

RTI:A MOVE FROM SECRECY TO OPENNESS

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Introduction

In a democratic country, the people are the real sovereign and information is considered a tool that empowers people to act more meaningfully because being well informed they will be more vigilant as well as democracy will also be more vibrant. In a democratic polity dissemination of information is the very foundation of the system because keeping the citizens informed is an obligation of the government. Right to information is an inherent right of every citizen in a democratic country like India. It ensures not only the right of a citizen to know about the government activities but also empowers them to fight against corruption and partisan action of the government, apart open and unrestricted dissemination of information also enhances public health and safety and the general social welfare, as citizens become better able to make informed decisions about their daily life, their environment and their future. The main objectives of the law on 'right to information' is to operationalize the fundamental right to information to set-up systems and mechanisms to people for having an easy access to information, to promote transparency and accountability in governance, to minimize corruption and inefficiency in public offices and to enable people's vibrant participation in governing polity of the country. The ambit and scope of the Act are much wider; the Act shakes off the monopolization of information by few and sets in the transparency, which in turn promotes accountability. The act proposes to transform Indian 'mass of citizens' into informed class of citizenry. The intent and spirit of the act is free-flow of information, which leads to formation of wise-citizens and knowledge society. The right to information is an effective and landmark Act that has changed the relationship of the citizen with the state. This Act was enacted in order to ensure smoother, greater and more effective access to information and provide an effective framework for effectuating the right to information recognized under Article 19 of the constitution. The architecture for accessing information through RTI is simple, time-bound and inexpensive.

Purpose of Right to Information

The right to information was framed with a purpose-

- To provide a right to information held by public bodies in accordance with principles that such information should be available to the public.
- Necessary exceptions to the right of access should be limited and specific.
- That decision on the disclosure of such information should be reviewed independently of government.
- To provide a right to access to information held by private bodies where this is necessary for the exercise or protection of any right, subject only to limited and specific exceptions.¹

Right to Information Act empowers every citizen to:

- Ask any question from the government or seek any information.
- Take copies of any governmental documents.
- Inspect any governmental documents.
- Inspect any governmental works.
- Take samples of material of any governmental work.²

Origin of the Right to Information

The world's first freedom of information legislation called Ordinance on Freedom of Writing and of the Press was adopted and proclaimed by the Swedish parliament in the year of 1766. The enlightenment thinker and politician *Anders Chydenius*³(1729-1803), belonged to the Finnish city of Kokkola, played a fundamental role in the creating of this new law, which he considered himself to be one of his supreme achievements. Some of the key achievements of the Freedom of the Press Act, 1766 Act were the abolishment of political censorship

¹ Jagadish A.T., Right to Information-A Silver Lining in Democracy, Karnataka Law Journal 2012, April 15; 2(8), p. 61.

²Prof. (Dr.) Kailash Thakur, The Right to Information Act, 2005: A Movement from Darkness to Light, Civil and Military Law Journal, July-September 2012, Vol. 48, No. 3, p. 166.

³ Tatiana Artemyeva at.el, The Philosophical age: the northern lights social philosophies and utopias of the enlightenment in northern Europe and Russia, St.Petersburg Center for the History of Ideas available at:<http://ideashistory.org.ru/pdfs/a39.pdf>, visited on 14/9/2014 at: 5.20 pm

and the gaining of public access to government documents. Although this new innovation was suspended from 1772-1809⁴, the principle of publicity has since remained central in the Nordic countries. The enactment of this law was only the beginning.

Right to Information globally, is not a new but an old concept whose evolution can be traced back mainly in the 18th Century that followed by many of the countries in the modern times mainly in the end of the 19th Century. The first RTI law was enacted by Sweden in 1766. Finland was the next to adopt, in 1953, followed by the United States, 1966, and Norway, in 1970. The development in RTI laws took a leap forward after the United States, passed FOI law in 1976, followed by western democracies (France 1978, Netherlands 1978, Australia 1982, New Zealand 1982, Canada 1982, Columbia and Denmark 1985, Greece 1986, Austria 1987, Italy 1990). By 1990, the number of countries with RTI/FOI laws was 13. As of 2011 more than 70 countries had enacted laws establishing citizen right to information.⁵ Today nearly 105 countries have enacted formal freedom of information laws, Africa -15, Asia- 13, Caribbean countries-5, Central Aisa-6 and Europe-44, Middle East-3, Latin America-15, North America-2, Oceania- 2 and there are current debates and proposals under discussion in scores of others.⁶

In India apart from the Supreme Court decisions the real movement originated in relation with the Right to Information from the grassroots level that lay in Devdungi a tiny place located in central Rajasthan in 1987 by some of the human rights activists named Nikhil Dev, Shanker Singh and Aruna Roy in order to improve the life of the people and initially worked upon the livelihood issues. This campaign was born out of the struggles of an organisation of the poor based in central Rajasthan called the Mazdoor Kisan Shakti Sangathan (MKSS). The 1990s saw the emergence of a right to information movement.⁷ The success of this movement spread over in Rajasthan and other states establishing firmly that information is true power and people should have right to official information.⁸ This movement has raised some of the famous slogans as hamara paisa hamara hisaab (our money our account) and hum janenge hum jiyenge (we will know we will live). This movement caught the attention of the policy maker and led the enactment of the Rajasthan Right to Information.⁹

Most of the major political parties promised transparency and administrative reform in their election manifesto. That was given impetus at the 24 May 1997, a conference of the Chief Ministers of the States who discussed the action plan for the effective and responsive Government at the Centre and the States. This conference recognised that secrecy and lack of openness is one of the major factors of corruption in the official dealings and also contrary to the accountable and democratic Government. As a result of which two States passed the Right to Information legislation in the same year and the Government of India also appointed a

⁴ Afshin Mehrpouya, "Transparency in Transnational Governance Exploring the Institutional Construction of a Powerful Norm, Multiplicity and Plurality in the World of Standards Working Paper, 2012", p.9 Available at: http://www.egosnet.org/jart/prj3/egos/resources/dbcon_def/uploads/Wty9v_20120515_Transnational_Transparency_Djelic_Mehrpouya_EGOS.pdf, visited on 25/09/2014 at 6 pm

⁵ Dr. Shripad S.B., A Note on Right to Information Act, 2005, Karnataka Law Journal 2012, March 15; 2(6): p. 17.

⁶ Available at home.broadpark.no/~wkeim/foi-list.htm visited on 25th January, 2015.

Africa – Angola, Cote d'Ivoire, Ethiopia, Guinea, Liberia, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sierra Leone, South Africa, Tunisia, Uganda, Zimbabwe.

Asia – Bangladesh, China, Hong Kong SAR, India, Indonesia, Japan, Maldives, Nepal, Philippines, South Korea, Taiwan, Thailand.

Caribbean – Bermuda, Cayman Islands, Dominican Republic, Jamaica, Trinidad and Tobago.

Central Asia – Afghanistan, Azerbaijan, Kyrgyzstan, Pakistan, Tajikistan, Uzbekistan.

Europe – Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, European Union, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Italy, Jersey, Kosovo, Latvia, Liechtenstein, Lithuania, Macedonia, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom.

Middle East – Israel, Jordan, Yemen.

Latin America – Argentina, Belize, Brazil, Chile, Colombia, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay.

North America – Canada, United States.

Oceania – Australia, New Zealand.

⁷ Interestingly, in the late 1990s and the early 2000s, it was the Congress party which took the lead in enacting right to information laws in the states that they ruled and today it is seen as the champion of the right to information in the country, having rightly got credit for enacting a powerful national law.

⁸ Ramakrishna Dass, Right to Information Act, 2005: An overview, Vitasta Law Journal, 2011, Vol. 1, No. 1, p. 87.

⁹ Versha Vahini, Right to Information Act, A critical overview, MDU Law Journal, 2006, Vol. xi, part-1, p. 182.

working committee to draft the Freedom of Information Bill, 1997.¹⁰The working group appointed by the Government in the year of 1997 is known as the 'Shourie Committee' this committee was to make recommendations regarding secrecy legislation and to prepare draft legislation on the Freedom of Information. On the basis of which Freedom of Information Act, 2002 (Act 5 of 2002) though passed by the Parliament and also received the assent of the Present of the India, never came into force and became operative as it faced severe criticism from all corners due to certain inherent shortcomings.

The cumulative effect of these shortcomings and lacunae in the Freedom of Information Act, 2002 was that it was replaced before the Parliament in the new form and development of 'Right to Information Bill, 2004' on the date of 22nd December, 2004 with more than one hundred amendments incorporating therein based the recommendations made by the Standing Committee of the Parliament and the group of ministers. The Bill was passed by the Lok Shaba on May 11, 2005 and by the Rajya Shaba on the very next day i.e. on May 12, 2005. It received the assent of the Present of India in June 15, 2005 and came into force in the Statute Book as The Right To Information Act, 2005(22 of 2005). This Act came into force with effect from October 12, 2005.¹¹

Judiciary and Growth of Right to Information

Before as well as after the independence of the Country, the Press was only the source of providing the information to the common public that's why the freedom of Press was inevitable. The Press had played a significant role during the colonial rule, from Tilak to Ghandi, every leader who had mobilised the people against colonial rule had used the Press as a means of informing the people and educating them about liberal values. Tilak fought against the law of sedition, which as interpreted by the courts punished even an honest and non-violent criticism of the rulers in newspapers.¹² Gandhi ji insisted on the truth and ahinsa (non-violence) for India's struggle for independence and such struggle could succeed only if the people could speak freely and fearlessly. The entire Gandhian movement highlighted the value of freedom of speech.¹³

Our Supreme Court, many times, declared that we had freedom of information, which was a part of freedom of expression guaranteed by Article 19 of the Constitution. Without freedom of information, freedom of expression remains meaningless. Article 19(1) (a) guarantees us the right to freedom of speech and expression. We shall go through some of the judgements that support the fact that Supreme Court has consistently recognized this right as implying a full right to information.

- The Supreme Court earlier in 1950 observed that the freedom lay at the foundation of all the democratic organisations and without providing the free political discussion on public education, the proper functioning of the processes of the popular government is not possible. Though the freedom of such amplitude might involve some risks of abuse but it is better to leave a few of its noxious branches to their luxuriant growth.¹⁴
- The fundamental right involved the people's right to know, so the freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of the people in the administration.¹⁵
- Supreme Court ruled that the right to freedom of speech and expression guaranteed by Art. 19(1) (a) included the right to information.¹⁶
- Justice Mathew explicitly stated: in a government of responsibility, 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 and everything that is done in a public way, by their public functionaries.¹⁷
- The right to know is implicit in the right to free speech and expression and the disclosure of any information in relation with the functions of the government must be a rule.¹⁸
- The public interest in the freedom of discussion stems from the requirement that members of a democratic society should be sufficiently informed.¹⁹

¹⁰Government of India's working group on Right to Information and promotion of open and transparent Government that gave its report in 1997.

¹¹ Dr. Vinay N. Paranjape, Right to Information Law in India, Central Law Agency, first edition 2013, page 89.

¹²SP Sathe 'Tilak's Philosophy of law' in NR Inamdar (ed) Political Thought and Lectureship of Lokmanya Tilak, page 119.

¹³Pk Tripathi 'Free Speech in the Indian Constitution: Background and prospect', yale law journal page 384(1957-1958) Reprinted in Pk Tripathi Spotlights on Constitutional Interpretation, 1972, page 213.

¹⁴ Romesh Thapper v. State of Maharashtra, AIR 1950 SC 124.

¹⁵Attorney General v. Times Newspaper Ltd.,(1973)3 ALL ER 54.

¹⁶ Bennette Coleman v. Union of India, 1973 AIR106.

¹⁷ State of UP v. Raj Narainn, (1975) 4 SCC 428.

¹⁸ S.P. Gupta v. Union of India, 1981 Supp SCC 87.

¹⁹Indian Express Newspapers (Bombay) v. Union of India, AIR 1986 SC 515.

- The freedom of speech and expression, as has been held repeatedly by the Supreme Court in different cases is the basic to and indivisible from a democratic polity. Reasonable restriction can be placed upon the freedom of speech and expression as well as State is also free to make laws in future imposing such restriction. Hence the right to know or be informed is the foundation of democracy and is derived from the plenary provisions of Art. 19(1) (a) of the Constitution of India.²⁰
- The freedom of speech and expression also includes the right of the citizens to know about the affairs of the government.²¹
- The members of the democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect them so the right to get information in the democracy is recognised all throughout and it is natural right flowing from the concept of democracy.²²
- The right to information was further elevated to the status of a human right, necessary for making governance transparent and accountable. It was also emphasized that governance must be participatory.²³

Implementation of the Right to Information Act, 2005 in India

Under this Act any person interested for receiving any information from any public authority can approach to the public information officer who is designated in all the central and state departments for the purpose of receiving the information application and for issuing such demanded information. No specific form for filling the application is prescribed and the information officer is also not entitled to ask the information seeker for the purpose of information except the address necessary for communication. Every applicant except a person of below poverty line has to submit an application fee of Rs 10 along with the application form. There can be some additional fee depends on the volume of information required. Every public information officer is under an obligation to provide the information demanded within a time period of 30 days in a general course. If the information asked is related with the life or liberties of any person, the same is to be provided within 48 hours. If the information requested is not provided within the stipulated time period, it will deem as the request has been turned down and the concerned information officer shall be responsible.

The noteworthy feature of this Act is two-tier appeal system, considered a landmark provision of the Act that provides a grievance redressed system for citizens in the way of appeal. If case any citizen is not satisfied either with the information given to him/her or his/her application is rejected mala fide. If desired information is abolished or given information is incorrect, incomplete or misleading or there is no response of his/her application made within the stipulated time by central/state public information officer then citizen has the right to go in appeal and can knock the door of justice, where he can make an appeal after 30 days of submission of his application or receiving unsatisfactory answer. The first appellate authority has to dispose the appeal within 30 days of the receipt or maximum in 45 days. If citizen is not satisfied then he/she can go to second appeal to central/state information commission within 90 days of the disposal of the first appeal. In another way it can be said that this Act provides a guarantee for justice to the common people of the country.²⁴

In order to maintain the effectiveness of the functioning of the officials, the Act provides a provision of penalty for non-furnishing the required information in a sum of 250/ Rs per day up to maximum amount of 25000/ Rs. All the information required cannot be disclosed to the public especially if they are relating to the sensitive information or departments falling under exclusive category. The officials are given the power to exercise their discretion in certain matters and the decision of central information commission (CIC) or state information commission (SIC) is binding on all parties but in case the particular information seeker is not satisfied with the decision of CIC/SIC then a writ petition can also be filed either to the High court or to the Supreme court.

Concluding Observations

In the beginning of this world people were not so civilized and always tried to have the power with them in order to control the others. People were not in a condition to believe on each other and that's why the life were so solitary, poor, nasty and brutish and also the concept of liberty and freedom were missing. With the revolution of uncivilized culture to the civilized culture the common people tried to understand the significance of the liberty and freedom and started sharing the information relating to the activities happening in the world that affect their social life. In the present current era information is considered a viable weapon to keep pace with the global phenomena. It equips the people with knowledge and enables them to make informed choice. It is also the potential of the information that can transform the social as well as democratic institutions along with

²⁰ Secretary, Ministry of I & B, Government of India v Cricket Association of Bengal AIR 1995 SC 1236.

²¹ Dinesh Trivedi, M.P. v. Union of India, (1997) 4 SCC 306.

²² Union of India v. Association for Democratic Reform, AIR 2002 SC 2112.

²³ People's Union for Civil Liberties v. Union of India, AIR 2003 SC 2363.

²⁴ Shilpa Seth, Right to Information: A Path to Swaraj, Civil and Military Law journal, April-June 2010, Vol. No. 46, p. 154.

governance of the country. In any democratic country like India, people are entitled to know the policies, programmes and activities of the government. Without being properly informed of all the issues, people cannot exercise their right to participate in the affairs of polity of the country. The transparency is required for ascertaining the good governance thus access to information is necessary for a movement of secrecy to openness. Openness in government does not only mean openness in the functioning of the executive branch of the state, the same is required in the functioning of the judiciary also.

