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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

RIGHT TO INFORMATION IN INDIA: A CRITICAL ANALYSIS IN CASES OF LIFE AND LIBERTY.

AUTHORED BY DR. SONIA ANEJA*

Abstract

RTI Act, 2005 has proved to be helpful in bringing in transparency and answerability in Government and Public Institutions. The extent of the RTI Act is broad enough to cover all the Constitutional Institutions and subject to exemptions, unanimously apply to all Public Authorities. The objective of provision of RTI Act particularly Section 7(1) proviso is that life and liberty connected information shall be provided in 48 hours. This is done to instill responsive attitude in the Police Authority and to protect the fundamental rights of citizens of India as enshrined in Constitution. It is rational to anticipate that when the life or liberty of a person is at risk, the information which might save/help the person should be revealed as quick as it can be.

Further, request for information for copy of the FIR can also be put forward by any person under the RTI Act, 2005. Therefore, it can be seen that Right to information has proved to be a bane for common man struggling to receive information in cases of violation of human rights and cases of corruption and also it has helped common man to obtain FIR copies through RTI. Therefore, wherever in reply to a request for revelation of information related to Life and Liberty the public authority takes protection under the provisions relating to exemption clauses under RTI Act, 2005, the Central Information Commission (CIC) or the constitutional courts must see that no citizens fundamental right to life with dignity is infringed and suitable information must be provided to information seeker so that his/her Life and Liberty can be protected as provided under constitution of India. In a way the simple procedure of filing RTI without any complex procedure has made RTI very effective in instances of information related to Police FIR's and Life and Liberty matters.

Keywords: Information, RTI, Life, Liberty, Police etc.

Introduction

'Right to Information' is the right to acquire information from any public authority by way of:

- (i) “inspection, taking of extracts and notes ;¹
- (ii) certified copies of any records of such public authority ;
- (iii) diskettes, floppies or in any other electronic mode.”

Information in this backdrop indicates any material in any form concerning the administration or verdict of a public authority.

As per RTI Act, 2005 it is the duty for making information held by executive agencies of the State available to the public except it comes within any one of the explicit categories of matters exempt from public disclosure. Further as per RTI Act, 2005 nearly all branches of the executive department of the Government are mandated by the RTI Act to issue regulations to put into operation the provisions of the Act.

These regulations notify the public from where certain types of information may be conveniently obtained, however, other information may be obtained on request. Also the internal system of approaching appellate authority is available if a member of the public is refused the requested information by Public Information officer (PIO).

To avert misuse of discretionary power of the Governmental agencies Right to Information Act, 2005 is enacted requiring them to make public certain information about their functioning.

Right to Information or right to know is an essential part and basic rule of the freedom of speech and expression which is a fundamental right¹ provided under Article 19(1)(a)² of the Constitution. It also flows from Article 21 of Indian Constitution³ as pronounced by the Supreme Court in the case of “Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Pvt Ltd. and Ors.”⁴ . The Apex Court dealing with the subject of freedom of press and administration

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¹ Fundamental Rights are the basic rights contained in Part III under Article 12 to 35 of Constitution of India. It guarantees civil liberties such that all citizens can lead their lives in peace and harmony as citizens of India.

² Article 19 , Constitution of India

³ Article 21 in The Constitution Of India 1949

“21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law”

⁴ AIR1989SC190

of justice, held that “we must keep in mind that the public has a right to know in order to take part in democracy. Right to know is an essential right which people of a state look for in the broader view of the right to live in this era under Article 21 of Constitution. That right has attained new proportions and importance. That right puts larger answerability upon those who take upon themselves the liability to inform”.

However, the citizens have a guaranteed ‘Right to Know’, the performance of the State and its instrumentalities under the cover of darkness leave the citizens uninformed about the basis of any decision taken by the authorities or any policy made and the implications thereof

The function and purpose of the RTI Act, 2005 is not only to supply information but to keep a check on corruption, and for that matter bestow a right upon the citizens to have the necessary information, so that suitable action may be initiated against the erring officers and also against the arbitrary and unlawful orders.

The preamble of the Right to Information Act, 2005 emphasize that democratic state requires a knowledgeable citizenry and lucidity of information which are necessary to its performance and also to minimize corruption and to put the administration answerable to the governed. In order to support transparency and answerability in the operation of every government department, the setting up of a Central Information Commission (CIC) and State Information Commissions (SIC) and for matters connected thereto the RTI Act, 2005 has been passed.

The Delhi High Court in the case of Secretary General, Supreme Court of India v. Subhash Chandra Agarwal⁵ observed that “the right to information is an essential element of the freedom of speech and is subject to limitations that can be enforced upon that right under Constitution of India by article 19(2).”

A person, who desires to obtain any information under the RTI Act, 2005 as per Section 6(1) of the RTI Act, 2005 shall make a demand in writing or through mail (soft copy) denoting the details of the information sought by him/her.

6. Request for obtaining information.—

(1) 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 in the official language of the area in

⁵ AIR 2010 Del 159.

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;

(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her: Provided that where such 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 the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information, - Section 6 Sub-Section (2) of RTI Act, 2005 provides that a citizen filing for request for information shall not be compelled to give any ground for asking the information and no personal information apart from those that may be required for contacting him can be asked from him.

It is thus obvious that while allowing RTI application made under RTI Act, 2005 the intention of the applicant cannot be inquired by the Public Information officer (PIO) and PIO is supposed to supply every information sought by applicant except what has been exempted under Section 88 of RTI Act, 2005.

Some of the information's requested by the applicant under RTI Act, 2005 will be problematic to the persons to whom it relates and therefore, every attempt would be made for the non-disclosure of such Information by public official by taking protection under the provisions of Sections 8 and 99 of the RTI Act, 2005 which are the exemption clauses.

Section 8 of the Right to Information Act, 2005 provides certain kinds of exemptions, where the Government has no responsibility to provide information to any citizen. Generally all information should be given to the citizens but there are certain information's which have been protected from revelation. It means this is an effort to harmonize the public interest with the individual's right to information.

Right to Information in cases of life and Liberty

The free course of information is necessary for a democratic society in personam because it assist in the growth of society. Information guarantees transparency and answerability in governance and thus becomes a lively constituent of effective democracy. Further, the fundamental right to speech and expression under Article 19(1) of the Constitution of India can never be implemented until and unless the information regarding public matters is being dispersed. This makes Right to Information Act, 2005 ('the Act') a very significant legislation.

The RTI Act, 2005 clearly permit the common man to access the information from any public office and the Central Public Information Officer

Section 8 in The Right To Information Act, 2005

Exemption from disclosure of information.—

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

- a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- f) information received in confidence from foreign government;
- g) 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 purposes

Section 9 in The Right To Information Act, 2005

Grounds for rejection to access in certain cases.—Without prejudice to the provisions of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

The exception to the 30 days rule is when the information required by applicant is related to the 'life and liberty of a person', in that particular case the information should be provided within 48 hours.

Ordinarily the government machinery is not planned in a way that responds to all RTI applications within 48 hours, the question of 'life and liberty of a person' has to be carefully examined.

It is rational to suppose that when the life or liberty of a person is at stake, the information which might save/help the person should be revealed as fast as it can be. But what are life and liberty? Life and liberty are two of the most significant features of our survival. Right to life means the right to lead significant, absolute and distinguished life. It is something more than existing or animal survival. Liberty is the protection from random exercise of authority. It has also been defined as freedom of choice, enjoyment of rights which belong to us as individuals.

However, the term 'life or liberty of a person' has not been clearly defined in the RTI Act, 2005. Therefore, one can take reference Article 21 of the Constitution which assures that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. In a catena of cases for many years, the Supreme Court has interpreted and widened the extent of the right to life and liberty to include -

Right to live with human dignity, free from exploitation	<i>Bandhua Mukti Morcha v. Union of India</i> , [1984] 3 SCC 161
Right to livelihood	<i>Olga Tellis v. Bombay Municipal Corporation</i> , 1985 SCC (3) 545
Right to speedy trial	<i>Hussainaira Khatoon v. State of Bihar</i> , [1979] 3 SCR 169

The right against solitary confinement	<i>Sunil Batra v. Delhi Administration</i> , [1978] 4 SCC 494
The right against bar fetters	<i>Charles Sobraj v. Superintendent, Tihar Jail</i> , 1979 SCR (1) 512
The right to legal aid	<i>Madhav Hayawadanrao Hoskot</i> v. <i>State of Maharashtra</i> , 1979 SCR (1) 192
The right against delayed execution	<i>T.V. Vatheeswaran v. State of Tamil Nadu</i> , AIR 1983 SC 361

Unless and until an imminent risk or danger to life and liberty is made out, Section 7(1) of RTI Act, 2005 cannot be cited and only when revelation of information would have a result of saving the applicant from that danger, such information should be given in 48 hours.

In the case of *N.N. Kalia v. University of Delhi*,⁶ the Central Information Commission (CIC) observed that section 7(1) of RTI Act, 2005 proviso has to be applied only in outstanding circumstances. Whether the information required by applicant is related to the life or liberty of a person has to be cautiously scrutinized and only in limited number of cases this ground can be relied upon. The government departments working does not happen in a way in India that responses to every RTI Applications can be given within forty-eight hours. The life or liberty provision can be used by applicant only in circumstances where there is an imminent danger to the life and liberty of a person.

In the case of *Mr. J.K. Mittal v. Gncd*,⁷ the CIC held that “the purpose of provision of RTI Act particularly Section 7(1) proviso that life and liberty related information shall be given in 48 hours is to inculcate responsive attitude in the Police Authority. It is pitiable to note that Home Department did not exhibit any concern and remained unresponsive. They simply passed on the back to the Police Authority.”

⁶ CIC/SG/C/2009/001169/4696

⁷ CIC/SA/C/2015/000030

The proviso to Section 7(1) of the RTI Act has to be used only in exceptional circumstances. Whether the information required is related to the life or liberty of a person has to be carefully examined and only in a very limited number of cases this argument can be relied upon. Also it is necessary that while providing information by Public Information Officer the priority should be given to cases of life and liberty issues because Article 21 of the Constitution itself contains provision regarding right to life and personal liberty.

If the information is not within the meaning of Life and Liberty there is no necessity to be provided in 48 hours as held by CIC in the case of Ashok Randhawa v. Lok Nayak Hospital, Govt. of NCT of Delhi,⁸ information was sought regarding the child Shanno, who breathed her last due to alleged punishment/thrashing given by the teacher of her school. The Appellant had sought the medical history of the child, cause of death, the status of the child when taken to casualty, treatment given to her, and findings of C.T. scan within 48 hours, terming it as an issue of 'life and liberty'. The Central Information Commission accepted the contention of the PIO that the 'life and liberty' (the child) in this case is dead, hence there was no imminent danger to life and liberty.

Right to Information in cases of Police FIR's

Life and personal liberty are the most esteemed belongings of an individual. The internal urge for freedom is an ordinary fact for each human being. Respect for life, liberty and property is not simply a standard or a policy of the State but a necessary obligation of any enlightened society.

About a century ago, the Patna High Court in Dhanpat v. Emperor⁹ laid down as follows:

"It is vitally necessary that an accused person should be granted a copy of the FIR at the earliest possible in order that he may get benefit of the legal advice."

The Scheme of Criminal Procedure Code does not provide for providing copy of the FIR to the accused at any previous stage than by a Magistrate on beginning of the proceeding under Section 207 of the Cr.P.C. Section 173 of the Cr.P.C. however provides that "Officer in charge of the police station shall forward to the Magistrate a report stating the details as mentioned in Section 173(2)". Section 173(6) also authorizes the police officer to point out by attaching a note requesting the Magistrate not to provide a part of the statement to the accused by giving reasons.

⁸ CIC/SG/C/2009/000453

⁹ AIR 1917 Pat 625

Emerging Trends in Right to Information

The execution of the Right to Information Act, 2005 has taken place in the whole country, however, the pace and growth of execution of the RTI Act varies from region to region in India. The RTI Act has brought in a 'drastic' change in the way the government and bureaucracy function. Now it is no more a period of closed, mysterious unreachable, administration. The common public has also started using their right in progressive numbers. Citizens have progressively become aware of the huge potential of right to know/information in their general empowerment. The government functionaries have started performing in a more accountable as well as open manner. The Act has come as a great rescue and virtue for all the upright and honest officers who want to do their job as per the norms without any interference from any quarter whatsoever. The pro-active disclosure by various public authorities, though not in the preferred quantity, has also reduced the information gap of the citizens.¹⁰

The RTI Act, 2005 has loopholes and lacunas. Many information seekers are either not informed properly of their rights or are often not provided the required information due to the insensitive approach of the public authorities attached. Poor quality of information and lack of a uniform official structure for providing information across departments in different states adds to the anguish of the applicants for information.

The Patna High Court has observed that the Right to Information Act, 2005 has been put into effect with the chief purpose of open governance, transparency and a participatory government which only shall fulfill the needs of the people as provided under the Constitution of India.¹¹

The Allahabad High Court has observed that from the scrutiny of the objects and reasons for passing Right to Information Act, 2005 it is obvious that the Government desired to establish a realistic rule of right to information for citizens to have access to information under the control of public authorities.¹²

The Right to Information Act, 2005, is a special Act. It prevails over the other provisions of laws in India. As per the provisions of section 23, the purpose of the RTI Act is to:

¹⁰ "Abhishek Jain, "RTI Implementation at the District level: Issues and Challenges.", *The Indian Journal of Public Administration*, Vol. 55, No. 3, July-September 2009, pp. 346-363, at p. 347."

¹¹ *Bihar Public Service Commission v. State of Bihar* (2009) 75 AIC 507 (Pat.).

¹² *Dhara Singh Girls High School v. State of UP*, AIR 2008 All. 92.

- i. provide information to the applicants from the area of public authority without the cost of litigation
- ii. Avoid postponement and relief available under the Act is available in a better manner without resorting to the complex process of civil courts.”

According to section 23 of the Right to Information Act, 2005, no court shall allow any proceeding in respect of any order made under RTI Act and. In other terms, it means all civil courts are disqualified from entertaining any suit, or proceedings in respect of any order made under RTI Act.

Conclusion:

The right to information is a valued right. Right to information is intended to be formidable²⁶ tools in the hands of accountable citizens to fight dishonesty and corruption and to bring in answerability²⁷. The provisions of RTI Act should be enforced firmly.

The objective of provision of RTI Act particularly Section 7(1) proviso is that life and liberty connected information shall be provided in 48 hours. This is done to instill responsive attitude in the Police Authority and to protect the fundamental rights of citizens of India as enshrined in Constitution. It is rational to anticipate that when the life or liberty of a person is at risk, the information which might save/help the person should be revealed as quick as it can be. As Life and liberty are two of the most key aspect of our survival. Right to life means the right to lead meaningful, complete and dignified life. It is something more than surviving or animal subsistence. Liberty is the resistance from random implementation of authority. It has also been defined as freedom of choice, pleasure of rights which belong to us as individuals and as per Law of Land.

Further, request for information for copy of the FIR can also be put forward by any person under the RTI Act, 2005. If police authorities are asserting exemption under Section 8(1) of the 2005 RTI Act it is a question which has to be determined by the police authorities by taking suitable decision by the competent authority in police department as per RTI Act, 2005. In event no such decision is taken to declare immunity under Section 8 of the 2005 Act, the police authorities are obliged to supply copy of the FIR on a request of Information under the RTI Act, 2005. Many citizens who have been falsely implicated by police authorities in cases have obtained copy of FIR and proved themselves innocent in court of law.

Therefore, it can be seen that Right to information has proved to be a bane for common man struggling to receive information in cases of violation of human rights and cases of corruption and also it has helped common man to obtain FIR copies through RTI. Thus, wherever an applicant files an RTI application for revelation of information related to Life and Liberty the public authority takes protection under the provisions relating to exemption clauses under RTI Act, 2005, the Commission (CIC) or the constitutional courts must see that no citizens fundamental right to life with dignity is infringed and suitable information must be provided to information seeker so that his/her Life and Liberty can be protected as provided under constitution of India. In a way the simple procedure of filing RTI without any complex procedure has made RTI very effective in instances of information related to Police FIR's and Life and Liberty matters.