

Lecture- 25



What is the right to information?

The right of access to information held by the government bodies provides that individuals have a basic human right to demand information held by the government bodies. It can be inferred from the right to expression to seek and receive information, and it is recognized as a human right throughout the world. Under this right, any person can claim information from a public body, and that body is legally bound to disclose such information unless there is a legal reason not to disclose such information. In a democratic country, RTI is an important tool for countering abuse, mismanagement and corruption to enforce essentials of economic and social rights.

In India, right to information can be derived from the fundamental right of freedom of speech and expression which is guaranteed under Article 19. Several incidents have proved that the right to information is an integral part of the Constitution of India and is a recognized right for all its citizens. As RTI is a constitutional right it has also been incorporated in legislation and is known as the Right to Information Act, 2005 which now deals with the disclosure of information by the government bodies for the needs of the community or individuals public interest. This has provided the appointment of designated officers to release information to the public, a complaint mechanism, a proactive disclosure by the government for specified types of information and this act also protects the privacy of both citizens and public figures. The development of the right to information can also be seen through various Supreme Court judgements also, as in the case of Bennett Coleman and Co. vs. Union of India, the right to information was held to be included within the right to freedom of speech and expression guaranteed by Article 19(1)(a). Then in the case of SP Gupta vs. Union of India, the right of the people to know about every public act and the details of every public transaction undertaken by public functionaries were described.

Thus, the right to information has been recognized and accepted as a law in India and is considered as a fundamental right through which the public can call for information by the government or public authorities which are in the interest of the public.

Conflicts between both the rights

It is very well-known that the authorities are the custodians of numerous non-public records of various citizens. The income-tax returns of a person, his clinical records, his biometric facts and

so forth are his personal belongings of which authorities could have access. If such records are made subject to RTI, a large invasion with respect to the privacy of an individual. On the other hand, it additionally aims to ensure that no one puts on a facade of safety or privacy with the intention to protect himself against the disclosure of data which can be mandated through RTI. In instances wherein there may be a dispute concerning whether or not the data needs to be protected under Section 8(1)(j) or not, the applicant will have to satisfy the Public Information Officer that the data is for public interest and its disclosure will benefit the public as a whole. If the officer is satisfied, the data can be provided. Here, the general public interest surges in advance of the right to privacy of the individual. Thus, there may be a likely paradox among these rights. However, the question is whether or not these rights are so opposing in nature to the quantity that they can't be reconciled? Many efforts have been made to harmonize these provisions and it has met with a fair amount of success. These rights may be complementary to each other and promote extra transparency and accountability from governmental authorities.

Conclusion

Both the rights are intended to help individuals in holding the government accountable and transparent. Most of the issues can be solved by following a defined and tested system that works as a due diligence mechanism for the protection of private information and regulation of public information. Right to privacy and right to information both are fundamental rights recognized by the Constitution of India and are interpreted in a way that provides protection to the citizens of India. These rights have evolved in the era of technological advancements which has laid down the need for a law in regards to personal data protection, also which is under the process and would be brought before the Indian citizens very soon with effective provisions.

Laws that Licence Secrecy

Remarks made by the Attorney-General in the Supreme Court on March 6, of looking into "criminal action" against those responsible for making "stolen documents" on the Rafale deal public, have brought the Official Secrets Act into focus. The colonial-era law meant for ensuring secrecy and confidentiality in governance, mostly on national security and espionage issues, has

often been cited by authorities for refusing to divulge information. Governments have also faced criticism for misusing the law against journalists and whistleblowers.

What is the Act about?

The Official Secrets Act was first enacted in 1923 and was retained after Independence. The law, applicable to government servants and citizens, provides the framework for dealing with espionage, sedition, and other potential threats to the integrity of the nation. The law makes spying, sharing ‘secret’ information, unauthorised use of uniforms, withholding information, interference with the armed forces in prohibited/restricted areas, among others, punishable offences. If guilty, a person may get up to 14 years’ imprisonment, a fine, or both.

The information could be any reference to a place belonging to or occupied by the government, documents, photographs, sketches, maps, plans, models, official codes or passwords.

Has the law undergone any changes over the years?

No. However, the Second Administrative Reforms Commission (SARC) Report, 2006, suggested that the Act should be substituted by a chapter in the National Security Act that incorporates the necessary provisions. The reason: it had become a contentious issue after the implementation of the Right to Information Act.

The OSA does not define “secret” or “official secrets”. Public servants could deny any information terming it a “secret” when asked under the RTI Act.

The SARC report stated that as the OSA’s background is the colonial climate of mistrust of people and the primacy of public officials in dealing with the citizens, it created a culture of secrecy. “Confidentiality became the norm and disclosure the exception,” it said. This tendency was challenged when the Right to Information Act came into existence.

In 2008, during the first term of the UPA, the Group of Ministers that scrutinised the SARC report refused to repeal the Act but suggested amendments to do away with ambiguities. Even on Thursday, Congress president Rahul Gandhi was wary of scrapping the law. He was of the view that the legislation should not be used to harass journalists.

In 2015, the NDA government formed a high-level panel to look into the provisions of the OSA in the light of the RTI Act. No action has been taken on the panel's report, which was submitted in 2017.

Is withholding information the only issue with the Act?

Another contentious issue with the law is that its Section 5, which deals with potential breaches of national security, is often misinterpreted. The Section makes it a punishable offence to share information that may help an enemy state. The Section comes in handy for booking journalists when they publicise information that may cause embarrassment to the government or the armed forces.

Journalist Tarakant Dwivedi alias Akela was booked for criminal trespass under the Official Secrets Act on May 17, 2011, 11 months after he wrote an article in Mid-Day about how sophisticated weapons bought after 26/11 were being stored in a room with a leaking roof at the Chhatrapati Shivaji Terminus in Mumbai. An RTI query later revealed that the armoury Akela visited was not a prohibited area and the Bombay High Court subsequently dismissed the case.

Kashmir-based journalist Iftikhar Gilani was arrested in 2002 under the OSA for downloading a document from the Internet. After spending seven months in jail, he was honourably discharged by the courts.

In a case pertaining to journalist Santanu Saikia, who wrote an article in Financial Express on the basis of a leaked Cabinet note, the Delhi High Court in 2009 ruled that publishing a document merely labelled as "secret" shall not render the journalist liable under the OSA.

Do other nations have similar laws?

Several countries, including the United Kingdom, Malaysia, Singapore, and New Zealand, continue to use the legislation to protect state secrets. In 2001, Canada replaced its OSA with a Security of Information Act. The “official secrets” come under the Espionage Act in the U.S.

On September 3, 2018, a Myanmar court awarded seven years’ jail to two Reuters journalists for illegally possessing official documents on the military’s alleged human rights abuses against Rohingya Muslims. Malaysia has also been accused of using the OSA to silence dissidence.