

INDIAN POLITICAL SYSTEM AND THE RIGHT TO INFORMATION

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We are living in the age of liberal democracy. In recent years, there has been an almost unstoppable global trend toward recognition of the right to information (RIT) by countries, inter-governmental organizations, civil society, and the people. The right to information has been recognized as a fundamental human right which upholds the inherent dignity of all human beings. It may be able to contribute to solving many social and cultural problems of the individuals and the Nations. But many preconditions are related to economic, social, cultural, and political development for realizing the Right to information. Among these are an adequate standard of living, food, housing, education, health, work, social security, and a share in the benefits of social progress.*1 Individuals living in developed countries have many more possibilities in using the right to information than developing countries.

The right to information shows greater responsiveness of the government to community needs. Too many restrictions show the feeling of powerlessness and alienation. Without information, people cannot adequately exercise their rights as citizens or make informed choices.

The United Nations recognized the right to information as a fundamental right in 1946. *2 The right to information is set out as part of the fundamental right of freedom of expression, which includes the right to seek, receive and impart information. In 1948 the UN General Assembly adopted the Universal Declaration of Human Rights which guarantees freedom of opinion. Freedom to receive and impart information and ideas through any media regardless of frontiers, is enshrined as a fundamental right in Article 19 of the UN Universal Declaration of Human Rights. The International Covenant on Civil and Political Rights was adopted

by the General Assembly in 1966 which ensured freedom of opinion and expression during the last fifty years and an unprecedented number of states strived to become more transparent and legislated. The USA passed a Freedom of Information in 1967, this was followed by Australia, Canada, and New Zealand in 1982.

In India, the fight to guarantee the right to information was taken up by illiterate villagers in the State of Rajasthan. When the government cheated them of wages, they were owed for work done during the famine in the mid-1990s, their anger and their determination to hold the government accountable sparked a right-to-information movement that spread across the country as the National Campaign for People's Rights to Information. We call for public accountability in the form of 'Jan Sunwai' has been given the Mazdoor Kisan Shakti Sangathan (MKSS). Here is an example of Jan Sunwai, one of the most powerful public tools to bring corruption to the forefront. On April 3, 2001, for 98 works done during 1994-2000, labor expenditure came to Rs. Fifty-two lacs and material and material expenditure to 48 Lacs. Total expenditure came to one crore. Evaluation could be done for 31 works out of 98 due to incomplete records or late arrival of information. Yet for the evaluated Rs. 65 Lacs, the villagers discovered the panchayat officials and bureaucrats had siphoned off around 45 lacs. On April 9, three of the culprits were arrested. *3

The free flow of information remained severely restricted by some factors as the restrictive legislation such as the official Secrecy Act of 1923, the culture of secrecy and arrogance within the bureaucracy, and the low level of literacy and awareness. But it is clear by a Supreme Court

decision that the right to information is included in the constitutional guarantees of freedom of speech and expression. Several High Court decisions have upheld the right of citizen groups to access information where the environmental issue was concerned.*4

The Press Council of India drew up the first major draft legislation on the Right to Information in 1996. The draft affirmed the right of every citizen to Information from any public body. The term public body included not only the state but also all privately owned undertakings, non-statutory authorities, companies, and other bodies whose activities affect the public interest. The draft also provided for penalty clauses for defaulting authorities. In 1997 a conference of Chief Ministers resolved that the central and state governments would work together on transparency and the right to information. The center agreed to take immediate steps to introduce freedom of information legislation along with amendments to this Official Secrecy Act and the Indian Evidence Act then came the Freedom of Information Act in 2002*5 which provided the freedom to every citizen to secure access to information under the control of public authorities, consistent with the public interest, to promote openness, transparency and accountability in administration and relation to matters connected therewith or incidental thereto. According to this act, freedom of information means –

1. Inspection, taking of extracts and notes,
2. Certified copies of any record of such public authority,
3. Diskettes, Floppies, or in any other electronic mode or through printout where such information is stored in a computer or any other device

Every public authority shall maintain all its records, and publish some details of its duties, rules, regulations, and the details of facilities available to citizens for obtaining information and relevant facts concerning important decisions and policies. If a person desirous of obtaining information makes a request, the Public Information Officer shall, as expeditiously as possible, and in any case within

thirty days of receipt of the request provide the information. If the information sought concerns the life and liberty of the person, the same should be provided within forty-eight hours of the receipt of the request. Some information is exempted from disclosure, namely relating to security and integrity, affecting public safety, center-state relations, cabinet papers, legal advice, during decision-making, commercial secrets, and facts that can breach the privileges of Parliament and Legislature of State.

However, the Act has been criticized on several grounds. It provides information on demand but does not sufficiently stress information on matters related to food, water, environment, and other survival needs that must be given pro-actively, or suo-moto by public authorities. The Act does not emphasize active intervention in educating people about their right to access information -vital in a country with a high level of illiteracy and poverty- or the promotion of a culture of openness within official structures. Without widespread education and awareness about the possibilities under the new Act, it could just remain on paper. The Act also reinforces the controlling role of a government official, who retains wide discretionary powers to withhold information. There is no mechanism to punish delay or refusal to grant information. So there is no compelling reason for the official concerned to provide answers. Instead, the law provides for two internal appeals within the government machinery and blocks access to the Civil Court.

Despite all these shortcomings, the Act guaranteeing the right to information is a major step towards ensuring a participatory developmental process in the country. For its successful implementation, it needed the active participation of the community at large, including non-government organizations and the press which play a major role in educating the people in this regard. There is a need to move beyond the right to vote towards a right to participate in governing ourselves.

Some state governments also passed Acts on the right to information as Goa, Tamil Nadu, Karnataka, Delhi, Rajasthan, and Maharashtra. It is

important here to do some analysis of the Delhi Right to Information Act. It was passed by the Delhi Assembly in May 2001 and it became effective on 2nd October 2001. About 119 departments of the Delhi Government have been brought under the purview of this Act through a notification. In each department, one officer has been designated as a competent authority. Under this act, any citizen can approach the competent authority in any of these departments and seek any information concerning the working of that department or take copies of any document. Any person seeking information can apply a specific form. The government will make its endeavor to provide the information in 15 days subject to a maximum of 30 days. After that, if information is not given, an appeal can be filed in a public grievance commission. Whosoever being bound to supply the information fails to furnish information asked for under the Act within the time specified or fails to communicate the rejection order shall be liable to pay the penalty of Rs. 50 per day for delayed periods beyond the 30 days subject to a maximum of Rs. 500 per application. In case the information supplied is found false, the person supplying the information shall be liable to a penalty of Rs. 1000 per application.

The process of implementation of the act was not very smooth. The role of 'Parivartan' is important in this direction. The Parivartan program in New Delhi was a people's movement against corruption. "Parivartan was a non-government organization that included individuals from all sections of society who were concerned about rampant corruption prevalent in India and were committed to altering it. It took the leadership of the Delhi citizens' right-to-information campaign. It was broadly used in resolving individual and community grievances, checking corruption, and seeking information related to policy matters of the government. There are many examples of resolving grievances under this Act. An interesting one can be cited here – A resident of Delhi applied for a new electricity connection on 3.2.01 but even after continuously pursuing it for over a year, the connection was granted. He made several visits to

the Delhi Vidyut Board (DVB) office but no one listened to his woes. Those in his area who applied after him bought the connection because they had paid the bribe. He did not want to pay the bribe. Ultimately, he applied for the Right to Information Act in February 2002 and on 2nd March 2002, the new connection was granted to him. *6

There are increasing demands for more transparency from different sections of society. Justice V.R. Krishna Iyer had given a clarion call for repeal of the Official Secrets Act tuning it as an imperative demand of Indian democracy and termed it as a legacy of British Raj. All corruption can end only if there is freedom of information and the media has a crucial role to play in this regard. *7 The right to know is as much a basic right as the one to breathe fresh air and drink fresh water without obstruction and it should be declared a part of the basic structure of the constitution. In independent India, there should be complete transparency. *8 Then Attorney General Soli Sorabji stressed the need to give people access to information on the functioning of the government to make it more accountable. "Information is power today, and therefore no one should be surprised as the frantic attempts by the officials as also by businessmen and vested interests to suppress or distort and manipulate information for reasons spurious and specious". *9

The RTI Act was based on the conception that all information that was in the public interest should be made public unless it impacted National Security or breached someone's privacy. Information was made public after long Court cases. There are attempts to weaken the right as it is a weapon in the hands of citizens to fight corruption and human rights violations. When it came into force in 2005, it was hailed as a law that could make government transparent and accountable, but with time it is becoming ineffective.

Human development can be described as a comprehensive economic, social, cultural, and political process that aims at the constant improvement of the well-being of the entire population and all individuals.*10 The right to

information as a human right is a result and product of human development. The right to information for a hungry person who does not have enough money to live, who is not educated, and who does not have freedom, does not have any meaning either. In the same way, a country that has the problem of hunger, education, and economic and political freedom cannot give priority to the right to information, of course, information is a power that plays an important role in solving these problems.

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