

RIGHT TO INFORMATION — A STUDY

The Right to Information refers to the right of every citizen of the state to access information under the control of public authorities consistent with public interest. The main objective of providing information is not only to promote openness, transparency and accountability in administration but also to ensure participation of people in all the matters related to Governance. Right to Information is a very effective tool in the hands of citizens to make the objectives of Good Governance (SMART) realizable.

Right to access information held by public bodies is a fundamental human right, protected under constitutional law of India. It is accepted by supreme court that Right to information is an inherent part of Right to Freedom of Speech and Expression under article 19(1)(a) and the Right to Life and Personal Liberty under article 21 of the constitution. But then, the question arises why we need a separate law for freedom of information when there is a constitutional provision. In spite of Constitutional Provisions, Which guarantee fundamental rights we have not been able to create a culture and climate where values of freedom, rights and a democratic way of life are respected. One of the purposes of making laws like the right to information, which is primarily a human right, is to help create this culture. Hence Right to Information must be guaranteed by a strong legislation and the process of law-making itself must be participatory.

In this direction the union government recently enacted the Freedom of Information Act 2002. Despite the right to information bill having received presidential approval seven months ago, citizens may have to wait some time, before they can exercise their right to access government files, as the concerned authorities are yet to set a timeframe for framing the rules. Some states like Goa, Tamilnadu, Karnataka, Rajasthan, Delhi and Maharashtra have also passed Right to information laws, how ever there is criticism that the working has not been satisfactory.

THE NEED FOR RIGHT TO INFORMATION

(a) Ensures people's participation

Since most of the governmental works are carried out for the people, people must be involved in the planning process and must know exactly how things are being done. To participate in planning processes and judgment of whether certain plans and schemes are useful for them or not, people must have sufficient information about the nature of the projects and programmes. This will enable them to give their opinion well in time for required changes or modifications. This will reduce project costs and will increase project outputs manifold.

(b) Ensures Principle of accountability

Ours is a democratic system of governance in which the government is run for

the benefit of the public at large and not for the benefit of one person or a few persons. Governance from the village to the central level therefore has to be accountable to the people. People have a right to know what the government is doing. A Right to Information will ensure that people can hold public bodies accountable on a regular basis, without having to lay the entire burden on their elected representatives who are themselves often unable to get the information sought in spite of all the resources at their command.

(c) Transparency

There is a presumption that everything that is done by the government is done for the public good-which means, it is done to further the objective of public well-being, is done honestly with optimum benefits from the funds used. However, as we all know, in recent times, this presumption has been eroded to a great extent by misuse, misappropriation and also careless use of public funds. To counter this, it is essential that there should be complete transparency in all public dealings. This is bound to bring about a more careful utilization and application of funds. Transparency will also help people to hold the officials accountable for their mishandling of public time and money. Transparency would go a long way in helping to expose the corrupt and allowing the honest to do their jobs without fear or favor.

(d) Limiting the discretion powers given to Officials

Officials can abuse their discretion to suit various political or other vested interests, as well as to misappropriate funds. In absence of legislation on Right to information they tend to be hidden from disclosure. Although it is possible to seek the court's intervention to compel disclosure of this information, in practice this is not possible for poor people or villagers, given the cost, distance and delays involved. Another problem

is the lack of transparency regarding selection for public posts. The selection of inappropriate employees in to the government adds to the inefficiencies and ills in the government. The right to information is therefore important to check abuse of administrative discretion and to ensure fair process.

(e) Protects the Civil Liberties

The right to information is essential for protecting liberties of citizens by making it easier for civil society groups to monitor wrongdoings like custodial deaths and the abuse of preventive detention legislation. Custodial institutions are some of the most opaque places in the country. Violations in custody range from deaths in custody, keeping convicts in jail long even after they have served their sentences, and abuse of women. Effective community monitoring of these institutions is dependent upon access to information. Some government are even considering providing the right to information explicitly in relation to prisons.

(f) Effective and Proper Implementation of Schemes of Government

In rural areas, numerous schemes for providing food, housing, employment and education are run by the central and state government. These schemes are meant for the poorest of the poor in the rural areas. There is wide spread criticism that these funds have been routinely misappropriated or misused on a large scale. In most cases, people do not know about the existence of these schemes, even if they know they do not get their entitlements under the scheme, paving the way for them to accept less than their allocation. Furthermore, records are often tampered because no one outside the administration has access to them. By providing entire information on these schemes to the public would make the administration more accountable.

(g) Makes media more effective

Even if the government provides for the right to information, the citizens resort to media like newspaper, radio, television etc for day to day information about government activities. The media provides a link between the citizens and its government. So, it is essential that media is able to access information. The media's right to information is not a special privilege but rather an aspect of the public's right to know. The lack of a right to access official information causes many problems for the media. Balanced reporting becomes difficult when the primary sources of information are denied. In absence of exact information, they provide biased news, suppressing or distorting information. By providing right to information, media and citizens would together make the government more accountable.

GLOBAL PERSPECTIVE

Freedom of information, including the right to access information held by public bodies, is protected under international and constitutional law. Authoritative statements and interpretations at a number of international bodies, including the United Nations (UN), the Commonwealth, the Organization of American States (OAS) and the Council of Europe (CoE), as well as national developments in countries around the world, amply demonstrate this.

In 1946, during its first session, the UN General Assembly adopted Resolution 59(1) which stated "Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated". The importance of freedom of information, including the right to access information held by the State, has been recognized by the Commonwealth for more than two decades. The Council of Europe (COE), an intergovernmental organization is composed of 43 member states. One of its foundational documents is the European

Convention on Human Rights (ECHR) which guarantees freedom of expression and information as a fundamental human right in Article 10. In US in 1985, the Inter-American Court of Human Rights, interpreting Article 13(1), recognized freedom of information as a fundamental human right which is as important to a free society as freedom of expression.

In a number of countries, freedom of information, including the right to access information held by the State, has been recognized at the constitutional level, either by courts which have interpreted general guarantees of freedom of expression as including it, or through specific constitutional provisions recognizing it.

Now, over 40 countries have comprehensive laws to facilitate access to state records; over 30 more are in the process of enacting such legislation. In Western Europe, only Germany and Switzerland lack legislation. Nearly all Central and Eastern European countries have adopted laws as part of their democratic transitions. Almost a dozen Asian countries have either enacted laws or are in the process of doing so. Similarly, in South and Central America, several countries are considering laws. Many countries in southern and central Africa are following South Africa's lead, with varying proposals for formulating freedom of information laws.

In Asia, Philippines recognized the right to access information held by the State relatively early, passing a Code of Conduct and Ethical Standards for Public Officials and Employees in 1987. A Code on Access to Information was adopted in Hong Kong in March 1995, and in Thailand, the Official Information Act came into effect in December 1997. In South Korea, the Act on Disclosure of Information by Public Agencies came into effect in 1998, and in Japan, the Law Concerning Access to Information held by Administrative Organs was enacted in April 2001.

Despite this global recognition of the fundamental right to information, to date no State in South Asia has a national freedom of information law giving practical effect to this right. However, change is now very much on the agenda. Superior courts in some countries in South Asia have recognized the right to information as part of the constitutional guarantee of freedom of expression or thought. Civil society groups in all countries in the region are demanding that governments respect the right to information, and pass legislation giving effect to it. These groups have the support of global civil society, as well as of many intergovernmental organizations and the international community generally. They are also deriving increasing support from the people, who are no longer prepared to tolerate corrupt, undemocratic, secretive government.

Governments in South Asia have started to respond to these pressures, and take on board the global recognition of the right to information. Indian Parliament has already enacted Right to Information Act and several Indian States have already adopted freedom of information laws or orders. In Pakistan, a Freedom of Information Ordinance was introduced in 1997, but allowed to lapse shortly thereafter. A similar Ordinance was circulated in 2000, but failed to become law. In both Nepal and Sri Lanka, there has been some official acceptance of the need for legislation and it is hoped that developments currently underway will lead to the adoption of freedom of information laws.

September 11 attacks have actually led some countries to limit information access. The restrictions have been most profound in the United States and Canada where proposals to limit national and local freedom of information acts have been adopted. In the UK, implementation of the long-awaited information act has been delayed until 2005.

The rapid proliferation of freedom of information laws in countries in all regions of the world is a dramatic global trend and one of the most important democratic developments of recent times. The use of the right to information will be able to contribute to solve many social and cultural problems of the countries like India as it is one of the main human rights that protect and develop the human life.

POSITION OF INDIA AND INDIAN STATES REGARDING LEGISLATION ON RIGHT TO INFORMATION

The passage of the much awaited Freedom of Information Bill-2002 is an important landmark in the history of Indian democracy. The Bill grants statutory right to the citizens to access information from the Government. The legislation is in accord with both Article 19 of the Constitution as well as Article 19 of the Universal Declaration of Human Rights. With the passage of the Bill, India is now among the 20 countries to have legislated a measure, which is in the direction of providing transparency, openness and accountability in government functioning. Despite the right to information bill having received presidential approval ten months ago, citizens may have to wait some time before they can exercise their right to access government files, as the concerned authorities are yet to set a timeframe for framing the rules.

In Indian context, there are essentially two types of information

- * information to which access must be given upon request; and
- * information which must be published and disseminated suo motu (proactively) by public authorities, including information which would affect fundamental rights such as food, environment and civil liberties.

The Freedom of information Bill, 2002 provides both information upon request and

proactive publication of certain information in chapter II called Freedom of Information and Obligations of Public Authorities. A government sharing information proactively, without being asked for it, is a true indication of a democratic and transparent society. It marks a paradigm shift from the culture of secrecy to transparency. This proactive role of the state is of special significance to a society like ours, where due to social and educational reasons, many people are not able to exercise a right provided to them.

Important state initiatives

Inspired and encouraged by the exercises taken up by the Press Council of India, Working Group and the Central Government, the State Governments also yielded under popular pressure and started preparing draft legislation on Right to Information. A number of states have already introduced the Bill on Right to Information, many even before the union has enacted its law.

Tamilnadu : Tamilnadu was the first state to set an example by introducing the Right to Information Act on 17th April, 1996. The Bill was modeled on a draft legislation recommended by the Press Council of India. The enacted legislation was full of exemptions and inadequacies, so it has failed to evoke much response from the public and devoted NGOs and other concerned activists. Tamilnadu, the first State of India to pioneer the enactment of such a 'progressive' legislation, has clearly borne out : a Right to Information Act, if not properly formulated following a thorough-going public debate, might turn just into its diametrical opposite i.e. Right to No Information Act. Frontline" editor N. Ram observed that the Tamilnadu legislation, in its prelude, made all the right noises. It was the catalogue of exceptions carried in fine print that made the 'act an uninspiring model for others to emulate.

Goa: Goa was the second State to enact the Right to Information legislation. The act also applies to

private bodies executing government works. Despite tall claims made by the State government regarding transparency and openness to strengthen democracy, Goa Act also ironically contains several peculiar provisions, which allow the State to withhold information without sustaining reasons for it. The Act needs further clarification on the vague exemptions mentioned in it. It was also not clear as to who would be the competent authority to furnish the information. Another major weakness is that it has no provision for pro-active disclosure by government.

Karnataka: The Karnataka Right to Information Act (KRIA) was enacted in 2000, and came into effect in July 2002 when the Rules were notified. KRIA requires that once the Competent Authority receives an application under KRIA and if information is being provided, the applicant must be informed of the fees payable within 7 days from date of application. The information must then be provided within 15 working days from date of fee payment. If information is being denied, the applicant must be informed of reasons for denial within 15 working days from date of application. In addition, all offices of public authorities are required to display information regarding particulars of the organization, its functions and duties, details of facilities available to citizens for obtaining information on notice boards outside their offices. The findings revealed that in cases where information has been provided, the applicants had to engage in constant follow-up indicating that systems for implementation of KRIA have not been set up in the public authorities.

Delhi: The Government of Delhi has enacted the Delhi Right to Information Act, 2001. The Act has come into force with effect from 2 October, 2001. This law is along the lines of the Goa Act, containing the standard exceptions and providing for an appeal to an independent body, as well as the establishment of an advisory body, the State Council for Right to Information. Many

departments of 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 on the activities of that department and take copies of documents with some exceptions from the civic body after paying a nominal fee. The corporation has to provide it within a month, failing which the concerned officials could be penalized and are liable to pay Rs.50 per day for any delay beyond 30 days, subject to a maximum of Rs.500 per application. It is also clearly stated that wherever the information is found to be false or has been deliberately tampered with, the official would face a penalty of Rs.1,000 per application.

Rajasthan: After five years of dithering, the right to information act was passed in 2000. The movement was initiated at the grassroots level. Village-based public hearings called Jan Sunwais, organised by the Mazdoor Kisaan Shakti Sangathan (MKSS), gave space and opportunity to the rural poor to articulate their priorities and suggest changes. The four formal demands that emerged from these Jan Sunwais: 1) Transparency of panchayat functioning; 2) accountability of officials; 3) social audit; and 4) redressal of grievances. The Bill as it was eventually passed, however, placed at least 19 restrictions on the right of access. Besides having weak penalty provisions, it gives too much discretionary power to bureaucrats. Despite this, at the grassroots level in Rajasthan, following systematic campaigns waged by concerned groups and growing people's awareness of their own role in participatory governance, the right to information movement thrives, it was the Jan Sunwais that exposed the corruption that pervaded several panchayats and also campaigned extensively for the right to food after the revelation of hunger and starvation-related deaths in drought-ravaged districts.

Maharashtra: The Maharashtra assembly recently passed the Maharashtra Right to Information (RTI) Bill, following sustained pressure from social activist and anti-corruption crusader Anna Hazare. The Maharashtra legislation has been called the most progressive of its kind. The Act brings not only government and semi-government bodies within its purview but also state public sector units, co-operatives, registered societies (including educational institutions) and public trusts. It provides that Public Information Officers who fail to perform their duties may be fined up to Rs.250 for each day's delay in furnishing information. Where an information officer has wilfully provided incorrect and misleading information or information that is incomplete, the appellate authority hearing the matter may impose a fine of up to Rs.2,000. The information officer concerned may also be subject to internal disciplinary action. The Act even provides for the setting up of a council to monitor the workings of the Act. The council shall be comprised of senior members of government, members of the press and representatives of NGOs. They are to review the functioning of the Act at least once every six months. Exclusion clauses have been reduced to barely ten.

5. CONCLUSION

Information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues on political, social and economic front. Free exchange of ideas and free debate are essential for a democracy like India. In this Age of information technology, Right to Information is a critical factor in ensuring country's socio-cultural, economic and political development. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible.

However in India the free flow of information is restricted due to

1) The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923. Although the union government and some state governments have made legislations regarding right to information, most states governments still lag behind.

2) The pervasive culture of secrecy and arrogance within the bureaucracy.

3) The low levels of literacy and rights awareness amongst India's people.

So the first step in making right to information realistic would be to have a comprehensive legislative frame work at both union and state levels. Only making the legislation will not do justice to the information seekers unless it is implemented with strong conviction. Laws by themselves are not adequate. What is needed is that such progressive laws must be backed by people's movement. A law for right to information or Freedom of Information can be made effective only through people's active involvement.

There is a view that there are many pre-conditions which are related to economical, social, cultural and political development for realizing the right to information in a developing country. And unless a country has solved the main problems like hunger, education, health, social security and political freedom, it is not possible to realize the right to information. However there is no harm in passing legislation on Right to information so that the legal pressure is maintained on the government officials to provide information even if asked for by an elite group of people.

The essential requirements of legislation on right of access to information which is in the possession of the state are

1. a right of access which is broadly defined and extends to all the organs, agencies, or departments of the state;
2. a narrow definition, in precise and specific language, of the exemptions to the right of access;
3. statutory language which makes clear that access is to be the norm, and exemptions are to be resorted to only in exceptional cases;
4. speedy processing and disposition of requests for access;
5. independent review of denials of access;
6. minimal or no fees or other charges for the processing of documents requested.
7. The creation and training of a cadre of officials to assist persons making access requests;
8. Wide publicity about the right of access and explanation of the procedures to be followed.

(*Courtesy* : RTI Cell YASODA)

