
THE RIGHT TO INFORMATION IN THE CONTEXT OF INDIAN DEMOCRACY

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Abstract

The beginning of twenty first century is marked with the developments made in the field of information and technology. Information is buzz word today. It is a key to keep pace with progressive trends in the modern world. Information has an unlimited potential. Everyday we read newspapers, watch news channels, surf on the net to keep ourselves aware of our surroundings or in other words, to catch up with what is going on around us. A number of newspaper, agencies, channels and web sites have come up these days to encash on people's craving to know and to be updated with latest available information.

Information is the medium of conversation. We need information about commodities when we buy some products from the market. It may pertain to quality, quantity, purity, standard potency and prices of product or service that are needed to make an informed choice, or decisions. The primary role of information is to equip the consumer to make informed choices.

Introduction

As a citizen of a democratic country, a person has a right to know about the policies, laws and other information that may affect him directly or indirectly. This right to information also co-exists with our right to vote. A citizen is not only entitled to select the government by exercising his or her franchise but she/he is also expected to know how the selected government is performing. In a democracy a citizen is authorised and is responsible to make informed choices about the candidates of the political parties which should come in power.

The present paragraph looks at the development of the concept of RTI across the world. It focuses on interventions that are made at the global level and briefly discusses laws on RTI as prevalent in other countries. Sweden was the first country to provide Freedom of Information to his citizens as far back as 1766. The Constitutional provisions guaranteeing this freedom was adopted in this year, as part of the Freedom of the Press Act, as one of Sweden's four basic Constitutional Laws. In other countries, however, the development in this regard has been far

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more recent. Among the other Scandinavian Countries, Finland enacted the Freedom of Information legislation in 1951, followed by Denmark and Norway in 1970. The United States enacted its Freedom of information law in 1996. Austria, France and the Netherlands passed legislation to this effect during the 70s, while Australia, Canada and New Zealand enacted it in 1982-83. In Bulgaria, the Access of Information Act was enacted in June 2000 and Ireland enacted the Freedom of Information Act, in 1997. In the Republic of South Africa, the Right to Access to Information Act was passed in 2000. In Britain, a white paper called 'Your Right to Know' was published in 1997 and three years later, on 30th November, 2000; the Freedom of Information Act received the Royal Assent.

Colonial government was not responsible to the people. The 'Right to Information' was demanded as essential to people, who may make grassroot demands such as the right to work, the right to obtain famine relief, or the right to receive minimum wages. In India, the campaign on Right to Information was triggered off at the grassroot level by an organization called Mazdoor Kisan Shakti Sangathan (in brief MKSS) in 1990, which initially started to bring the transparency in villages. It was actually an offshoot of the demand for minimum wages in rural area the State of Rajasthan. The ghost entries in the muster roll, discrepancy that exist between reality and records and the rampant corruption that followed up, prompted people in Rajasthan to demand information recorded in the official files. This had a major impact not only in the villages of Rajasthan but it spread all over India like wild fire.

Thus, it was a modest beginning of a great movement, only to be followed by broader discourse on issues of governance in India. This vibrant movement for the Right to Information in India is different from the movement in West, because here it related to the very right to survival of people.

The campaign also initiated a debate or feasibility of Right to Information law in India. The process was initiated in 1993 when Right to Information Law was proposed and eventually the Freedom of Information (in brief FOI) Bill, 2001 was passed in December, 2001 and received Presidential assent in January, 2002 which turned into the Freedom of Information Act, 2002. The aforesaid Act, 2002 was the only comprehensive Central law entrenching the Right to Information in India. Although the Act was passed in 2002, it never "came into force".



But even before the FOI Act, was passed some of the States had already introduced and passed their own Right to Information legislation. The first amongst these was Tamil Nadu (1997) which was followed by Goa in 1997, Rajasthan in 2000, Karnataka in 2000, Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003) and Jammu & Kashmir (2004). The main objectives of the Right to Information Act was to operationalise the Fundamental Right to information to set up systems and mechanisms that facilitate people to have easy access to information, to promote transparency and accountability in governance, to minimise corruption and inefficiency of public offices and to enable peoples' vibrant participation in governance.

The Official Secrets Act, 1923 of India prohibited disclosure of information indiscriminately. Section 3 dealt with spying and section 4 with the evidence relevant in the proceedings for the prosecution of a person for the offence under Section - 3 & 5 prohibited the disclosure of information, which the government considered to be confidential. It is suggested that the definition of official information should have been narrow and strictly limited to those aspects of governance which needed to be kept confidential for the time being. In view of the right to information that is now being recognised, confidential matter is minimum. Bureaucrats have the tendency to stamp any document as confidential and thereby make it inaccessible to people. The tendency to over classify documents or information as confidential results in creating unnecessary secrecy in administration which is harmful to good governance and Citizens of Motherland.

The Central Bill with a changed title to this effect was passed with amendments by Lok Sabha on 11th May, 2005 and by the Rajya Sabha on 12th May, 2005, which received the assent of President Dr. A.P.J. Abdul Kalam on 15th June, 2005. The Central law was published in the Gazette of India on June 21, 2005 as the Right to Information Act, which came into full force with effect from 12th October, 2005.

In India, the Right to Information flows from the Constitution. This paragraph focuses on the Constitutional and legal aspects of RTI in India. Art. 19 (1) (a) of the Indian Constitution guarantees the Fundamental Rights to Freedom of Speech and Expression, which by implication, includes within its right to access the information for the citizen of India. Therefore the RTI becomes a Constitutional Right. It being an aspect of the Right to free speech &



expression, which includes the Right to receive and collect information. However, Art. 19 (2) permits the State to make any Law in so far as such Law imposes 'Reasonable Restrictions' on the exercise of the rights conferred by Art. 19 (1) (a) of the Indian Constitution in the interest of Sovereignty and Integrity of India, the security of the State, Friendly Relation with Foreign States, Public Order, Decency and Morality and also Contempt of Court, Defamation and Incitement of Offence.

The Right to Information also flows from Art. 21 of the Constitution which deals with "Right to Life and Personal Liberty", which in turn includes 'Right to Know' about things that affect our lives. Art. 21 confer on all persons the aforesaid right to & are not limited to citizens.

Earlier India had no legislation that provided for limited access to official informations and this resulted in constitutional interpretation of reading a right to information into the aforesaid guarantees under Art. 19 (1)(a) and 21. However, the free flow of information till recently has been severely restricted by three factors, firstly the legislative frame work included several pieces of restrictive legislations like the Official Secrets Act, 1923 but there was no law on freedom of information giving individuals a right to access to information held by public authorities, secondly the pervasive culture of secrecy and arrogance within the bureaucracy and lastly the low level of literacy and rights.

The Right to Freedom of Speech and Expression often collides- with the right to privacy which is protected by the law of tort. We shall examine the legal position regarding privacy.

Privacy was recognised by the apex court as inherent in the right to personal liberty guaranteed under Art. 21 of the Indian Constitution. The violation right to privacy may also invite legal action for defamation. The laws of defamation and privacy need to be made compatible with the right to freedom of speech and right to information which are sine qua non of democratic society. The balancing of competing interests in these seemingly conflicting values will bring about the harmonious solution.

The following paragraph looks into various notable aspects of the Right of Information Act, 2006. Information brings about transparency and accountability both of which held to reduce corruption and increase efficiency in governance and therefore justify the demand of Information.



Notable features of the RTI Act mentioned in the work are as follows:-

'Information' as a term derived from the Latin words 'Formation and Forms' which means giving shape to something and forming a pattern respectively. Information may be of facts or law. Information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press-release, circular, orders, books, contract reports, papers, samples, models and data material held in any private body that can be accessed by a public authority under any other law for the time being in force.

The Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request for information shall as expeditiously as possible and in any case within 30 days of the receipt of the request either provide the information on payment of prescribed fee or reject the request for any of the reasons for which such information can be refused under the Act.

Any person, who does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of Central Public Information Officer or State Public Information Officer, as the case may be may, within thirty days from the expiry of such period or from the receipt of such a decision prefer an to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in such public authority.

A second appeal against the decision under sub-section (1) shall be within ninety days from the date on which or was actually received, with the Central Information Commission or the State Information Commission. The penalties can be imposed by the Central Information Commission at the time of deciding any complaint or appeal. It shall impose a penalty of Rs. 250/- each day till application is received or in information is furnished. However the total amount of such penalty should not exceed Rs. 25,000/-.

Conclusion

This Act, promotes openness, transparency and accountability in democratic process by making Government more open to public scrutiny. Ultimately we can say that RTI Act, 2005 has offered hope to people striving to generate the culture, institutions and principles necessary for a participatory democracy.

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