

The Role of Judiciary in the Creation of a “Right” To Information in India*

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Abstract—The Supreme Court in particular and the judiciary in general has contributed to the beneficial interpretation of the various rights guaranteed under the Constitution of India. It is rightly said that the right to information as now made available under the Right to Information Act, (RTI) 2005 is the result of favourable interpretation of legal regulation for the welfare of people and good governance of the country by the judiciary. While the weapon of secrecy was used by the executive in governance to defeat the rightful claims of the governed, the judiciary destroyed this weapon in favour of an open, democratic and welfare form of governance. Article 19 in the constitution of India can said to be the mother of the ‘right to know’ and article 19(1) (a) is the womb. In essence the right to information is a human right as declared by the UDHR, 1948.

Keywords---Article 19 (1) (a), Constitution of India, Right to Information, Supreme Court..

I. INTRODUCTION

JURISPRUDENTIALLY stating, a ‘right’ is a legally recognized and enforceable interest. The correlative of a right is a duty. In the context of right to information there is a constitutional obligation to provide information to the citizens when sought for. Until before the emergence of welfare state, there was a general lack of knowledge of ‘rights’. Written constitution and consequent promise of welfarism have given rise to the creation of several new kinds of right, hitherto, prohibited. A ‘right to information’ is a new species of the general rights of citizen, which when enforced, seeks to revolutionize the art of governance.

II. GOVERNANCE AND RIGHT TO INFORMATION

A democratic form of governance existence is by the people for the people. Government policies are directed towards welfare of the people. Under such circumstances the people who elect the government and for whose benefit the laws are enacted have an inherent right to know how these laws and welfare programmes are implemented. In short, people have to right to know how they are being governed.

The task of democratically governing India is set out in detail in the Constitution of India which was adopted by “We, the people of India” in the year 1950. A major task in the initial years of governing the country was to enact laws to

fulfill the promise of the Constitution mentioned in the preamble i.e. equality, justice and liberty. Successive parliaments have since then been enacting laws designed for the overall development of the nation and the citizen. But, soon it was realized that despite the best and honest efforts of the government, there was a general lack of progress as far as the individual citizen was concerned. There was evidence to suggest that lack of information and withholding of information by citing the Official Secrets Act had resulted in water down the promise of equality, justice and liberty. Further, corruption at all levels of governance has made the governing structure stink with buried rights of the people.

III. THE CONSTITUTION AND RIGHT TO INFORMATION

It is generally accepted that ‘information’ is the key to the success of a democratic society. The ‘right’ to have the information is empowering tool for a vigilant society. Stressing on the importance of right to information Justice V.R.Krishna Iyer, former judge of the Supreme Court of India, quotes from Rig Veda by stating, “from the Rig Veda downwards the Indian heritage has been an eclectic universality and cultural hospitality for creative ideas and educative information” [1] The Constitution of India in Article 19 (1) (a) lays down the basic structure for securing to the citizens of India the right to know. Liberty of thought is the basis of freedom of speech and expression under Article 19 (1) (a). In fact, Universal Declaration of Human Right, 1948 included freedom if expression and free flow of information as a Human Right essential in the pursuit of peace and progress.

Though it is Article 19 (1) (a) which empowers the citizen the right to receive information, it is Article 21 which secures to its citizen the right to life and personal liberty. Article 21 within itself includes within a variety of rights. Article 21 confers on all persons a right to know which include a right to receive information. The ambit and scope of Article 21 is much wider as compared to Article 19(1) (a) Thus, the courts are required to expand its scope by way of judicial activism. In *P.U.C.L v U.O.I* [2]JT 2003 (2) 528, the Supreme Court observed that Fundamental Rights themselves have no fixed contents, most of them are empty vessels into which each generation must pour its contents in the light of its experience.

IV. ROLE OF JUDICIARY IN THE CREATION OF “RIGHT” TO INFORMATION

There is no doubt that the judiciary in India, especially the

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Supreme Court of India, over the last several decades since the enactment of the Constitution, has contributed to the interpretation, creation and enforcement of several rights for the welfare of the citizens of India. Many landmark judgments have corrected the lapses of the legislature and the executive in India. The entire human rights jurisprudence in India is the contribution of the Supreme Court.

The creation of the 'right' by the Supreme Court may be traced back to its judgment in *State of U.P v Raj Narain* { (1975) 4 SCC 428}. In its judgment the court stated, "the right to know", which is derived from the concept of freedom of speech, though not absolute is a factor which should make one wary, when secrecy is claimed for transaction which can, at any rate, have no repercussion on public security." Further, it stated, "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries".

Thus, it was made clear by the court that a citizen has a right to receive information and that right is derived from the concept of freedom of speech and expression comprised in Article 19(1) (a).

The right to know was concretized by the Supreme Court in its decision in *S.P.Gupta v. Union of India* {1981} Suppl. SCC pg 87.} While dealing with the issue of High Court Judges' transfer, the Court observed, "The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19 (1) (a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy and exception..."

The emphasis on right to know was stated in the following words, "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 when people know how the government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory."

From the above it can be stated that, the link between the citizens' right to know and government accountability was firmly established.

In *R.P.Limited v Indian Express Newspapers* (AIR 1989 SC 190) the Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards global perspective in various fields including Human Rights, the expression "liberty" must receive an expanded meaning. The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that

opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. Article 21 confers on all persons a right to know which include a right to receive information. The ambit and scope of Article 21 is much wider as compared to Article 19(1) (a).

The following observations of the Supreme Court in *Dinesh Trivedi v. Union of India* {(1997) 4 SCC 306} are quite pertinent on the creation of the right to information, "In modern Constitutional democracies, it is axiomatic that the 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. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute." In this the proposition expressed in *Raj Narain's* case was quoted with approval.

The next decision which deserves reference is the case of *Secretary, Ministry of I & B v. Cricket Association of Bengal* {(1995) 2 SCC pg 161}. While dealing with issue of right to get an event telecast through an agency of his choice whether national or foreign, the court has said that, "The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19 (1) (a) of the Constitution. A citizen has fundamental right to use the best means of imparting and receive information and as such to have an access to telecasting for the purpose. However, this right to have an access to telecasting has limitations on account of the use of the public property..."

In another epoch making judgment the Supreme Court of Indian in the case of *Union of India v. Association for Democratic Reforms*,[3] case recognized that a voter has a right to know about the antecedents and past performance of the candidate at an election. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided, its result, if pending –whether charge has been framed or cognizance has been taken by the court. There is no necessity of suppressing the relevant facts from the voters.

It is relevant to mention here that the right to information evolved by the Court in the above discussed case is qualitatively different from the right to get information about public affairs. The right to information about a candidate an election cannot materialize without the Government's intervention.

V. SIGNIFICANCE OF RIGHT TO INFORMATION ACT, 2005

India's new Right to Information Act is the outcome of the consistent inroads made by the judiciary in India into the secrecy clause covering the layers of administration. The preamble of the law on Right of Information states that it sets out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. It has emerged as a powerful tool for India's civil society to promote

transparency and hold those in power accountable. Ordinary citizens have taken up their battle against government officials.

Various cases of corruption, nepotism, biased decision making have been exposed. As a result of the law, the government has come with various schemes and polices to keep the citizens informed about the various activities empowering citizen's participation in governance.

VI. CONCLUSION

From the above discussion of the various cases decided by the Supreme Court of India it may be concluded that the Judiciary has played a proactive role in the creation of 'right' to information which ultimately led the enactment of law titled Right to Information Act, 2005. In less than ten years of its existence the law has benefited the citizens in espousing their cause and exposing cases of mala-administration in governance.

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