

Nature of right to information: Constitutional, statutory or legal

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Abstract

Right to information is inherent in Fundamental Right. Supreme Court in many cases interpret Right to Information and reasonable restriction on such right. Today most of democratic country prefer ‘Open Government’ i.e. Transparent. So they implement Open Data available not only to it’s citizen but to any person. RTI implemented in India to reduce corruption, but when a application filed with Government Authority then he always been under dilemma that whether such information is under exception or not, Supreme Court in it’s landmark cases explain how independent decision making is important for transparency. This paper is humble attempt to find nature of right to information.

Keywords: RTI, constitutional rights, statutory right, fundamental right, legal right

1. Introduction

Indian Constitution is best in world, and has all unique element from different constitution in the world. Indian constitution makers made it in such a way that one can creatively interpret it and he will definitely finds a way out from a situation. Right information was recognized by the Supreme Court as a fundamental right under Article 19 (1) (a) of the Constitution. Indian Apex court in many cases recognized that Right to know is a basic right which citizen

of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. Through this ACT citizen can ask any information except some restriction mentioned in the Act form any government authority. So this Act directly put some pressure on government department to maintain transparency in day to day transaction which ultimately reduce corruption.

2. RTI - Constitution and Fundamental Right

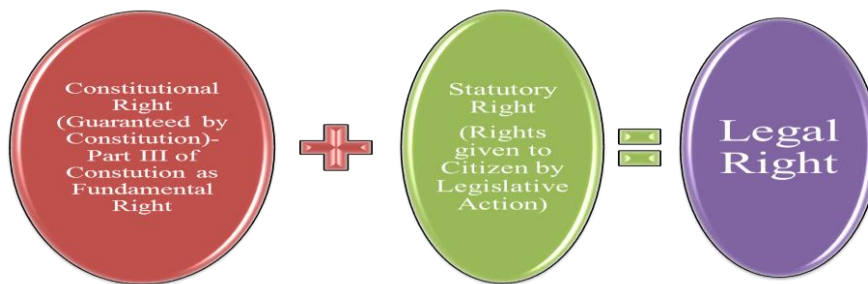


Fig 1

The Constitution guarantees the fundamental right and also guarantees six freedoms to all the citizens. Some Fundamental rights are guaranteed to all persons whether citizens or not.

Our Constitution in unique in a way which provide Some rights in such a way that state while governing through its power have to provide to citizen by making proper policy. Such rights are under the Directive Principle of State policy. These directives are meant to social and economic transformation of the country. Some Directive Principles of State Policy have been interpreted by the judiciary in the form of fundamental rights e.g. the right to education under Article 21 ^[1]. This led to the 86th Constitutional Amendment

by inserting Article 21-A of the Constitution which says that it is fundamental right of all children of age six to fourteen to get free education and state shall provide free and compulsory education, this amendment also amend article 51 Fundamental Duty by inserting Article 51-A(k) on every parents or guardian to provide opportunity to his child between age of six and fourteen years.

The fundamental rights, Directive Principle of the state policy and Fundamental Duties to be implemented required a vigilant citizen. Unless the citizenry is well informed of their rights, duties and the administrative actions and the policies, the fundamental rights cannot be asserted. Directive Principles cannot become the basis of social and economic transformation.

¹ Mohini jain vs. State of Karnataka, AIR 1992 Sc 1858

Unless the citizens are educated and informed, they cannot properly utilize right to information. Constitution of India the right to information has not been guaranteed. But first of all, in *Bennett Coleman and Co. v. Union of India* ^[2], the right information was recognized by the Supreme Court as a fundamental right under Article 19 (1) (a) of the Constitution. Honourable Justice Sabyasachi Mukherji in *Reliance Petrochemicals Ltd. V. Proprietors of Indian Express Newspapers Bombay Ltd. & Others* ^[3] held the right to information as a fundamental right under Article 21 of the Constitution. He observed:-

“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 citizen of a free country aspire in the broader horizon of the right to live in this age in our land under Article 21 of our Constitution. That right has reached new dimension and urgency. That right puts greater responsibility upon those who take part themselves in the responsibility to inform.”

Table 1: Following are the some specific Article of Constitution providing right to information

Article	Contents of Provision
Article 22(1).	Arrested person cannot be detained in custody without being informed . This article is for the detained person’s basic fundamental right to be informed.
Article 22 (3)	this provision is same as restriction provided in RTI act, according to this article Provision of Article 22(1) shall not apply to- (a) enemy alien or (b) to any person arrested under any law for preventive detention
Article 311.	Constitution of Indian also provides that government officer cannot be dismissed or removed or reduced to lower rank without conducting proper inquiry in which he was informed for charges against him. So through this article Constitution also provide such mechanism for government employee to be informed while facing departmental charges.
Article 14 and 21.	Article 14 of the Constitution which contains equality before law clause and Article 21 of the Constitution which provides fundamental right of protection of life and personal liberty except according to procedure established by law. Thus these both article put restriction on arbitrariness. The Supreme Court in <i>Maneka Gandhi v. Union of India</i> , ^[4] case observed that the law must be just, fair and reasonable. The decisions of all the authorities including administrative must be reasoned. ^[5] If the reason is not communicated to the person affected, the Court has power to summon the record and scrutinize the reasons when they have been recorded.

The Constitution make the provision of taking oath by the President, ^[6] Vice-President, ^[7] Prime Minister and other Ministers, ^[8] the Governors of the States, ^[9] the Chief

² AIR 1973 SC 106.

³ AIR 1989 SC 190.

⁴ AIR 1978 SC 597.

⁵ A.K. Kraipak v. Union of India, AIR 1970 SC 150; Ridge Brod win, (1964) AC 40.

⁶ Article 60 of Indian Constitution

⁷ Article 69 of Indian Constitution

⁸ Article 75(4), Form set out in Third Schedule, of Indian Constitution

⁹ Article 159 of Indian Constitution

Minister and other Ministers, ^[10] Members of the Parliament ^[11], and State Legislature, ^[12] Judges of the Supreme Court ^[13] and High Courts before entering upon their offices. ^[14] The oath is taken by the Ministers of the Union and the ministers for the State for loyalty to the Constitution and for not communication. The President, Vice-President, Judges of the Supreme Court and High Court and Members of Parliament and State Legislatures take oath for loyalty to the Constitution and upholding the sovereignty and integrity of India.

3. RTI a constitutional right or a legal right

Its classification as constitutional/legal/fundamental can be judged by the way it is refer to.

As per Article 19(1), if information is asked as desire to speak or express. It will come under the scope of fundamental right: “Right to freedom of speech and expression”.

Supreme Court has stated in judgement in *Menaka Case* that Right to information can also be adduced through a fundamental right stated in Article 21 (“ Right to life and personal Liberty”). If the information which is asked is about to protect one’s Right to Life and Liberty for example- Information asked by accused from the inspector about details of his FIR and charges in it.

As the above right is already given under constitution but the Parliament passed Right to Information Act, 2005. This act makes the clear provision regarding to one’s life and liberty, and say that a person who is asking the information have nothing to do with his desire to speak or express or to access his right to life but he can asked such information as his legal right.

Section 3 of the Act provides that all citizens on India shall have right to information, but this right is not absolute it is subject to the provision of this Act.

The concept of liberty which is inherently include free speech and sharing of information by sovereign authority among its people. Sovereignty involves the legitimacy of a governmental action. Sharing of information by public authority means intimate correlation between the functioning of the Government and common man’s knowledge of such functioning.

On the emerging concept of an ‘open government’ the Constitution Bench of Supreme Court in ‘*State of UP V. Raj Narain*’ – AIR 1975 SC 865 held that the people of this country have a right to know every public act done by public authority, everything, that is done by public authority in a public way. Citizens are entitled to know the particulars of every public transaction except excluded in strict public interest or national security. The right to know concept is derived from freedom of speech. Though right to know is not absolute but this right should be adhere in every public act when secrecy in public act should be always avoided in every case having no repercussion on public authority.

In ‘*S.P Gupta V. President of India*’ –AIR 1982 SC 149 the Supreme Court Constitution Bench held that the concept of an open government is the direct emanation from the right to know which seems to be inherent in the right of free speech and expression guaranteed under Article 19(1)(a).

¹⁰ Article 164(3), Form set out in Third Schedule, of Indian Constitution

¹¹ Article 99 of Indian Constitution

¹² Article 188. Form set out in Third Schedule of Indian Constitution

¹³ Article 124(6) of Indian Constitution

¹⁴ Article 219 of Indian Constitution

Therefore all the information under the public authority while performing his duties, except where public interest or national security involved, should be disclose. From the above judgment it can be inferred that the right to information is basically founded on the right to know which is an internal part of the Art.19 (1) (a) of the Constitution.

Honourable Supreme Court in the case *Reliance Petrochemicals Limited Vs. Properties of Indian Express Newspapers Bombay (P) Limitd* ^[15] that the right to information is a fundamental right under Art. 21 of the Constitution. It was further held that we must remember that the people at large have a right to know in order to able to take part in participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country arise in the larger scope of the right to live in this age in our land under Article 21 of the Constitution. That right has reached new dimension and urgency. That right puts greater responsibility upon the person who is in power to control the information and have responsibility to inform.

In its landmark judgement of ‘Secretary, Ministry of Information and Broadcasting, Government of India V. Cricket Association of Bengal’ ^[16] the Supreme Court held that right to acquire information and to disseminate it is an inherent component of freedom of speech and expression.

In ‘People’s Union for Civil Liberties V. Union of India’ ^[17] the Supreme Court held that right to information is a facet of the right to freedom of speech and expression as contained in Article 19(1)(a) of the Constitution of India. It was also held that right to information is absolutely a fundamental right.

Supreme Court in this case also clarified that the origin of the right to information was form the Universal Declaration of Human Rights, 1948 and also Article 19 of the International Covenant on Civil and Political Rights and European Convention on Human Rights also have provision for freedom of information as contained in our Constitution. The preamble to the Right to Information Act shows that the Act was enacted to promote transparency and accountability in the working of every public authority in order to strengthen the core constitutional values of a democratic public. While passing Right to Information Act in India the law makers actually wanted to make Indian Citizen informed by making government decision transparent and end result thought was reduction in corruption. By enacting this Act Government plays duel role, where at one side it has to disseminate required information to the person seeking information and at one side it has to preserve confidential and sensitive information. So RTI Act makes fine balance between transparency and confidentiality. But in so many cases Government also misuses exemption section and not provide required information but it give only after the court intervention.

While interpreting exception provision of RTI Act Hon. Supreme Court in many cases told that right to information is such a right which is subject to reasonable restriction under Art. 19(2) of the Constitution. Out of many cases one Landmark case before SC was *Dinesh Trivedi, M.P., V. Union of India* ^[18]. In this case SC explain what if right and what is not, by saying that disclosure of information must be

in ordinary rule and secrecy must be exception. While explaining SC give example of sunlight as disinfectant but it is also important to alive for future danger and protect from sunlight. Court also comment on the decision making process in government and told that it is important to realize there is undue pressure brought on decision maker in Government can have alarming side effect. So we have to understand if every action taken by government officer converted into public controversy and to mitigate public servant have to face enquiry, ultimately it will affect independent decision making process done by government office by not taking any decision. Court also says that this type of gesture will paralyze the entire system. To mitigate such situation court told that we have to make fine balance which ultimately protect public interest.

4. Conclusion

Supreme Court in many landmark case reiterated that right to information is fundamental right, but with the reasonable restriction as mentioned in the Law. So we can say that RTI is basically combination of Constitutional and Statutory Right. That means Right to information is Legal Right and one can use it as described in the Law and Public Authority can restrict such right as per provision of Law.

5. References

1. Mohini jain vs. State of Karnataka, AIR 1992 Sc 1858
2. AIR 1973 SC 106.
3. AIR 1989 SC 190.
4. AIR 1978 SC 597.
5. A.K. Kraipak v. Union of India, AIR 1970 SC 150
6. (1988) 4 SCC 592.
7. (1995) 2 SCC 161.
8. (2004) 2 SCC 476.
9. (1997) 4 SCC 306.
10. Article 60 of Indian Constitution.
11. Article 69 of Indian Constitution.
12. Article 75(4), Form set out in Third Schedule, of Indian Constitution.
13. Article 159 of Indian Constitution.
14. Article 164(3), Form set out in Third Schedule, of Indian Constitution.
15. Article 99 of Indian Constitution.
16. Article 188. Form set out in Third Schedule of Indian Constitution.
17. Article 124(6) of Indian Constitution.
18. Article 219 of Indian Constitution.

¹⁵ (1988) 4 SCC 592

¹⁶ (1995) 2 SCC 161

¹⁷ (2004) 2 SCC 476

¹⁸ (1997) 4 SCC 306