

RIGHT TO INFORMATION AND THE PRACTICALITY OF PROGRESSIVE DISCLOSURE

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Abstract

The Right to Information Act, 2005 laid down the guidelines for the effective realization of the fundamental right of speech and expression. In doing so, the act has opened doors to increased transparency and has been instrumental in exposing many scams in the nation. However, the procedures involved, like any other procedure, has been twisted and turned by the officials unwilling to disclose information, to deny the citizen the information he desires. The law makers, having learnt from their experiences in contemporary India were smart enough to include a mandatory section for disclosure of information. Hence Section 4 of the act deals with progressive disclosure by the government. In this comment firstly we look at a practical approach to the issue of progressive disclosure from the view point of the government and the citizens, who happen to be the stakeholders in this case. And lastly we look at certain basic steps that can be undertaken by the government to fulfill their burden under the section.

Keywords: progressive disclosure, right to information, right to know, Sec 4 RTI Act 2005

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INTRODUCTION

The right of the citizens to obtain information on matters relating to public acts flows from the 'Fundamental Right' enshrined in Art. 19(1)(a) of the Constitution of India, 1950.¹ The Hon'ble Supreme Court has held that the Art. 19(1)(a) ensures and comprehends right to know and the right to receive information regarding matters of public concern.²

In the political arena, such a right plays an important role in determining our law makers. Let's look at it this way, expression has many fold meaning, from something written to something spoken orally or even a display of emotion. This also envisages the right to hold an opinion. Now voting on the face of it is not expression, however when the voters turn up at the polling booth to cast his vote and has to make a choice, then the freedom of expression materializes.³ The object of such expression will be lost if the voter is not making an informed choice and hence it is essential to maintain the true integrity of the elections that people have access to the records of their candidates.⁴

So in all matters, *right to express and the right to know are interlinked by the right to information*. If the objective is to achieve a well informed citizen who can make rational decisions on the political front, this essential link has to be upheld in full stature.

*Dinesh Trivedi, M.P. and others v. Union of India*⁵ is a case on the point where the Supreme Court dealt with the right to information, and 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 Hon'ble Supreme Court being an activist judiciary⁶ has done a lot to strengthen this right. But given that there are mainly two stakeholders, the government and the citizens of India, it becomes crucial that the two are fully aware of such developments. India has 26.96% of its population as illiterates (2011 figure) and 29.5% below poverty live (as per Rangarajan

¹ PUCL v. Union of India (2003) 4 SCC 399.

² State of Uttar Pradesh v. Raj Narain AIR 1975 SC 865 at 884.

³ M P JAIN, INDIAN CONSTITUTIONAL LAW (LexisNexis, 7th edition) 2007 at 1023.

⁴ *Supra* note 1.

⁵ (1997) 4 SCC 306.

⁶ Gardiner Harris, *India's Supreme Court Restores an 1861 Law Banning Gay Sex*, THE NEW YORK TIMES, DEC. 11, 2013.

Committee 2014), quality education therefore is a luxury in most parts of India. In this scenario a balance has to be brought about by an active government. The recent trend has been that the government shuns away from their responsibility of ensuring the utilization of such rights,⁷ thanks to the enormous amount of scandals ranging from a few crores to few lakh crores.

SECTION 4 OF THE RIGHT TO INFORMATION ACT

However, a fresh change is seen in Sec 4 of the Right to Information Act, 2005⁸. This section calls for *suo moto* disclosure of information by various departments of the government. Obligations such as compulsory computerization within a reasonable time, ensuring availability of records of boards, councils and committees have been formulated. The budget, implementation plan, manner of execution of subsidy programmes and detailed allocations are now to be voluntarily disclosed.

The essential difference between Sec 3 and 4 of the act is that, Sec 3 remains a freedom whereas Sec 4 practically is everyone's right. In the sense that under Sec 3 the people can 'ask' for information, but under Sec 4 people will get information irrespective of their request.⁹ This is a very progressive piece of legislation as it seeks to bring in to reality what the Supreme Court has visualized since a long time.

This is also in conformity with Principle 2 of the Basic Principles of Freedom of Information Legislation developed by Article 19 (Global Campaign for Free Expression), one of the foremost activists for free speech in the world.¹⁰ Similarly these were endorsed by the UN special Rapporteur, Mr. Abid Hussai, on Freedom of Opinion and Expression in his report of 2000 session of the United Nations Commission on Human Rights.¹¹ In fact such steps are also in line with the idea of a modern 'open government'.¹² The policies rolled out by the government for the welfare of the people are best utilized when people are actually aware of

⁷ Himanshi Dhawan, *Reluctance to penalize weakening RTI: Study*, TIMES OF INDIA, Oct. 26, 2014.

⁸ Act No. 22 of 2005. [Hereinafter referred to as 'the act'].

⁹ SRIDHAR M, RIGHT TO INFORMATION: LAW AND PRACTICE (Wadhwa Nagpur, 1st Edition) 2007 at 110.

¹⁰ For more information See Article 19, *Peoples right to know* (International Standard Series) at <https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf> last accessed on 07/08/2015.

¹¹ UN Economic and Social Council, Commission of Human Rights, U.N.DOC/E/CN.4/2000/63 dated 5 April 2000 available on <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/16583a84ba1b3ae5802568bd004e80f7/> last accessed on 07/08/2015.

¹² OPEN GOVERNMENT: COLLABORATION, TRANSPARENCY, AND PARTICIPATION IN PRACTICE (O'Reilly Media, 1st Edition) 2010.

such policies existing solely for their benefit. Here we see, *the idea of welfare and awareness being linked through the right to receive information*. When for a government disclosure takes precedence, it instills a sense of accountability in the minds of the people and strengthens their trust in the capacity of the administration.

On a larger scale this rather facilitates the smooth functioning of the executive as well. For the government one of main hurdles, as they see it, is the open minded rational activist citizens thrusting for enforcing their rights. Failing such requests the government is put on a pitch battle with the groups who go on campaigns and protests thus affecting the smooth functioning. What the government fails to see here is that if there is actual transparency in the system, the activists groups have nothing to worry about. The crux of the point being, that once the government realizes its flaws of trying to cover up their tracks and move towards transparency, the friction is greatly reduced without anyone having to break a sweat about it.

PRACTICAL IMPLICATIONS: A CITIZENS PERSPECTIVE

Effectively right to know and the right to gather information, which is inherently a part of the right to information, is practically useless if there is no proactive disclosure by the government. The amount of time and tedious work put into gathering information by people can be greatly reduced. The general attitude of government official's reluctance, many a times is assisted by the fact that one can sit of a RTI application for a whole of 30 days and has been deterrent to people in need of quick information. The fundamental right of information qualified by the RTI act 2005 which calls for proactive disclosure needs to be followed a bit more seriously.

Such disclosures are not a burden on the government too. Though the section makes it compulsory for the offices to disclose certain grades of information at the time of the enactment of the act, there is also provision of the liberty to choose the most suitable mode and method of such disclosure. It wouldn't make sense for officials to be forced to convert all primary data on record in hard copies to soft copies on a hard disk, neither is it good for people of villages who do not have access to such electronic devices to be made accessible to such information. The aim of such implementation should be based on the common pillar of achieving maximum practical benefits. The execution plays a major role in such laws.¹³

¹³ For a more detailed discussion See Commonwealth Human Rights Initiative on Proactive Disclosure as at 08/08/2015 http://www.humanrightsinitiative.org/programs/ai/rti/india/officials_guide/proactive_disclosure.htm.

As effective as the section may seem, it does have its fair share of troubles. The law does not prescribe any mode of resource allocation and attention required to achieve the goal. Even if resources are being allocated towards it, the adequacy of such allotments is a very pertinent issue. As of this hour there is no clear guideline as to how the departments should go about executing it. Giving such a wide ambit for interpretation and the general lack of enthusiasm by government officials in such circumstance, begs the question: Is the purpose of the section truly being fulfilled?

Having said that, what we also have to look into is the scope of the officials who comprise of such government departments to carry out such a task. Many officials are ignorant of the existence of such laws and lack the basic training in whistle blower protection and basic mechanisms of the RTI.¹⁴ It is not enough to say that officials are reluctant to provide information, as it is also true that officials are unaware of their own obligation arising out of their office.

CONCLUSION

The present scenario calls for an inclusive awareness programme both for the public and the employees. One way of achieving such objective is for the government to work in close relation with RTI activist groups and NGO's or other institutions that specialize in such mechanisms. Other ways include, imparting basic training on the officials during their official training periods, or having compulsory seminars for them. The government can also utilize the social media and other print media to help aid the spread of such news. Overall, this is never a one sided effort. For achieving the true potential of such a law, the government and the citizens have to be reasonable and work in close proximity, with due regards to the practical implications and sometimes political ramifications.

¹⁴ *Supra* note 9.