

Lecture- 40



Balancing right to information with Indian judiciary - RTI

Table of Contents

- Introduction
- Indian judiciary system
- Independence of judiciary
- Right to information
- Judicial interpretation of freedom of speech and expression
- Landmark cases
- Romesh Thappar v. State of Madras
- Hamdard Dawakhana v. Union of India
- State of U. P. v. Raj Narain
- Balancing democracy vis-a-vis society and RTI
- Apex Court on RTI
- LIC v. Manubhai D. Shah
- D.K. Basu v. State of West Bengal
- People's Union for Civil Liberties v. Union of India
- Indira Jaising v. Registrar General, Supreme Court of India
- Supreme Court under RTI
- Higher judiciary in the light of RTI

Introduction

Indian subjects in this democratic system i.e. citizens have the right to know what, how and why of any decision, change or continuity regarding or functioning thereof. Right to information is a constitutional right, granted pursuant to Articles 19 and 21 of the Indian Constitution, and enacted by the Indian Parliament in 2005. This article will examine in detail the attitude of the judiciary towards the Right to Information, especially in the Supreme Court, several High Courts, Central Information Commission, and State Information Commissions. With the changing times and rules, people are becoming more conscious of their rights; and people have begun to be more conscious of the right to know Judicial interrogation on further levels. The

tussle that was taking place between the judiciary and various commissions was over the right to information. There's also a comparison regarding the situation in other countries and the rules framed by them to maintain the country's transparency and accountability. In this democratic country, there is also the solution given to these issues as to how to make the judiciary comply with the Right to Information rules, how to make them accountable, and whether or not the Supreme Court should fall under Right to Information.

Indian judiciary system

The Indian Justice System is one of the world's oldest legal systems. It is part of the parentage India received from the British after more than 200 years of colonial rule, and the same is apparent from the many similarities that the Indian legal system shares with the English legal system. The Indian Constitution has laid down the foundation for the new legal system, and the judiciary draws its authority from it. India's constitution is the country's supreme law, the country's fountain source of law. It not only laid down the foundation of the Indian judiciary, but it also specified people's fundamental rights and duties and guidelines, which are the duties of the states of India.

In a democratic system, the body of the judiciary is undoubtedly one of the most crucial institutions because it is charged with the great responsibility of administering justice, one of the core needs of a citizen. As the guardian of the rights of a country's citizens, the judiciary is entrusted with the task of fully realizing the constitutional values in furtherance of the constitutional makers' vision. The preamble to the Constitution enshrines the ideals of social, economic, and political justice for all its citizens. Justice, not enforced in a reasonable way, jeopardizes civil society rights, vitiating the rule of law concept. An independent judiciary could be declared the cornerstone of democracy. It is unnecessary to say that, over the years, the judiciary and judicial decisions have shaped the Indian polity to a significant extent. The position of the judiciary has been crucial in ensuring a mechanism of justice in governance and administration. Thus, be it the substantive understanding of Article 19 or Article 21 or the preaching of equality doctrines, the judicial decisions in India have entered every tier of society. As one knows, the judiciary is the edifice of a strong democracy. It strives not only to interpret

the black letter of the law but also to adopt an activist stance of interpreting it creatively to suit society's needs.

Independence of judiciary

The judiciary must be free from interference by other bodies. It's called division of powers in that way. Our Constitution makes the judiciary absolutely independent, except where certain powers of remission are granted to the executive heads. Judicial independence of the judiciary applies to an environment in which judges are free to determine or pass judgment without any interference from the government or other influential institutions. Judicial independence means that the judiciary as a legislative agency should be free from the power and control of the other two bodies, the executive and the governmental legislature.

The founders of this system understood that judges who can freely and fairly apply the law are essential to the rule of law. The Constitution guarantees our rights on paper, but without independent courts to protect them, that would mean nothing. It is essential that the judiciary stays independent to exercise its title of being the guardian of the Constitution. It is only when the judiciary is independent of the executive and legislative power, that the people can be assured of justice.

In a modern state, judicial independence is necessary for the following purposes:

Ensuring the accused's a free trial and to protect the innocent from harm and usurpation;

Keeping the government officials within the boundaries of their legitimate authority and to monitor the excessive use of their power.

Serve as the constitution's guardian especially in a federal form of government.

Judicial independence plays a vital role in preserving every country's democratic set-up, meaning. It acts as a link between citizen protection against administrative and legislative unconstitutional powers. Freedom from the executive's influence and control is crucially important. It is critical that the judges give their decision without fear or favour, for individual freedom. It refers to an environment in which the judge may pass unbiased judgment. Every democratic country adopts different ways of guaranteeing the freedom of the judiciary and thus

guaranteeing the freedom of the individual. The United States of America has implemented the separation of powers structure to guarantee judicial independence. In the case of England, where the constitutional system is based on the concept of parliamentary sovereignty, separation of powers is adopted. For in India, the doctrines of parliamentary and constitutional sovereignty are mixed together.

Dr B.R. said “There can be no difference of opinion in the House that our judiciary must be independent of the executive and must also be competent in itself. The question is how these two objects can be secured.”

The reason behind the makers of the constitution being so concerned about granting a separate entity to the judiciary was that to protect the stability of the society, the framers at the time recognized that such a system could only be established by ensuring the constitutional rights and the independence of the judiciary to guard and uphold the basic rights. In a country like India, the independence of the judiciary is paramount in upholding the pillars of the democratic system and thus ensuring a free society. India’s constitution embraces diverse devices in keeping with both the doctrines of constitutional and parliamentary sovereignty to ensure judicial independence.

Developed provision is in place to ensure the independent position of Supreme Court and High Court Judges. Before entering office, Supreme Court and High Court judges must take an oath about carrying out their duties faithfully without fear, favour, ill-will, and defend India’s constitution and laws. This oath is implicit in the recognition of the doctrine of legislative sovereignty. Secondly, the process of appointing judges also guarantees judicial independence in India. The President appoints judges to the Supreme Court and the lower Courts. India’s Constitution made it compulsory for the President to make the nominations in coordination with the highest judicial authorities. He takes advice from the Cabinet. The constitution also prescribes the qualifications necessary for such nominations. The Constitution attempts to make the appointments unbiased on political grounds. Third, the Constitution provides for the security of Judges’ tenure. The Supreme Court judges and the High Court serve “in good behaviour” and not according to the President’s pleasure, as is the case with other high-ranking officials of

government. The President cannot eliminate them arbitrarily. They can only be removed from office by impeachment. A judge can be removed on the grounds of proven misconduct or incapacity on a report supported by a special majority by both Houses of Parliament.

Right to information

Every person has the right to be aware of the true facts of their country's government as it is one of the essential facets of democracy. People can only play a significant role in a democracy if there is an open government where there is complete access to knowledge on how government works. A citizen can not attain knowledge unless he has certain fundamental freedoms such as freedom of thought, information, conscience, speech, expression, and locomotion.

As one of the members of the Constituent Assembly said, freedom of information is one of the terms in which the greatest and bitterest constitutional struggles were fought in all countries where liberal constitutional prevails. Everyone has the right to freedom of speech, freedom of expression requires the right to hold views without interference and to try and obtain knowledge and ideas through any media and irrespective of the borders declared as the Universal Declaration of Human Rights. In the preamble to the Constitution, the people of India proclaimed their determination to ensure freedom of thought and speech for all citizens. In the Preamble to the Constitution, the Indian people proclaimed that they gave themselves their determination to ensure freedom of thought and speech for all citizens. This resolution is expressed in Article (19)(1)(a) in Part III of the Constitution enumerating the Fundamental Rights. Such freedoms embody the basic values of life in a democratic society, and our Constitution has given them a position of pride. Our Constitution does not use the term 'information freedom' in Article 19, but the judiciary declares that it is included in Article 19(1) (a) which guarantees freedom of speech and expression.

Judicial interpretation of freedom of speech and expression

The judiciary is the protector and defender of our Constitution. It draws the boundaries of functioning public authorities. The primary purpose of the judiciary is to provide justice to every individual in the country and to put a bar on increasing corruption. Rights are the interests

recognised and secured by statute. The sanctity of the right is strengthened if accepted by a country's constitution. In the Indian sense, where the common people have been subject to neglect for decades, constitutional values are the only messiahs who can guarantee the liberty of all kinds. Information plays a crucial role in creating public awareness by making them informed.

In a developing country like India, accessing information is a daunting job to be done by a majority of less educated and illiterate people who are ignorant of their rights. Red tapestry and bureaucratic supremacy hesitate greatly in empowering people. In addition, the system is still haunted by the colonial legacy which was copious with the policy of secrecy. Here, the Indian Constitution comes to the rescue of the man by granting him some fundamental rights. These rights reflect the basic principles of life in a civilized society and have been given pride in our Constitution.

For many decades there has been no legal right to information despite the establishment of parliamentary democracy in India, and our Constitution also does not use the expression freedom of information in Art. 19. It was by interpreting Article 19(1)(a) of the Constitution that the Supreme Court exercised a fundamental right to information as implicit in the right to freedom of expression and speech. This right is of special significance to the media whose lifeline is information and whose responsibility it is to provide the public with information. In several landmark cases, the judiciary has expressly held the right to information as a natural concomitant of Article 19(1)(a) and Article 21 of the Indian Constitution, i.e. the right to freedom of speech and expression and the right to life and freedom comprising of the right to information. If a citizen's right to information is denied, the right to live loses much of its meaning. It was generally recognised as a requirement in the preamble to the Act by way of commitment to establishing an educated citizenry, to eradicate corruption and to promote accountability and transparency in the operation of every public authority.

Landmark cases

Romesh Thappar v. State of Madras

In *Romesh Thappar v. State of Madras*, the petitioner had challenged an order issued under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, by the then Government of Madras, imposing a ban on the circulation of the petitioner's journal. Such a ban order was laid down as a violation of the right to freedom of speech and expression provided for in Article 19(1)(a).

Hamdard Dawakhana v. Union of India

In *Hamdard Dawakhana v. Union of India*, the Supreme Court had declared that the right to information is a part of Article 19(1)(a) of the Indian Constitution. Although advertising is undeniably a means of expression, its true character is expressed in the object it is used to promote. It assumes the characteristics and elements of the operation pursuant to Art. 19(1) that it intends to help by bringing it to public attention.

State of U. P. v. Raj Narain

In the case of the *State of U. P. v. Raj Narain*, it was reiterated that it is the responsibility of the government like ours where all public officials have to be accountable for their actions. The people of this country have the right to know about every public act, all that the public functionaries do in a public way. The facts of this case were that Raj Narain, who questioned the legitimacy of Mrs Gandhi's election, needed Blue Books to be revealed containing the tour program and the security steps taken for the Prime Minister. Though disclosure had not been approved, Justice Mathew had held that the people of the country have the right to know the details of each public transaction during all its hearings.

Balancing democracy vis-a-vis society and RTI

Where a society has chosen to accept democracy as its faith, it is essential that citizens should know what their government is doing, that citizens are entitled to decide by whom and by which rules they are to be governed and that they are entitled to hold the people governing on their behalf, accountable for their actions. No democratic government can survive without accountability, and the fundamental assumption of responsibility is that people should have information about the government's functioning. The court's solution must be to minimize the

field of confidentiality as far as possible, consistent with the public interest provision, keeping in mind all the time that transparency often serves an essential public interest function.

If people know how government works can they fulfil the role that democracy assigns to them and make democracy a participatory democracy that is truly effective. This is the new political ideology of an open society that every western democracy is heading towards and that our country should not be an exception. The idea of an open government is the direct emanation from the right to learn which, according to Article 19(1)(a), tends to be implied in the right to free speech and expression. Disclosure of information regarding government functioning must be the rule and secrecy, an exception justified only where the strictest requirement of interest of the public is fulfilled as it demands.

The court's approach must be to mitigate the area of anonymity as much as possible, consistent with the public interest necessity, keeping in mind all the time that disclosure also serves an important public interest aspect. As learned writers have noted, freedom of speech has four specific social ends to represent. Firstly, it helps an individual achieve self-fulfilment. Secondly, it helps in finding the facts. Thirdly, it enhances an individual's capacity to engage in decision-making and provides a process by which a fair balance between stability and lastly, social change could be developed. All members of society should be able to develop their own views and communicate them freely to others. In summary, the basic concept involved here is the right of the people to know.

Freedom of speech and expression should receive generous support from all those who believe in people's involvement in the administration. It must be noted that people have the right to learn, in order to be able to participate in an industrial life and democracy participatory growth. Right to know is a basic right which the citizens of a free country aspire to hold under Article 21 of our Constitution in the broader horizon of the right to live. This right has taken on new dimensions and urgency. That right brings the Government to share the information with the public in large.

“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.” It went on to serve that “democracy expects openness and openness is concomitant of a free society and the sunlight is a disinfectant”. Though there is no specific provision in the Constitution of India, which provides for the citizens right to information. However, this right can be inferred from Article 19(1)(a) which provides freedom of thought and expression which indirectly includes the right to get information.

Apex Court on RTI

The SC plays a major role in protecting the democratic rights of the citizens, these rights are granted by the constitution which also includes providing fair justice. Justice must be administered without fear or favour, which is the soul of a democratic society. India’s Supreme Court is the highest court of law, and it controls the country’s entire judicial system. The Right to Information Act, 2005, has influenced all government organs the judiciary, the executive and the legislature. As is evident from the pro-disclosure judgments which come not only from the information commissions but also from the higher judiciary. Slowly but gradually, there is a growing awareness that access to knowledge is of long-term value to one and all. This act analyzes different landmark decisions concerning important and at times controversial issues related to the Right to Information law. Some of the rulings on a specific issue indicate the information commissions and courts current stance on it. Judiciary is to be considered to be the backbone of India’s Right to information. It has consistently and strongly advocated the ideals of openness and accountability in all fields of governance.

LIC v. Manubhai D. Shah

Importance of freedom of speech and expression was discussed in LIC v. Manubhai D. Shah, It was held that Freedom of speech and expression forms an integral part of freedom of information. A human being conveys his thoughts and feelings to others through speech. Freedom of speech and of expression is, therefore, a natural right acquired by a human being by birth. It is a fundamental right. The Court underlined that freedom of expression means the right to express one’s opinion by word of mouth, writing, printing, photography, or otherwise. It

would, therefore, include freedom of communication and the right to publicise or propagate opinion.

D.K. Basu v. State of West Bengal

It was held in D.K. Basu v. State of West Bengal, that the detainees have the right to know the framed charges or reasons for arrest, the right to inform the relatives of the arrest and to have one's own choice of lawyer. In this above-mentioned case, the Supreme Court set out some guidelines on the rights of the arrested person, and Justice Anand, who delivered the decision on behalf of the Bench Division, implemented a few fundamental rights that encompass the right to information. In all cases of arrest or detention, the Supreme Court considers it appropriate to issue certain requirements until legal provisions are made in that name as preventive measures.

People's Union for Civil Liberties v. Union of India

In People's Union for Civil Liberties, v. Union of India, the court said that a democratic system can not exist without the right of the people to vote in the affairs of the country's government. The right to take part in the domestic business is meaningless unless citizens are well informed on all sides of the issues they are asked to express their views.

Indira Jaising v. Registrar General, Supreme Court of India

In Indira Jaising v. Registrar General, Supreme Court, the Supreme Court refused disclosure with its bold declarations in the past, reasoning that is difficult to reconcile. A report made on such an inquiry that if the advertising is issued would only result in more damage than good to the institution. In such a case the only course to the parties concerned is to invoke the provisions of Article 124 or Article 217 of the Indian Constitution if they have material. The said report is by its nature purely preliminary, Ad-hoc and not final. The only source of authority from which the Chief Justice may exercise this investigation power is if it is morally ethical or not in exercising its powers according to any law.

The exercise of such power on the basis of moral power by the Chief Justice of India can not be made the subject of a written petition for disclosure of a report made to him. Definitely, the public has the right to know the dignity of those who grant justice. It was a fact that the Supreme

Court had instituted an investigation into the incident that was permitted to be widely publicised. That was a measure that encouraged and was intended to encourage public trust. So, the report itself was made public in the fitness of things. Quite apart from the public interest, it was in the interests of the judges concerned to have the report made public; the more so if its the non-guilty was confirmed.

Supreme Court under RTI

The Right to Information is a landmark legislative Act within the Indian parliamentary system in the Indian history of governance. The Right to Information aimed at increasing the level of transparency and accountability in government, as well as the dual role of empowering the common man to know about different administrative processes and, at the same time, to put pressure on the executive to act legitimately. Some departments were left outside Right to Information's reach as it would compromise security and secrecy, that is constitutionally and legally.

While secrecy is essential to avoid unnecessary delays and unwanted interruptions, it is paramount to be transparent. It increases a citizen's confidence and illustrates the conviction that our founding fathers held in the judiciary when they declared it the guardian of our supreme Constitution. The tussle between the executive and the higher judiciary is not new. Successive governments and critics blamed the judiciary as a roadblock in bringing transparency into the present system. The invalidation of the National Judicial Appointments Commission and subsequent unconstitutional attempts have only weakened the reputation of the Honorable Judiciary.

Higher judiciary in the light of RTI

Vacant seats will become transferable in various judicial constituencies, and recruitment for those posts will take place at a pace. It will give people more power to easily get their answers without any delay and informal paperwork. Increasing lucidity will check corruption. Courts for pending cases have always been questioned. Right to Information can set the standard for the

timely decomposition of justice among the judiciary. Judiciary as a constitutional watchdog has drawn several boundaries for public officials.

It will compromise judicial independence as stipulated by the constitution. It will challenge the Supreme Court's decision-making powers. It will create an extra-judicial burden as each file will be accountable to the judiciary. In some cases, it will compromise the secrecy and security involved. This is potentially detrimental to our country. Judiciary will become a puppet in people's hands, instead of being the country's sole justice provider. It will enhance judicial involvement in political matters. Challenging Supreme Court decisions means pointing a finger at the constitution each time. Delay in judicial appointments and transfers may be adopted as an over conscious approach to avoid conflicts.