jan sunwais. With the beginning of the RTI entered with this movement, which made people realize that secrecy enabled corrupt officials to siphon off minimum wages and other entitlements of the poor. A movement demanding the RTI was thus born and its first champions were the disempowered rural workers in the remote rural area of Rajasthan.

Movements for RTI cannot be seen as isolated events. They are coextensive with a movement to make democracy real and functional. RTI was demanded as the right to work, the right to obtain famine relief, or the right to receive minimum wages. Secrecy and national interest were some excuses which, were heavily used by the power wielders to wrap information insulating it from reach of the masses. Corruption, therefore, was breeding prolifically in face of lack of accountability and an open government. Importance of open government was observed by Bhagwati, J, in the following words: "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."<sup>31</sup>

Due to the pressure of the grassroots movements as well as to satisfy the international obligations, some of the State Governments such as Goa, Tamil Nadu, Rajasthan, Delhi Maharashtra, Madhya Pradesh etc, introduced the Right to Information Act. With the growing demand for a right to public information from various groups of the society and public spirited persons, led by civil society organizations in these States could no longer be ignored. The need to enact a law on right to information was recognized unanimously by the Chief Ministers Conference on "Effective and Responsive Government", held on 24th May, 1997 at New Delhi. The Government of India, Department of Personnel decided to set- up a 'Working Group' (on the 'Right to Information and Promotion of Open and Transparent Government') in January 1997 under the chairmanship of Mr. H. D. Shouri, which submitted its comprehensive and detailed report and the draft Bill on Freedom of Information in May 1997. The Press Council of India, the Press Institute of India, the 'National Campaign for People's Right to Information' and the Forum for Right to Information unanimously submitted a resolution to the Government of India to amend the proposed Bill in February, 2000.

The Government of India introduced the Freedom of Information Bill, 2000 (Bill No.98 of 2000) in the Lok Sabha on 25th July, 2000. The Bill, which cast an obligation upon public authorities to furnish such information wherever asked for, was passed by the Parliament as the Freedom of Information (FOI) Act, 2002.

However, the Act could not be brought into force because the date from which the Act could come into force, was not notified in the Official Gazette.

National Advisory Council (NAC) was set up by the United Progressive Alliance (UPA) government which came at the centre in 2004. FOI Act was a very weak law and did not confer the deserving status of constitutional status to RTI. NAC recommended various changes to be incorporated in FOI Act. The central government decided to make changes which would make the Act more participatory and meaningful. But later on the government decided to repeal the FOI Act, and enacted a new legislation, the Right to Information Act, 2005, to provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India. The then Prime Minister of India, emphasizing on the importance of RTI in the governance of country, reflected the culmination of what was a sporadically vehement movement initiated by the otherwise disempowered masses. He said, *"Four years ago I said to you that an important challenge we face is the challenge of providing good governance. We have taken several steps to make Government transparent, efficient and responsive. The Right to Information Act was one major step. We have initiated reform and modernization of Government"*<sup>32</sup>.

<sup>31</sup> S. P. Gupta v. Union of India, AIR (1982) SC 149, p. 234.

<sup>32</sup> The then Prime Minister, Dr. Manmohan Singh, addressing the Nation from the ramparts of the Red Fort on the 62nd Independence Day.

## Conclusion

In *Maneka Gandhi vs. Union of India*,<sup>33</sup> Justice V. Krishna Iyar opined that “A government which functions secretly not only act against the democratic decency, but buried itself with its own burial.” In a democratic setup there must be direct participation of the people in the democracy. This participation is meaningless unless the citizens are well informed on all sides 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 citizenry which makes democracy a farce, When medium of information is monopolized either by a partisan central authority or by private individuals or oligarchic organizations. Therefore to avoid this monopoly the duty of the government is to give information to the people of the country because the government is the trust of the people. In this reference, Henry Clay rightly observed that “government is a trust and the officers of the government are trustees and both the trust and the trustees are created for the benefit of the people.” Every democracy requires an informed citizenry and transparency of information which are vital for its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed. For setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities and to promote transparency and accountability in the working of every public authorities RTI is intrinsic right. No democracy can be meaningful where their citizens cannot audit the performance of the government business, bureaucrats and the other functionaries who act on behalf of the state. In order to audit the performance of the government, the people have to be well informed of its policy, actions and failures. An informed citizenry is a pre requisite for genuine and participatory democracy.

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<sup>33</sup> AIR (1978) SC 597.