

UNIT-2

MOVEMENT OF RIGHT TO INFORMATION IN INDIA

STRUCTURE

2.1 INTRODUCTION

2.2 OBJECTIVES

2.3 SUBJECT

2.3.1 Constitutional Perspective

2.3.1.1 Preamble

2.3.1.2 Freedom of Speech and right to know

2.3.1.3 Right to know vis-à-vis Right to privacy

2.3.2 Judicial Approach

2.3.3 Statutory Enactments

2.3.3.1 Indian Contract Act, 1872

2.3.3.2 Transfer of Property Act, 1882

2.3.3.3 The Code of Civil Procedure, 1908

2.3.3.4 Official Secrets Act, 1923

2.3.3.5 The Representation of Peoples Act, 1951

2.3.3.6 Atomic Energy Act, 1952

2.3.3.7 Commission of Inquiries Act, 1952

2.3.3.8 Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954

2.3.3.9 The Code of Criminal Procedure, 1973

2.3.3.10 The Urban Land (Ceiling and Regulation) Act, 1976

2.3.3.11 The Consumer Protection Act , 1986

2.3.3.12 The Competition Act, 2002

2.3.3.13 SEBI Rules

2.3.3.14 Intellectual Property Law

2.3.3.15 The Companies Act, 2013

2.3.4 Right to Information Movement

2.3.5 Efforts of the State Governments

2.3.6 Evolution of Information Law

2.4 SUMMARY

2.5 SAQS

2.6 REFERENCES

2.7 SUGGESTED READINGS

2.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

2.9 ANSWERS

2.1 INTRODUCTION

The evolution of the concept of right to information is a transition from an era of secrecy to that of transparency and accountability. The democratic form of government cannot thrive in secrecy. Democracy flourishes by sharing the information held by the government with the people. Further the new scientific developments in the area of communication has opened new avenues for the quick and easy exchange of information at every level. The evolution of right to information can be studied under different heads.

2.2 OBJECTIVES

After reading this unit you will be able to:

- Know the Constitutional provisions on right to information.
- Describe legislative provisions protecting right to information
- Learn the basis of codification of law on right to information
- Understand formation and repeal of central laws on right to information.

2.3 SUBJECT

2.3.1 Constitutional Perspective

The Constitution of India contains certain provisions that were interpreted by the courts as guaranting right to information to the citizens.

2.3.1.1 Preamble

The Preamble of the Constitution expresses gist of the intention of constituent Assembly. While interpreting any provision of the Constitution, the Preamble must form a part

of it. In *Sahal Papers(P) Ltd. v. Union of India*, AIR 1962 SC 305 the Constitutional Bench of the Supreme Court held that freedom of speech and expression of opinion is important under democratic constitution which envisages changes in composition of legislatures and governments and must be preserved.

2.3.1.2 Freedom of Speech and right to know

Right to information is an integral part of freedom of speech and expression under Article 19(1). All citizens of India have a right to freedom of speech and expression. This right is not absolute. Clause 2 of Article 19 imposes limitation on the freedom of speech and expression. It empowers the State to place reasonable restrictions on the exercise of the right conferred by Article 19(1) in the interest of the sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

2.3.1.3 Right to know vis-à-vis Right to privacy

Right to privacy is not expressly guaranteed under the Constitution of India. However right to privacy has been held to be an integral part of Article 21 of Constitution of India. Privacy of information is important to understand. As far as the right to information is concerned, it deals with the information which is held by the public authorities and which, if disclosed, may either defame the person to whom it is related or hamper judicial process or government security.

Generally there will be a conflict between right to know and right to privacy when information is of the nature of trust relationship like medical professional and patient, research institutes and sponsors or information is held by public authority in fiduciary relationship like election commission, passport office, employer etc.

2.3.2 Judicial Approach

Up to 1973 the cases before Supreme Court like *Ramesh Thappar v. State of Madras*, AIR 1950 SC 124, *Express Newspaper (P) Ltd. v Union of India*, AIR 1958 SC 578, *Bennett Coleman and Co. Ltd. v. Union of India*, AIR 1973 SC 106 related to the freedom of press. In 1975, for the first time, the Supreme Court a question was raised before the Apex Court regarding disclosure of information of functioning of government officials.

The five member bench of Supreme Court in *State of U.P v Raj Narain* AIR 1975 SC 865 delivered a judgment by ratio 4:1 declaring that in a government of responsibility, all agents of public must be responsible for their conduct. However there can be a few secrets. Thereafter in *S.P.Gupta v. Union of India*, AIR 1975 SC 865, the Supreme Court held that the right to know is implicit right in right of freedom of speech and expression under Article 19(1). The disclosure of information regarding functioning of the Government must be the rule and secrecy an exception.

2.3.3 Statutory Enactments

Some statutory enactments apart from the Right to Information Act, 2005 provided implicitly for the right to information to the concerned parties. These enactments are discussed as under:

2.3.3.1 Indian Contract Act, 1872

The parties to a contract are under an obligation to person(s) with whom they enter into contractual relationship to exchange substantial information about the subject matter of the contract. Suppression of substantial information by any of the parties amounts to breach of contract on the ground that the consent was not free. Similarly under Sale of Goods Act, 1930 a seller must disclose all such faults or defects in the goods that he is selling which could not be discovered by the buyer with due diligence. (Section 16)

2.3.3.2 Transfer of Property Act, 1882

Seller is under an obligation to disclose any material defect in property to buyer which the buyer could not discover with ordinary diligence and also produce all relevant documents related to property on the request of buyer. (Section 55(1)) Similarly the buyer is bound to disclose to seller any fact regarding nature and extent of seller's interest in property which materially increases the value of the property and of which the buyer is aware but of which he has reasons to believe that the seller is not aware. (Section 55(5)) Further a lessee is bound to disclose to the lessor any fact regarding the nature and extent of the interest which materially increases the value of such interest and about which the lessee and not lessor is aware. (Section 108(k))

2.3.3.3 The Code of Civil Procedure, 1908

Order XI, Rules 11 to 15 contain provisions related to disclosure of documents and information under "Discovery and Inspection".

2.3.3.4 Official Secrets Act, 1923

Section 8 casts a duty on every person to provide information to Superintendent of Police, or any other police officer empowered by an Inspector-General or Commissioner of Police, or to any member of the Armed Forces of the Union engaged on guard any information held by him relating to an offence or suspected offence. If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to three years or with fine, or with both.

If any person is having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of this Act or which has been entrusted in confidence to him by any person holding office under Government or which he has obtained or had access owing to his position as a person who holds or has held office

under Government he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.(Section 5).

2.3.3.5 The Representation of Peoples Act, 1951

This Act makes provision for providing information about the candidates to the electorate. Section 33 A states that apart from the information required to be furnished by the candidate under The Representation of Peoples Act, 1951 or any rule made under it, the candidate shall provide information in his nomination papers as to whether:

- i. he is accused of an offence punishable with imprisonment for two years or more in a case pending before a court and where charges have been framed by a court of competent jurisdiction;
- ii. he has been convicted of an offence and sentenced to imprisonment for one year or more.

The candidate or his proposer shall also deliver an affidavit sworn by the candidate to the returning officer verifying the information stated above. The above stated information shall, thereafter, be affixed by the returning officer at conspicuous place in his office for information of the electors.

2.3.3.6 Atomic Energy Act, 1952

The Act provides that the Central Government may restrict the disclosure of information in the form of information contained in the form of document, sketches, photographs, plan model, drawings micro-chips etc.(Section 18) The validity of this provision was challenged in People's Union for Civil Liberties v Union of India AIR 2004 SC 1442. The Apex Court held that restrictions on disclosure of information under Section 18 of the Atomic Energy Act, 1952 were reasonable and in the interest of the national security.

2.3.3.7 Commission of Inquiries Act, 1952

The Central Government or the State Government is empowered to appoint a Commission of Inquiry to enquire into any matter of public interest. (Section 5(5)). The report of the Commission should be laid before the Parliament or State Legislature within six months from the date of its submission. This provision was amended in 1986 to provide that the report of the Commission shall not be laid before the Parliament or State Legislature, if the Commission is satisfied that it is not in the interest of sovereignty and integrity of India, the security of State or friendly relations with foreign states or in public interest. However the amendment in 1990 repealed this provision with retrospective effect.

2.3.3.8 Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954

The Act prohibits the advertisement of certain drugs for the treatment of certain diseases and disorders as they may be injurious to human health(Section 3). The misleading advertisements regarding certain specified drugs and of drugs claiming magic remedies is also

prohibited. Any false, defective or misinformation or misstatement in advertisement regarding effect of the drug etc. is punishable under the Act.(Section 3)

2.3.3.9 The Code of Criminal Procedure, 1973

The Code of Criminal Procedure prescribes the procedure of trial of criminal cases. It contains some provisions related to right to information to a person accused of having committed an offence under Indian Penal Code or any other penal law in force in India. Section 50 provides that a n arrested person has the right to know the grounds of his arrest and also of being told that he has a right to seek bail. Section 50 A casts an obligation on the police officer or a person making arrest to inform the friend, relative or any other person nominated by arrested person to be told about the arrest of the person, grounds of arrest and place where the arrested person is being kept. The particulars of the person so informed shall be entered into record the police officer. Section 207 requires the police to supply to the accused, the copy of the police report and other relevant documents. Section 208 makes it mandatory for the police to supply the copies of statements and documents to the accused where the case is not instituted on police report and the case is triable by the Court of Session. Section 211-213 contains provisions regarding providing the information of the charges which he has to face in his trial.

2.3.3.10 The Urban Land (Ceiling and Regulation) Act, 1976

Section 6 of the Act provides that every person must furnish information regarding the land owned by him in an urban area. The Government has the power to seek and collect information from industrial and commercial enterprises regarding the matters pertaining to labour welfare schemes, environmental safety or industrial safety measures and compliance of mandatory industrial rules and regulations etc.

2.3.3.11 The Consumer Protection Act, 1986

A consumer has a right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect him against trade unfair trade practices.(Section 6(b))

2.3.3.12 The Competition Act, 2002

The Act provides for restriction on disclosure of information which has been obtained by or on behalf of the Commission or the Appellate Tribunal relating to any enterprise, without the previous permission in writing of the enterprise, otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.(Section 57)

2.3.3.13 SEBI Rules

The Securities and Exchange Board of India issued guidelines in 2000.As per these guidelines the equity shares and mutual fund schemes and plans should be duly advertised for information of public so as to caution the prospective investor that the value of such shares and units is subject to market fluctuations.

2.3.3.14 Intellectual Property Law

Section 84 of Protection of Plant Varieties and Farmers Act, 2001 provides that a person may obtain information in the form of a certified copy of an entry in the Register or any other document on payment of prescribed fee. Section 87 of the Semi Conductor Integrated Circuits Layout Designs Act, 2000 and Section 148 of the Trade marks Act, 1999 make a provision of making the document available for public inspection on payment of requisite fee. Similarly Section 18 of the Designs Act, 2000 requires the disclosure of information regarding existence of copyright. The Geographical Indications of Goods(Registration and Protection) Act, 1999 contains provisions for the inspection of documents and access of information to the public.

2.3.3.15 The Companies Act, 2013

This Act makes it mandatory for the incorporated companies to give information to its shareholders on certain matters through prospectus. Failure to provide information or providing false information incurs civil as well as criminal liability.(Section 34 and 35) The Company must make the copies of memorandum and articles available to the members for their knowledge and information.(Section 17)All incorporated companies are required to publish the reports of its proceedings of Annual and General Meetings(Section 18)Where a Company has passed a resolution for its voluntary winding up , it must furnish the resolution so passed for the information of creditors and contributories(Section 307)The Declaration of solvency has also to be published for the information of all concerned when it is being wound up due to its insolvency(Section 305). The creditors and contributories have a right to inspection of books and accounts etc. in case of winding up of a company(Section 346).The Central Government has the power to direct companies to furnish information, record or statistics etc.(Section 405)

2.3.4 Right to Information Movement

In early 1990s, the Right to Information movement was initiated by Aruna Roy in Rajasthan. The Mazdoor Kisan Shakti Sangathan successfully put an end to local [corruption](#) by accessing and using information.

A people's movement in a small dusty town in Rajasthan called Beawar, was started to fight against corruption. This dharna went on for 44 days and ultimately resulted in the Right to Information Act in 2005, which now allows every citizen to get information and access government records.

2.3.5 Efforts of the State Governments

Much before the Central Government, it were the governments in as many as eleven states that took the initiative to enact the Right to Information Act. The following Acts were passed by the States:

The Tamil Nadu Right to Information Act, 1997

The Goa Right to Information Act, 1997

The Karnataka Right to Information Act, 2000

The Andhra Pradesh Right to Information Act, 2001

The Assam Right to Information Act, 2001

The Delhi Right to Information Act, 2001

The Kerala Right to Information Act, 2002

The Orissa Right to Information Act, 2002

The Madhya Pradesh Right to Information Act, 2003

The Maharashtra Right to Information Act, 2003

The Jammu and Kashmir Right to Information Act, 2004

2.3.6 Evolution of Information Law

The Government of India set-up a 'Working Group' on the 'Right to Information and Promotion of Open and Transparent Government' in January 1997. It was headed by Mr. H. D. Shourie. The working group submitted its report and the draft Bill on Freedom of Information in May 1997. The various Ministries through which the Bill travelled took little interest in it. So it got delayed for one reason or the other. 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 through a unanimous resolution urged the Government of India to amend the proposed Bill in February, 2000.

The Government of India introduced the Freedom of Information Bill, 2000 in the Lok Sabha on 25th July, 2000. It was passed by the Parliament as the Freedom of Information Act 2002. However, the Act could not be brought into force as the date from which the Act could come into force, was not notified in the Official Gazette.

The United Progressive Alliance Government at the Centre set up a National Advisory Council to analyse the Freedom of Information Act 2002. The Council suggested some important changes. After considering the suggested changes, the Government decided to repeal the Freedom of Information Act 2002. A new legislation, the Right to Information Act was enacted in 2005 to provide an effective framework for effectuating the right of information recognised under Article 19 (1)(a) of the Constitution of India.

2.4 SUMMARY

The right to information is the basis of democracy. This right is protected by the constitutional provisions, judicial interpretations and several statutory provisions of different laws. The movement to codify right to information began in 1990s in Rajasthan. Many state governments passed laws codifying the right to information. The Central government framed Freedom of Information Act, 2002. But unfortunately it was never implemented. In 2005, the Right to Information Act was enacted empowering the citizens of India to get information as a matter of right from the public authorities.

2.5 SAQS

1. Short Answer Question.

- a. What is the judicial approach on information as a matter of right?
- b. Give brief description about the preamble protection viz-a-viz right to information.

2. Fill in the blanks

- a. The Freedom of Information Act 2002 was repealed in the year_____.
- b. For the first time, the question regarding disclosure of information of functioning of government officials was raised in Apex Court in the year _____.

3. True or False

- a. The Tamil Nadu Right to Information Act was enacted in the year 1997.
- b. Right to information is an integral part of freedom of speech and expression under Article 19(1).

2.6 REFERENCES

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2.7 SUGGESTED READINGS

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Right to Information Act, 2005 by [Jitesh Dhanrajani](#)

2.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

- a. Explain the statutory provisions other than those contained in RTI Act, 2005 protecting right to information.
- b. Discuss the evolution of the concept of right to information since 1990s.

2.9 ANSWERS

SAQs

1. a. refer 2.3.1.1 b. refer 2.3.2

2. a. 2005 b. 1975

3. a True b. True

TERMINAL QUESTIONS AND ANSWERS

a. refer 2.3.3

b. refer 2.3.4, 2.3.5 and 2.3.6