

# The Fundamental Rights of Citizens pertaining to access to information.

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In recent times, the right of the citizens to obtain information from the Government in regard to the functioning of the government has come to the forefront in all democratic countries.

Today, in most of the countries of the world, there are democratic forms of Government and people have rejected the monarchy or the King's rule. It was possible in the rule of monarchies that people could not know why they were being governed in the way they were. There has been a prerogative right of the King to prevent the disclosure of state secrets or even of "preventive the escape of inconvenient intelligence regarding intrigues of public servants." Even in India, there was a secrecy in the governance prior to independence by the Official Secret Act. The first of such Act was enacted by the Britishers in 1889 which was replaced by another Official Secret Act in 1923. This Official Secret Act has not been repealed even after the enactment of Right to Information Act. Only overriding effect has been given to Right to Information Act, 2005 over the inconsistent provisions of the Official Secret Act, 1923. The Right to Information Act, 2005 was enacted in India because of Article-19 of the Universal Declaration of Human Rights, 1948. It was reiterated in Article-19 of the International

Covenant on Civil and Political Rights (ratified in 1978) which provides the Right to Freedom of opinion and expression without interference and to obtain and impart information and ideas through any media and regardless of frontiers.

The importance accorded to Freedom of Information internationally can be gauged from the fact that the United Nations General Assembly, in its very first session in 1946, adopted Resolution 59 (I), which states:

“Freedom of Information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated.”

Article-19 of the ‘Universal Declaration of Human Rights’, a United Nations General Assembly Resolution 217 (III) A of 1948, has laid out equal rights for all people and three fundamental principles governing human rights: these rights are “universal”, meaning that rights apply to everyone whoever or wherever that person is, “inalienable”, in that they precede state authority and are based on the “humanity” of the people; and indivisible in that all rights are of equal importance. The Declaration recognizes Freedom of Expression- including Freedom of Information and Free Press- a fundamental human right. Freedom of Expression includes the right to seek, receive impart information and right to access information held by public authorities.

Article-19 (2) of the ‘International Covenant on Civil and Political Rights’, a United Nations General Assembly Resolution 2200A (XXI) of 1966 states:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

A similar right of the public to be informed and of the free press to inform the public is guaranteed by Article-10 of the declaration of European Convention of Human Rights, 1950.

After the independence, Indian Constitution was enacted and enforced on the 26<sup>th</sup> of January, 1950. There is a separate chapter of The Fundamental Rights in the Indian Constitution. Article-19 (1) (g) of the Constitution of India provides the fundamental right to freedom of speech and expression. The right to receive information may be deduced as a counterpart of the right to *impart* information, which is an ingredient of the freedom of expression guaranteed by Art. 19 (1) (a). In this fundamental right, the right to receive information was implicit. I say so, on the basis that without receiving the information about the act and conduct of public servants, it was not possible to develop an express and well considered opinion on any matter.

Secrecy can be defended in monarchic rule, but it is not acceptable in a sovereign democracy where there is a government of the people and the rulers are merely the people's representative. In this reference, I may refer the views expressed by James Madison, the fourth president of The United States, which I quote, "A popular government without a popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own governors, must arm themselves with the power which knowledge gives."

In Indian Constitution, State means- the Legislature, the Executive and the Judiciary. Legislature consists of elected politicians who govern the state, the executive consists of elected politicians and the bureaucrats who administer the state and the Judges judge everything in the state because of the different provisions in the Indian Constitution. Therefore, the people of India have a right to know whether these public servants are acting in accordance with the Constitution and how well they are using or are determining the use of the people money and resources to run a country. In the democratic system, people cannot be denied the right to participate in deciding the policies which will ultimately determine their rights and obligations. After independence in India, the elected politicians liked the practices discharged by their erstwhile British rulers by maintaining secrecy and

not disclosing the reasons behind their acts and functions. That is why, at the time of drafting Constitution, the drafters had the foresight to include several fundamental rights which were guaranteed against encroachment by the State and its agencies, including the Right to Equality, Right to Life, Right to freedom of expression. Political democracy, the foundation of which is free election based on appeal to reason, cannot function in a society where there is no freedom of speech. It is thus indispensable for the operation of the democratic system, which is based on “free debate and open discussion for that is the only corrective of government action,” and which envisages changes in the composition of legislatures and governments. However, that the freedom of speech and expression includes the liberty to express to propagate one’s own views only. It also includes the right to propagate or publish the views of *other* people; otherwise this freedom could not have included freedom of the press which is obviously included in it.

As I said earlier, the right to freedom of expression cannot be exercised without obtaining the entire information.

In a democratic country, the elected government is accountable to the people who elect them to rule every after five years. Therefore, I say that all the agents of the public must be responsible and accountable for their conduct. Where, there is a democracy and the state is run by elected representatives, the people 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 the every public transaction in all its bearing.

There is a historic judgement of the Indian Supreme Court in 1975 in which one of the hon'ble judge found the right to know in the fundamental right of freedom of speech guaranteed under the Indian Constitution. But, at the same time hon'ble court clarified that the right was not absolute and was subject to consideration of public security.

This fundamental right to know about the conduct and actions of the public servants is such a right which is found to be a safeguard against oppression and corruption. Indian Supreme Court has expressed this view that the responsibility of the official to explain and to justify their acts, is the chief safeguard against oppression and corruption.

Indian courts had taken a step further and have said that besides the fundamental right of expression which implicit the people's right to know, there is another fundamental right included in the Indian Constitution is the right to life itself and the right to know is the part of this right.

I may remind that International Covenant on Civil Political Rights mandates that everyone shall have right to receive the information for which I may refer Article-40 and 49 of International

Covenant on Civil and Political Rights. The member countries to these covenant had undertaken to take measures to give effect to all the rights including the right to information.

Now-a-days corruption is a world-wide problem and it is a subject-matter of inquiry and investigation by Lokpal/ Lokayukta/ Ombudsman or Vigilance Commissioner or Anti-Corruption Organization and people have started demanding corruption-free service as a fundamental right. This demand of fundamental right as a corruption-free service can be granted only if the right to information is guaranteed as a fundamental right in each and every country of the world. In the absence of the right to information as a fundamental right even the media is unable to expose cases of misuse of resources and corruption by public functionaries. That is why in most of the countries; it was considered necessary that there should be a separate institution to give recognition of a legal right to information and to ensure that people do not have to go court every time they want to exercise a constitutional right.

The public servants are the depositories of public trust. The public must be informed if the trust is breached. The people of the country have the right to know every public act and everything that is done in a public way by the public functionaries.

The right to information is a facet of and underlies all fundamental rights whether it be equality, liberty or any of the seven freedoms guaranteed to the citizens under either the Indian Constitution or any other Constitution of any other country because it can act as check against the misuse of power by those who are constitutionally bound to ensure the realization of those rights. In order to eradicate corruption, it is now for the public to be alert and watchful of their right to such information and compel disclosure because ultimately it is for them to use this weapon against all public functionaries to fix their accountability.

(Justice N.K. Mehrotra)