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## Right to Information and Why is the Government trying to Curtail its Power?

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*Right to information act came into being on the 12th of October, 2005. But the journey of the act started many years back in Rajasthan through the Mazdoor Kisan Shakti Sangathan. The act has had a long journey and the right to information is very important to bridge the gap between the government and the people. Every law in its inception goes through several steps, the journey for the right to information act was also long and filled with several stepping stones. But till date, there is no proper education imparted in this regard. There should be efforts made so that the whole process becomes easier and easier. People should be made more and more aware of such rights and should be encouraged to use this right on their if and when needed.*

**Keywords:** *right to information, power, curtailment, law.*

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### INTRODUCTION

The Indian constitution has been around for 73 years, in these several years of constitutional development the constitution has undergone as many as 105 amendments. With the advancing time and the need for the addition and subtraction of new laws, the government time and again came up with several amendments. One such amendment is the addition of the right to information. Right to information act came into being on the 12th of October, 2005, the primary objective behind the right to information is to give access to information under the public

authority, it further aimed to provide for more transparency and accountability in the working of the public mechanism. All around the globe in some or another way the government has come up with policies that aim at eliminating the gap between the government and the citizens. Under the right to information act, the government has recognized that it is the responsibility of the government to disclose its functioning to the citizen. Apart from a separate act right to information is one of the basic fundamental rights under the constitution; i.e., under article 19(1) and Article 21<sup>1</sup> of the Indian constitution right to information is a fundamental right. Once voted to power the citizens do not have any control over the actions of the political leaders, the right to information about the working of the government is very important to exercise their legal, social, economic, and political rights.

## HISTORY OF RIGHT TO ACCESS TO INFORMATION

1766-Sweden was the first country to recognize the right to information and make laws for the protection of the same. "1789- France's declaration of human and civil rights, which forms a major part of the French constitution. For example, under article 14<sup>2</sup> "all citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection, and duration." French free access to administrative law documents provides for a right to access by all persons to administrative documents."

"1946 - The UN too in the UN General Assembly Resolution said about the right to information that it is a fundamental right and it is the yardstick of all the freedoms listed under the UN Charter."<sup>3</sup> As for India, the demand for the right to information was first raised in Rajasthan in the Mazdoor Kisan Shakti Sangathan. This movement was where the spark was generated for a right to information which was taken forward by subsequent events in history. The Mazdoor Kisan Shakti Sangathan's huge success made the issue more public at the national level. Public with getting the right being guaranteed in form of legislation, but also made effect for practical

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<sup>1</sup> Constitution of India, 1950, art.19(1) and art.21

<sup>2</sup> Constitution of India, 1950, art.14

<sup>3</sup> 'History of Right of Access to Information' (*Access Info*, 17 January 2006) <<https://www.access-info.org/2009-07-25/history-of-right-of-access-to-information/>> accessed 15 July 2022

implementation of the right to information at the grassroots level. Mazdoor Kisan Shakti Sangathan forced the state government to pass the right to information act in 1997.

This movement began at the village level, but it spread to the whole of the country. It was a movement started by peasants and workers, under the movement the workers and peasants demanded a social audit of accounts in the villages and aimed to expose the corruption at the lower levels of administration. Their campaign has been directly linked with the right to livelihood issue of the rural population. The demand for the right to information arose from the demand to get minimum wages and to keep a check on the high corruption. They suggested implementing a system of Jansub way or public hearing system. The huge success of the Mazdoor Kisan Shakti Sangathan gave rise to the National Campaign on people's Right to Information, it was formed as a support group for the MKSS and it advocated the right to information at a national level. Although the movement did not get great success the involvement of influential people like respected media persons, serving and retired bureaucrats, and members of the bar and judiciary made it important. Its main objective includes providing support at the grass root level and also helping in the critical reviewing of rules and executive instructions related to the right to information.

Apart from this some organizations like Parivartan also made efforts to get and improve the right to information act. This organization made an effort to improve the public distribution system. One more organization the association for democratic reforms based in Ahmedabad in Gujrat seeks to bring transparency in elections. The organization filed several affidavits under "the Representation of the people act amendment ordinance". The cases filed by the organization resulted in the voter's right to know being declared a fundamental right by the Supreme Court. According to the latest judgement of the Supreme Court makes it is mandatory for every candidate to file five affidavits at the time of filing nominations. The Supreme Court recognized the Voters' fundamental right to know who they vote for.

"The Anna Hazare movement also played a major part in shaping the fate of the right to information law in India. In fact, the Maharashtra state government came up with its own right to information act in the year 2000; but the act was later repealed when a more updated act came

in the year 2002. His main aim through the hunger strike was to bring transparency in the government mechanism.”<sup>4</sup>

## RIGHT TO INFORMATION THROUGH THE EYE OF THE INDIAN CONSTITUTION

The constitution of India does not clearly provide for the right to education; however, time and again the Supreme Court has retreated that the right to information is a fundamental right under Article 19(1) and article 21 of the Indian Constitution. The Supreme Court states that it protects the purpose of such articles. Article 19<sup>5</sup>, freedom of speech, not only extends to the right to express one’s view freely but also the right to know. The citizens have the right to know about government affairs, but the right is not absolute, there are some restrictions on the information one can procure from the government. Section 8 of the right to information act, 2005 provides for an exception to the right to information. “According to section 8 of the right to information act, the obligation of giving information to the citizen in case of:

1. Information that prejudicially affects the sovereignty and integrity of India
2. Security, the strategic, scientific, or economic interest of the state
3. Information that affects the state’s relation with a foreign state or leads to incitement of an offense.
4. Discloser of information that is prohibited to publish by the court, or information that would amount to contempt of court.
5. Information, the disclosure of which would cause a breach of privilege of the parliament or the state legislature.
6. Information of commercial confidence, trade secret, or intellectual property. The disclosure of which would harm the competitive position of the third party. Unless the information is very important for the larger public interest.

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<sup>4</sup> *Ibid*

<sup>5</sup> Constitution of India, 1950, art.19

7. Information is available to a person because of one's fiduciary relation, the exception being if the information is beneficial for the greater good of the public.
8. Information received in confidence from a foreign state.
9. Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose.
10. Information that would affect the process of investigation or apprehension or prosecution of offenders. ”<sup>6</sup>

Several protests and movements played a major part in bringing to life the right to information act, but the main role was played by the Judiciary, In *Secretary General, the Supreme court of India v Subhash Chandra Agarwal*, the High Court of Delhi held- “the source of the right to information does not emanate from right to information act. It is a right that emerges from right constitutional guarantees under article 19(i) (a)<sup>7</sup> as held by the Supreme Court in a catena of decisions. The right to Information act is not the repository of the right to information. Its repository is the constitutional right guaranteed under Article 19(1) (a).”<sup>8</sup>

### **PROCEDURE FOR FILLING AN RTI REQUEST**

The right to information only extends to the citizens of India. A person who desires to obtain any information under this act shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made accompanying such fee as may be prescribed, to-

- (a) “The Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority.

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<sup>6</sup> Right to Information Act, 2005, s 8

<sup>7</sup> Constitution of India, 1950, art.19(1) (a)

<sup>8</sup> *Secretary General, Supreme Court of India v Subhash Chandra Agarwal* (2010) LPA No.501/2009

(b) The Central Assistant Public Information Officer or State Assistance Public Information Officer. As the case may be, “ 1

## WHY GOVERNMENT OF INDIA WANTS TO CURB THE POWER OF THE RIGHT TO INFORMATION IN INDIA?

In the case *Raj Narain v State of Uttar Pradesh*, “the Supreme Court ruled that the right to information is a fundamental right. Section 20 of the Right to information act provides that if a public Information officer, without any reasonable cause, refuses to receive an application for Information or refuses to furnish information within the time specified under section 7(I)<sup>9</sup> or mala fiddly denies information or destroys information, a penalty of two hundred and fifty rupees for each day till the application is received or information is furnished.”<sup>10</sup>

The law on information is a very deadly weapon in the hand of the common public, the government departments come under a lot of pressure as they have added pressure. The right to information only applies to the state, the scope of the right to information should be extended to other organizations where the matter concerns large public interest. “Section 6<sup>11</sup> of the right to information act, 2005 provides that where the request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making requesting orally to reduce the same in writing. Another safeguard given to applicants is that they do not have to give any reasoning for requesting the information to any other personal details except those that may be necessary for contacting him. Even when the applicant makes the request to the wrong department then the concerned department is under the duty to transfer the request to the concerned department. “

The government has always been very secretive about the army, whenever the right to information about the armed force is in question, the government always plays the security and

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<sup>9</sup> Right to Information Act, 2005, s 7(1)

<sup>10</sup> *Raj Narain v the State of Uttar Pradesh* (1975), AIR 865

<sup>11</sup> Right to Information Act, 2005, s 6

secrecy card. Whereas many experts feel that most of the parts of the armed force budget can be disclosed to the public.

## CONCLUSION

Right to information is unlike any other law or legislation, the right to information act is not as emphasized, and the right to information creates a bridge between government function and spending. As because after the government is elected to power, there is a loss of contact between the people and the government. Both the rights are intended to help the individual in making the government accountable and transparent. Most issues can be mitigated through the enactment of clear definitions in legislation, guidelines, techniques, and oversight systems. Due diligence would ensure that the access to information and data protection laws have compatible definitions of personal information. Appropriate institutional structures and public interest tests should be created to balance these rights and ensure that data protection and the right to information work together in harmony. The public authorities should deal with the applicants in a friendly manner and public interest should be at the core & the disclosures should be made accordingly.<sup>12</sup>

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<sup>12</sup> Vratika Phogat, 'Right to Information in Consonance with Right to Privacy' <<https://cic.gov.in/sites/default/files/Internship%20Research%20Paper-%20Vratika%20Phogat.pdf>> accessed 15 July 2022