



RIGHT TO INFORMATION AND PROMOTION OF OPEN GOVERNMENT

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Abstract: *Rule of law is the greatest principal of modern democracy. The term 'Rule of law' is used in contradistinction to rule of man and rule according to law. Even in the most autocratic forms of government, there is some law according to which the powers of the government are exercised, but it does not mean that there is rule of law. The rule of law implies the rule, which is based on the principles of freedom, equality, non-discrimination, fraternity, accountability and non arbitrariness, and is certain, regular and predictable, using the word law in the sense of 'Jus' and 'lex' both. Undoubtedly, Rule of law is an ideal for all the governments around the world. Recently, the concept of Rule of law got pre-eminent position in one of the postulates of Good Governance. The concept of Good Governance came into its full bloom in the first decade of 21 century. The philosophy emphasized upon the participation of individuals in decision making process and the process of implementation of decisions. In order to enable the individuals to participate in the decision making process, the information of facts are very important. The RTI make assure to transparency, participatory efficiency, decision making process, responsiveness and accountability are the hallmarks of Good Governance. The concepts of Good Governance and right to information are intertwined. Right to information can be used as an effective tool to usher in a regime of good governance. In a way, they can be said to be two sides of the same coin, or two aspects of the same aspiration, viz., to strengthen, stabilize and broaden the working for open government.*

Key words-Rule of law, RTI, transparency, participatory efficiency.

Evolution of Right to Information in India- The Supreme Court of India ruled in 1982 that access to government information was an essential part of the fundamental right to freedom of speech and expression. The Court ruled in 2002 that voters have a right to know information about candidates for elected offices and ordered the Election Commission to make candidates publish information about criminal records, assets, liabilities and educational qualifications.

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Under the Freedom of Information Act, as approved in January 2003, but not implemented, all Indian citizens will have a right to ask for information from Public Authorities. The Public Authority must respond in thirty days (48 hours, if it concerns dangers to the life or liberty of a person). The Act does not apply to intelligence and security agencies. There are mandatory exemptions for information that would harm national security, public safety and order or international relations; information that would harm Centre-State relations; cabinet papers; advice in policy making prior to decision; trade or commercial secrets; or would result in a breach of parliamentary privileges or a court order. Most of the information cannot be exempted if it relates to an event that is over 25 years old. There are also discretionary exemptions if the request is too vague or large a request; information that is about to be published; has already been published; or would be an unwarranted invasion of privacy. A 120second appeal is to the Central or State government.

The Public Authorities must appoint Public Information Officers. They must also publish information on their structure, duties, all relevant facts concerning important decisions and policies; give reasons for its decisions to those affected by them, and publish facts about any project before initiating any project. The Department of Personnel and Training (DoPT) is in charge of implementing the Act. The Secretary of the DoPT said, in August 2003, that they have not set a timetable for it to come into force because a number of decisions about the rules needs to be made.

The Official Secrets Act, 1923 is based on the similar Act of 1911 of United Kingdom. It prohibits the unauthorized collection or disclosure of information, and is frequently used against the media.

The Public Records Act, 1993 sets a thirty year rule for access to archives. Many of the States in India have enacted Right to Information Acts since 1997 due to pressure



from activists fighting corruption. These include Goa, Tamil Nadu, Madhya Pradesh, Karnataka, Maharashtra, New Delhi and Rajasthan. Uttar Pradesh has adopted a Code of Practice on Access to Information. The Maharashtra Government's Right to Information Act was adopted (replacing a 2002 Ordinance) in August 2003 after activist Anna Hazare went on a hunger strike. According to the Department of Personnel and Training (DoPT) the national law will take precedence once it comes into force but this is unclear as several state governments have enacted laws with the permission of the centre since the adoption of the national law.

Right to Information: Promotion of open Government-

Right to information is such a multifaceted right that it brings many aspects of governing system in its purview, such as transparency, accountability, integrity in governance, encouragement to public participation, prevention and exposure of corruption and cases of abuse of powers. The essential premise of this right to information is that in a democratic society, greater access means better responsiveness, and larger limits mean greater impotence and alienation. Right to Information (RTI) has acquired a special importance in the entire democratic world. It has become a vital element in the scheme of open and responsive governance. It is considered to be the pulse and the lifeblood of democracy. It is necessary for individual fulfillment. It is also necessary to make a responsive citizen; to participate into the governing process; to make wise judgment; to maintain human dignity and to uphold democratic process. It empowers the people; makes them responsible citizens; helps creating just society by preventing secret dealings in the public business. RTI is important for the political, economic and social well being of the society in general. It ensures transparency. The level of transparency determines the responsiveness of our government to our needs, wants, ideas and creativity. In order to make the government able to maintain the faith and confidence of its citizens, it must be in touch truthfully with the governed. RTI provides this opportunity to be in touch with the governmental process.

The effective operation of representative/participatory democracy depends on the people's ability to analyze, discuss and contribute to government decision making. To do this, they need transparency, which is possible only when there is access to information. It is well known that much material about government operations is provided voluntarily. The right to information has also an important role to play in enhancing the proper working of our representative/ participatory democracy by giving citizens the right to demand and receive information of public importance. Such access to information permits the government to be assessed and enables people to take part more efficiently in the policy and

decision-making processes of the government. It is clear that access to information is closely related to the notion of a healthy democracy where citizens participate in, and influence, the processes of government decisionmaking and policy formulation on any issue of concern to them. The importance of the right to information legislation is that it provides the means for a citizen to have access to the knowledge and information that will assist a more significant and effective enjoyment of life. The public authorities and government departments govern our lives, so these institutions must be held accountable and answerable to the people through RTI.

As we know, RTI is the backbone for participatory democracy without which people cannot effectively exercise their rights and responsibilities as citizens or make informed choices. It is the currency that we all need to share in the life and governance of our society. This fact further finds its support from the judgment of the full Bench of Delhi High Court comprising of Justice A.P. Shah (as he then was), Justice Vikramjet Sen and Justice S. Muralidhar in the matter of Secretary General, Supreme Court of India v. Subash Chandar Aggarwal, as it was observed Information is currency that every citizen requires to participate in the life and governance of the society. In any democratic polity, greater the access, greater will be the responsiveness and greater the restrictions, greater the feeling of powerlessness and alienation.

It enhances the accountability of government, and ensures that Members of Parliament are aware of the activities of the Executive, which is especially important in light of the disparity in power between them. It is also an important protection against corruption. RTI and Democratic Process Democracy demands transparent process in every decision making, which is possible only through effective RTI provisions and implementation thereof. Transparent process produces fairness and legitimacy. The consequentialist logic for



transparency in government usually rests on the idea that unclear processes are likely to facilitate corruption and irregularities. Corruption/ irregularities is/are more likely because secret decision making promotes rent-seeking by public officials, whereas transparent processes make bribery more difficult and increase the likelihood that it will be exposed.

Ways of Ensuring Access to Information- Transparency relies on access to information. Access is guaranteed through various ways. The most important one is the openness or information culture under which the government and people act openly and transparently by conduct without any legal sanction. The second is the Constitutional guarantee of the Right to Information and access to information legislation, which provide access to information having public importance. Under this scheme, citizens may have access to information as a matter of fundamental/legal right. It is the main instrument of guaranteeing transparency. There is also a third way of getting information. Although the Constitution/law regarding Right to Information is the major source of access to government information, there are other ways by which governmental and public information is available to members of the public. The parliamentary system, including the expanding parliamentary committee system, promotes the transfer of information from the government to Parliament, and then to the people. Members of the public can try to find information through the MPs of their constituencies. Annual reporting requirements for Constitutional organs, community consultation in certain types of bills, publication of information and administrative law requirements increase the flow of information from the government. The government provides information through various means of communication. The media is the main source of information in a democratic country. Free Press, Radio, Television and Internet like means of communication disseminate enough information to the public by using their several freedoms and rights. In addition to the constitutional guarantee and right to information legislation, there are number of statutes that make provision of disclosure of information or provide the right to access to information. These statutes are complementary and supplementary to the right to information law and serve the purpose of the access to information; thereby, honoring people's right to know. In substance, access to information highly depends on the accountability of the government. It relies on the 23 philosophy of open government and transparency culture.

In substance, transparent governance depends on all of the above mentioned ways of disseminating and getting information. At this point of time, we have to design new Constitution in this line. Similarly, we need to update present

legislation regarding RTI and to develop a culture of transparency and openness.

Right to information is one of the basic aspects of transparent governance. It mainly focuses on three principal areas: (1) Access to public records and documents, in which the "business of the people" is stored in some tangible form; (2) Access to the deliberative institutions of government and public bodies, such as meetings and forums in which public business is debated and resolved; and

RTI and Right to privacy- The literal definition of privacy is freedom from public interference, especially as a right. The right to privacy is protected by Article 21 of the Indian Constitution, which states that no one's life or personal liberty may be taken away except in accordance with legal procedures. The safeguards are in place so that, while the right to privacy is a fundamental right guaranteed by the Constitution, special legislation can override it when the public interest is at stake. Moreover, privacy primarily concerns the individual. It, therefore, relates to overlap with the concept of liberty. The most serious advocates of privacy must confess that there are serious problems of defending the assails and the scope of the right. Privacy interest in autonomy must also be placed in the context of other rights and values. When an individual's privacy and citizens' Right to Information compete, the former must yield to the latter since it serves the wider Public Interest. The RTI Act's preamble states that citizens have the right to secure access to information under the control of public authorities in order to promote transparency of information that is critical to the functioning of public authorities, to contain corruption, and to hold governments and their instrumentalities accountable to the governed, thereby developing participatory governance.

Reasons responsible for Framing of Information Laws in India- There have been a variety of internal and external pressures on governments to adopt Freedom of Information



(FOI) laws. Civil society organisations, such as the press and environmental organisations, have played an important role in the advocacy and passage of laws in most countries. Improvements have been required by international organisations. Finally, governments have realised the value of using FOI to modernise.

1. International pressure- Access has been aided by the international community. The Commonwealth, the Council of Europe, and the Organization of American States have all drafted recommendations or model laws, and the Council of Europe voted in September 2003 to prepare the first international treaty on access. The World Bank, the International Monetary Fund, and others have encouraged governments to enact legislation aimed at reducing corruption and improving the accountability of financial systems. Dozens of nations have signed the UN-sponsored Aarhus Convention on Access to Environmental Information, which commits them to enacting environmental information access legislation.

2. Modernization and the Information Society- The public, corporations, and civil society organisations have increased their desire for more information as the Internet has become more mainstream. The necessity to upgrade record systems and the shift to e-government has produced an internal constituency that promotes information distribution as a goal in and of itself. The Ministry for the Information Society in Slovenia was a driving force behind the law's successful passage.

3. Constitutional Rights- The transition to democracy for most countries has led to the recognition of Freedom of Information (FOI) as a human right. Almost all newly developed or modified constitutions include a right to access information from government bodies. Over forty countries now have constitutional provisions on access. They also often include specific provisions on a right to information on the environment and the right of individuals to access their personal files.

4. Corruption and Scandals- Often, crises brought about because of a lack of transparency have led to the adoption of laws to prevent future problems. Anticorruption campaigns have been highly successful in transitional countries attempting to change their cultures. In long established democracies, such as Ireland, Japan and the UK, laws were finally adopted as a result of sustained campaigns by civil society and political scandals relating the health and the environment.

CONCLUSION- The Right to Information Act of 2005 has transformed India from the world's biggest democracy into a responsible, interactive, and participatory democracy. India's

democracy would not be complete without the passage of the Right to Information Act. The inhabitants of India now enjoy unprecedented authority as a result of this Act. People now have the ability to hold government officials accountable for their actions and make decisions based on the standards of public interest, good governance, and fairness. With the passage of this legislation, Indians have a powerful tool at their disposal, empowering themselves and ensuring more accountability and responsibility from their elected officials and government agencies.

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