

# OVERSEAS INDIANS: ACCESS TO RIGHT TO INFORMATION

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## ABSTRACT:

Right to information forms the essence of a true democratic country aimed at the welfare of its citizens. This right had its genesis in the right to know which forms the other facet of the right enshrined in Right to Freedom of Speech and Expression under Article 19(1)(a) of the Indian Constitution. Obtaining and providing information are the two sides of the same coin. That is why freedom of speech and expression is considered the freedom to receive and disseminate information without any interference. Right to Information, as interpreted by the Supreme Court of India has been recognized as a Fundamental Right and occupies preferred position in the hierarchy of rights made enforceable in the country. The freedom contemplated in Article 19 (1)(a) includes in its ambit freedom to communicate or circulate one's opinion without interference or objection by a large population not only within the country, but abroad as well, as for the present generations it is possible to reach anywhere in this world through technological innovations. In order to make this right available to a sector of persons with Indian origin commonly called 'Overseas Indians', the applicability of the Act has to be expanded and diversified. As has been specified by the Act that citizens of India are entitled to obtain information under the Right to Information Act, 2005, can it be construed that even the Overseas Citizen of India Cardholder is also entitled to be benefitted by the provisions of this Act? The analysis of this question is the sole basis of this research and has been supported through cases decided by the Supreme Court.

## KEYWORDS:

Right to Information (RTI), Overseas Indians, Fundamental Right, Overseas Citizen of India Cardholder, Freedom of Speech and Expression.

## Right to Information in India:

At the outset, the Indian democracy was never aimed at recognizing or creating a right to information. It was simply aimed at securing the rights of its citizens and their effective enforcement. One cannot find any specific right to information contained in the Constitution of India.

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It was only after Maneka Gandhi's case, that wider interpretation was given to the content of Article 21 and consequently the judicial activism heralded a new era where the rights of the citizens were given prime importance despite the fact that they were not explicitly contained in Part III of the Constitution of India. The right to information has also been construed to be read as part of the Constitutional guarantees of Fundamental Rights. The inalienable rights incorporated in Part III of the Constitution include the Right to Equality (Article 14), Right to Fundamental Freedoms (Article 19) and the Right to Life and Personal Liberty (Article 21). The rights enumerated thereto are made enforceable by judiciary through the Right to Constitutional Remedies provided in Article 32, that is, the Right to seek redressal from the Supreme Court, the apex court of the country for infringement of any of these rights. These rights have received diverse interpretation by the Supreme Court over the years and can truly said to be the basis for the development of the Rule of Law in India. As pointed out by H.M. Seervai,

"Corruption, nepotism and favoritism have led to the gross abuse of power by the Executive, which abuse has increasingly come to light partly as a result of investigative journalism and partly as a result of litigation in the Courts"<sup>1</sup>.

## Genesis of the Law:

The right to information had its genesis through several Supreme Court decisions interpreting the Right to Freedom of Speech and Expression in Article 19(1)(a) in such a diverse manner as to include within its ambit the other facet of this right, Right to Know which cannot be exercised without exercising the right to Freedom of Speech. These judicial pronouncements have achieved the milestone in widening the scope of this right, taking into account the cultural shifts in the polity and in society. The recognition of the right to information as a part of the Constitutional Law of the

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<sup>1</sup>H.M. Seervai, *Constitutional Law of India: A Critical Commentary*, (3<sup>rd</sup> Ed. 1988) at p. 201.

nation was first laid down in the case of *Bennett Coleman & Co. v. Union of India*<sup>2</sup> in which the right to freedom of speech and expression was interpreted to include the right of the petitioners to freely publish and circulate their newspaper. It was opined by the Supreme Court that it is indisputable that by freedom of the press meant the right of all citizens to speak, publish and express their views and Freedom of speech and expression includes within its compass the right of all citizens to read and be informed. This principle was further enunciated in the case of *Indian Express Newspapers v. Union of India*<sup>3</sup> where the court remarked,

“The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know.”

The Indian Democracy expects openness as a concomitant of a free society where it becomes axiomatic that citizens are given an opportunity to know about the affairs of the government elected by them while formulating policies aimed at their welfare. The Supreme Court in *State of Uttar Pradesh v. Raj Narain*<sup>4</sup> laid down,

“While there are overwhelming arguments for giving to the executive the power to determine what matters may prejudice public security, those arguments give no sanction to giving the executive exclusive power to determine what matters may prejudice the public interest. Once considerations of national security are left out there are few matters of public interest which cannot be safely discussed in public”.<sup>5</sup>

Justice K.K.Mathew went further to say,

“In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption”.<sup>6</sup>

With the growth of technology in this electronic era, it has also been recognized by the courts in India that Right to Know includes within itself right to acquire information and right to disseminate the same through any media whether print, electronic or audio-visual.<sup>7</sup> It has now been settled through numerous cases founding disclosure of governmental information and transparency as a matter of right. This right can be considered as one of the strongest formulations of the right in all its manifestations.

Before the year 2005, the only remedy available with the citizens was to enforce their right through a writ either in a High Court or Supreme Court. There is a massive probability that if a person would go to any Government Department and tell the officer there, “Right to Know is my fundamental right, and that I am the voice of this country. So, please show me your files concerning the information I require”, he would not do that. By all possible means, he would throw that person out of his room. Every time if a person wants to enforce his right, he shall have to knock at the doors of the court to avail justice which is not an appropriate method approachable for all. Every Indian citizen neither has the means nor the time and inclination to get into convoluted legal processes which last for years. Also the remedy of public interest litigation is a tool which can be availed by only a few. Therefore, a need was felt to create a machinery through which this fundamental right could be exercised even by a common man. It was in the year 1994 that a campaign was started in State of Rajasthan for enforcing this right. The first draft of Freedom to Information Bill, 1997 was prepared by the working group appointed by the Central Government for this purpose. Tamil Nadu became the first State to pass a law on Right to Information in 1997, followed by Goa in 1997. Resultantly, Freedom of Information Act was passed by both the houses of the Parliament in 2002 and was notified in the official gazette in January 2003. The Act reported high resistance from civil servants and politicians and massive lobbying was done

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<sup>2</sup>AIR 1972 SC 106.

<sup>3</sup> (1985) 1 SCC 641.

<sup>4</sup> 1975 SCR (3) 333.

<sup>5</sup>*Id.* at 334.

<sup>6</sup>*Id.* at 360.

<sup>7</sup> *Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*, (1995)2 SCC 161.

against the same. Finally, Right to Information Act 2005, which became effective on 13th October 2005, was passed amidst high protests providing for the machinery enforcing the right to Information of citizens of India. The Act lays down the process on how to apply for information, where to apply, what is the fee required in each case and the time limit in which the authority is required to furnish the information.

Advocacy on the use of this legal process has become more focused with citizens' filing their applications through various sources using technology thereby enforcing their right to information more frequently. Environmental groups and NGO's have also approached the government to know certain crucial facts concerning the environmental details of development projects. The developments in the implementation of this right under the new law have won half the battle for the enforcement of right to information, as the basic principle that the right to information is a fundamental right has been so firmly embedded that the probability of its complete subversion by government is practically not feasible. Whistle-blowers have further concentrated their energies towards the practical application of the right, spreading awareness amongst the masses to mobilize and encourage people to use this right and to make this legislation workable and create wonders in terms of accountability of information providers. The legal advancements through judicial interventions have made it clear that how the right to information can be merged with other issues and expanded to cover accessory matters to get accountability and transparency for a variety of governmental actions.

### **Overseas Indians' Right to Information:**

Irrespective of the status or position of a person, as far as a person is a citizen of India he or she shall have the right to information subject to the provisions of RTI Act, 2005. In simple words, all citizens are entitled for information under Right to Information Act, 2005. Section 3 of the Act clearly states that,

“Subject to the provisions of this Act, all citizens shall have the right to information.”

Another provision that has a contradictory application is contained in Section 6 of the Act which states that,

“Where an application is made to a public authority requesting for an information,

- (i) which is held by another public authority; or
- (ii) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.”

The statement reflecting in the provisions of Section 3 thus restricts the Right to access information solely to Indian citizens and that the term ‘citizen’ has not been defined or explained anywhere in the Act, leaving it to the interpretations of the judiciary. In the absence of any note clarifying the term citizen, the implication of the statement would seem to mean that only Indian Passport holders will be provided information under the RTI Act. Reliance may be placed on the decision of the Central Information Commission in the case of Mr. Chanderkant J. Karirav. Ministry Of External Affairs<sup>8</sup> wherein the issue of the rights of an Overseas Indian Citizen qua the Right to Information have been recognized and placed at par with the rights of the citizens of India. For further deliberations on this issue, the provisions of Section 7 (B) of the Citizenship Act may be referred to which conferred certain specific rights upon the “Overseas Citizen of India” (OCI) as follows:

### **“7B. Conferment of rights on overseas citizens of India Cardholder-**

1. Notwithstanding anything contained in any other law for the time being in force, an overseas citizen of India cardholder shall be entitled to such rights [other than the rights specified under sub-section (2)] as the Central Government may, by notification in the Official Gazette, specify in this behalf.

2. An overseas citizen of India cardholder shall not be entitled to the rights conferred on a citizen of India--
  - a. under article 16 of the Constitution with regard to equality of opportunity in matters of public employment;
  - b. under article 58 of the Constitution for election as President;
  - c. under article 66 of the Constitution for election of Vice-President;
  - d. under article 124 of the Constitution for appointment as a Judge of the Supreme Court;
  - e. under article 217 of the Constitution for appointment as a Judge of the High Court;
  - f. under section 16 of the Representation of the People Act, 1950(43 of 1950) in regard to registration as a voter;

<sup>8</sup> Complaint No. CIC / AD /C/ 2009/ 900683 (Central Information Commission May 10, 2010), [http://rti.india.gov.in/cic\\_decisions/CIC\\_AD\\_C\\_2009\\_900683.pdf](http://rti.india.gov.in/cic_decisions/CIC_AD_C_2009_900683.pdf)

- g. under sections 3 and 4 of the Representation of the People Act, 1951(43 of 1951) with regard to the eligibility for being a member of the House of the People or of the Council of States, as the case may be;
- h. under sections 5, 5A and 6 of the Representation of the People Act, 1951(43 of 1951) with regard to the eligibility for being a member of the Legislative Assembly or a Legislative Council, as the case may be, of a State;
- i. for appointment to public services and posts in connection with the affairs of the Union or of any State except for appointment in such services and posts as the Central Government may by special order in that behalf specify.
3. Every notification issued under sub-section (1) shall be laid before each House of Parliament.”

As is clear from the statement contained in Section 7-B, overseas Citizen of India cardholder, even though not being a citizen of India due to the fact that India doesn't permit dual citizenship, is entitled to all the rights given to a citizen of India except the political rights mentioned in clause 2 of Section 7B.

Arguing further, “Right to Information” emanated from the Article 19 of the Constitution which ensures as follows:

“19. (1) All citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (g) to practise any profession, or to carry on any occupation, trade or business....”

Since the scope of the said Article has been excluded from the ambit of the restrictions as placed by the Section 7(B) of the Citizenship Act, therefore clearly the OCIs are entitled to enjoy the right to information just like any other citizen of India. The same Right to Information which is available to OCIs, shall also be available to the person holding “Person of Indian Origin” card (PIO card) as both the categories have now been merged as per the notification issued by the MHA through Gazette notification dated 19.07.2002. Without any dispute, Right to information is also available to the NRI's as the third category of individuals belonging to the group commonly called as “Overseas Indians”.

In a landmark judgment, in the case of Kunal Saha v. Ashok Chowdhury,<sup>9</sup> the Supreme Court established the Overseas Indians' right to seek information from any public authority, organisation or institution under the Right to Information (RTI) Act 2005. An Indian scientist based in the US petitioned the courts and the Supreme Court of India guaranteed the right to information to all persons of Indian origin, including NRIs. In 2008 the Supreme Court granted all overseas Indians the right to seek information from any public authority, organisation or institution under the Right to Information (RTI) Act 2005, saying the right is available to all persons of Indian origin (PIOs) who have obtained the status of Pravasi Bharatiya. The ruling was made by a bench comprising Justices S B Sinha and Cyriac Joseph on an appeal petition by a non-resident Indian (NRI) scientist based in the United States, Dr. Kunal Saha, after he was denied information by the West Bengal Medical Council about details of the medical treatment given to his late wife, Dr. Anuradha Saha, at a Kolkata hospital. Dr. Anuradha Saha died in 1998, allegedly due to an incorrect dose/treatment administered to her at the hospital. Dr. Saha, a noted AIDS vaccine researcher at Ohio State University, has been fighting to prove a case of medical negligence since 1998. Dr. Saha approached the apex court against a Calcutta High Court order rejecting his plea seeking documents under the Right to Information (RTI) Act that the Medical Council was said to have obtained in the course of their investigation into his complaint against senior Kolkata doctors. The High Court also held that Dr. Saha was an NRI and thereby not entitled to information under the newly enacted law. The Supreme Court however upheld Dr. Saha's appeal petition that he was entitled to information under the RTI Act. The Supreme Court admitted a claim for Rupees 1.43 billion compensation by the US-based AIDS researcher against the Kolkata doctors -- the highest in the country till date. The case was under consideration by the country's apex judiciary. The apex court's order vis-à-vis the RTI Act has brought cheer to India's NRI community for a number of reasons.

In June 2007, the Indian embassy in Washington DC brought all its operations under the purview of the RTI Act as a result of the persistent efforts of volunteers from the Association for India's Development (AID), a non-profit group based in the United States. This meant that the RTI Act extended to all Indian citizens living in the US. The Supreme

<sup>9</sup> SLP (Civil) no. 22999 of 2007 (Supreme Court of India December 13, 2007), <http://courtnic.nic.in/supremecourt/temp/229992007113122007p.txt>.

Court of India has now ensured that the RTI Act covers all persons of Indian origin, anywhere in the world. “Our repeated attempts since November 2006 to get Indian embassy officials in Washington DC to implement the RTI Act went unheard, and then we were left with no choice but to get in touch with the central information commissioner directly,” explains Arun Gopalan, a Maryland resident and an AID member.<sup>10</sup>

The Central Information Commission in New Delhi issued an order around April 2007, and bringing all abroad missions under the scope of the Indian Right to Information Act. It took about one-and-a-half months of further campaigning by the AID volunteers, to get the Indian embassy in Washington DC to accept its first RTI petition. Now, however, any Indian citizen who is in possession of a valid Indian passport can file an RTI application with the public information officer at the Indian embassy, after paying a specific fee. Subsequently, the embassy transfers the application to the relevant department in India, if the information requested does not pertain to the embassy itself. The applicant has to necessarily receive a response within 35 days or he/she can file an appeal with the appellate authority, and later with the Chief Information Commissioner in India.

Under the present Act, a citizen, who desires to obtain any information under the Act, should make an application to the Public Information Officer of the concerned public authority in writing in English or Hindi or in the official language of the area in which the application is made. The application should be precise and specific. He should make payment of application fee at the time of submitting the application as prescribed in the RTI Rules, 2012. The applicant can send the application by post or through electronic means or can also deliver it personally in the office of the public authority. The public authority from whom the information is requisitioned must furnish the same in the time specified by the Act. To take it forward, the Government of India took a major step forward in enabling Non-Resident Indians (NRIs) to file applications under the Right to Information Act this week, announcing that it has launched a service called “eIPO,” or Electronic Indian Postal Order. Using this, NRIs across the world may now be in a position to file RTI applications conveniently via direct payment of fees for the same. Lokesh Batra, a retired commodore and an RTI activist who was said to be one of the principal campaigners behind the move was very happy at this initiative taken by the Indian Government. It was his frustration with the difficulties in filing an RTI application from the U.S. during a two-month visit there to see his daughter four years ago that led him to start an online petition to make it easier for to buy IPOs or demand drafts in Indian rupees. He was said to have moved the Central Information Commission which in 2010 reportedly ordered that a system be put in place to make it possible for Indians living abroad to file RTIs.<sup>11</sup>

This is surely the feature of a good democratic nation that when law leaves a gap, the same is filled up by the unanimous power of judicial activism exercised by the judiciary to enforce the rights of the people affected thereby leading to a complete welfare State. The judiciary in India have expanded the applicability of Right to Information Act, 2005 to cover all Overseas Indians who are no doubt have Indian origin but may not be citizens of India in a literal sense but when interpreted in the light of doctrine of Pith and Substance, they may be conferred with the Right to Information under the Act though the Act is made applicable to only citizens of India. The title of the Act itself states,

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Whereas the Constitution of India has established democratic Republic;

And whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

And whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

And whereas it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal;

<sup>10</sup>[NRIs too have the right to information](http://infochangeindia.org/right-to-information/features/nris-too-have-the-right-to-information.html), Info change (June 3, 2015), <http://infochangeindia.org/right-to-information/features/nris-too-have-the-right-to-information.html>.

<sup>11</sup>Narayan Lakshman, RTI applications for NRIs simplified, The Hindu (March 23, 2013), <http://www.thehindu.com/news/international/rti-applications-for-nris-simplified/article4539240.ece>.

Now, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.”