

Participatory Democracy

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- Need to popularise the Right to Information Act 2005 among rural public.

A popular government without popular information or the mean the acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance and a people who mean to be their own governors, must arm themselves with the power knowledge gives.

– James Madison, former US president 1822.

Accountability in a democracy means, among other thing that every citizen must have right and access to Information. It presupposes a transparency in the public functioning of those who hold the reins of power whether; it is at the village and township level or at the State and National Level. Transparency and accountability in the governance have a direct impact on issues of survival in poorest communities including their right to food, shelter, health, environment and livelihood².

The people who voted for the formation of Democratically e3lected Governments and paid Taxes to finance Public activities, on many occasions had no right to know as to what process has been followed in framing the policies affecting them, how the programs have been implemented, who are the concerned officials associated with the decision making process and the execution of schemes and why the promises made for delivery of essential goods and services to the poor have not been fulfilled?.the culture of secrecy beginning from the colonial rule and openness and accountability in the functioning of the government not only bread inefficiency but, perpetuated all forms of poverty including nutritional, health and educational. Prof.S.P.Sathe. Point out that colonial culture of secrecy and distancing from people is still the ethos of Indian administration³.

In order to rectify the deficiencies in the mechanism, which denied the reach of entitlement to the intended beneficiaries, the people in general and civil society group and Nongovernmental organizations (NGO) in particular demanded for a greater access to the information held by the public bodies which were acceded by the government in 2005 .The Right to Information Act 2005, the RTI

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² The Hindu Dated January 04, 2005

³ Freedom of Information. Some Lessons from the Commonwealth, Liberty, Equality and Justice Struggle for a New Social Order (LLS Law College, Plantinum Jubilee Commemoration Volume) 2003.

hereinafter, was enacted by the Indian Parliament to dismantle the culture of secrecy and to change the mindset of the bureaucrats and political leaders and to create conditions for taking informed decisions.

Prior to commencement of the act the accountability of public authority was practically minimal. The object of the Act is to keep the citizens aware about the administrative decisions and policies. By this Act the citizen of India has been empowered like never before. He can now question, audit, review, examine, and assess government acts and decisions to ensure that these are consistent with the principles of public interests, good governance and justice. A little more stimulation by the Government, NGOs and other enlightened and empowered citizens can augment the benefits of this Act manifold. RTI will help not only in mitigating corruption in public life but also in alleviating poverty- the two monstrous maladies of India. The Act provides the citizen the right to seek information on many matters but not on all matters. It does not permit citizens to seek information of certain matters affecting security, strategic, scientific or economic interests of the country. It gives citizens a legal right to be informed about utilization of public funds, progress reports of ongoing projects, state circulars, contracts, etc. .

Need for Legislation:

The rights of citizens against the Government are absolute. However, this is the theory and in practice Government is the legal guardian of the larger public interest and because of this, it often violates citizen's rights under the pretext of 'public interest'. Government has three organs Legislature, Executive and Judiciary. Legislature and Judiciary conduct their business in the open forums — Parliament and Court.⁴ They give full opportunity to all concerned to join the debate and know about the facts available with them, but this is not so with Executive branch of the Government. The decisions in this branch of the Government are taken in the closed rooms and may be without consulting the affected parties. Therefore, the right to know to the citizens shall be discussed in relation to the Executive branch of the Government. The governments withhold information from its citizens on some feudal, colonial and technical grounds. However, transparency, accountability and fairness demand equality. The public authorities should provide complete information to its citizens, which are the first human right. Fortunately, all modern Governments believe that 'openness' is one of the principles of good governance. It serves three purposes; firstly, evaluation of the Government by the citizens, secondly their participation in the decision making and thirdly, it casts a duty on the electorate to keep an eye on the deeds of its representative and not sit idle after exercising their franchise after years.

As stated earlier the citizen should not interfere and mar the administration unnecessarily several exemptions have been indicated in the Act. As a general rule, every right legal or moral carries with it several exceptions. Thus, operation and functioning of a nuclear plant is sensitive in nature. Any information relating to the training features, processes or technology cannot be disclosed, as it may be venerable to sabotage. It is a reasonable restriction being imposed in the interest of the state by Atomic

⁴ However, both departments enjoy autonomy under the laws of parliamentary privileges and contempt of court, thus they discharge their responsibilities without fear and favour.

Energy Act, 1962. The Court normally would respect the legislative policy behind the same⁵. Similarly, where the investigation in relation to murder case is at the initial stage, it is impermissible to provide access to the journalist to interview the accused at this stage. They can renew their request after the charge sheet is filed⁶.

The Right to Information as a Fundamental Right:

The Supreme Court sowed the seeds of right to information in the landmark judgment, *State of Punjab v. Sodhi Sukhdev Singh*⁷, by the Supreme Court. No doubt, this case was decided in favour of state as it was allowed to withhold documents. However, Justice Subba Rao in his dissenting opinion observed that at the time when Evidence Act, 1872 was passed, the concept of welfare state had not been evolved in India and therefore, the word affairs of state used in Section 123 of that Act could not have comprehended the welfare activities of the state. He further observed that if non-disclosure of a particular state document was in public interest the impartial and uneven dispensation of justice by Court was also in public interest. Thus, the final authority to allow or disallow the disclosure of document lies with the Court after the inspection of the document. In *Amar Chand v. Union of India*⁸, the Supreme Court rejected the claim for privileges on the ground that statement of Home Minister did not show that he had examined the question as to whether their disclosure would jeopardize public interest. Thus, in this case the apex Court was successful to secure freedom of information on the basis of public interest doctrine.

Again in *State of U. P. v. Raj Narain*⁹, the Court disallowed Government claim in respect of the blue book issued by the Central Government containing rules and instructions for the protection of the Prime Minister while on tour. The Court held unless the document belonged to a class, which deserves immunity from disclosure; it should be inspected by Courts in camera for deciding the privilege to withhold or disclosure based on public interest involve. In another case¹⁰, the Court held that service record of employee could not be said to be privileged document and he has a right to claim information in this regard. The law was squarely set by the apex Court in *S. P. Gupta v. Union of India*¹¹. In the instant case, Government claimed the privilege over the correspondence between Law Minister, Chief Justice of High Court and Chief Justice of India. pertaining to the transfer of high Court Judges and non-confirmation of an additional High Court Judge. The Court rejected the claim of the Government and recommended that the century old provision of Section 123 of Indian Evidence Act, 1872 enacted to some extent keeping in view needs of empire builder. It must change in the context of repudiation form of Government, which the people of India have established.

⁵ *People's Union for Civil Liberties v. Union of India*, AIR 2004 SC 1442.

⁶ *D. N. Prasad v. Principal Secretary to State* A. P. 2005 Cri LJ 1901 (AP).

⁷ AIR 1961 SC 493.

⁸ AIR 1964 SC 1658.

⁹ AIR 1975 SC 865.

¹⁰ *State of U. P. v. Chandra Mohan Nigam*, AIR 1977 SC 2411

¹¹ AIR 1982 SC 149

In a famous case of State of UP v. Raj Narain¹², Justice Mathew ruled, "In a government of responsibility like ours, 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, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security". In Bennett Coleman Case¹³, the right to information was held to be included within the right to freedom of speech & expression guaranteed by Article 19 (1) (a). In S. P. Gupta Case¹⁴, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described.

The Right to Information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The Right to Information forms the crucial underpinning of participatory democracy. It is essential to ensure accountability and good governance. The greater the access of the citizen to information, the greater the responsiveness of government to community needs.

The Supreme Court in the pace-setting judgment of BALCO Employees Union v. Union of India¹⁵, observed that transparency does not mean conducting of the Government business while sitting on the cross roads in public. Transparency would require that the manner in which decision is taken and is made known.

RTI as Good Governance:

The success of a democratic framework depends on good governance. It can be achieved by the efficient and effective administration. According to a document prepared by the Initiative for Human rights, good governance has eight major facets. It is participatory, consensus oriented, accountable, transparent, accountable, effective and efficient, equitable, inclusive and respects the rule of law. RTI is one of the most important methods of good governance, which is necessary to ensure sustainable human development¹⁶. Corruption is major hindrance in the growth of any system. Dangers are more in a democratic system, where development of people who have reposed their faith by electing the government to power does not takes place. Conditions become more aggravated when basic information related to the people is not disclosed in the garb of maintenance of secrecy. In fact this culture of secrecy breeds nepotism and increases corruption to an obnoxious level. Information therefore is an antidote to corruption. It limits the abuse of discretion and protects civil liberties¹⁷.

¹² AIR 1975 SC 865

¹³ AIR 1973 SC 60

¹⁴ A.I.R. 1982 SC 149, p. 234

¹⁵ AIR 2002 SC 350 at 352.

¹⁶ <http://prashantjustice.blogspot.com/search?updated-min=2009-01-01T00:00:00-08:00&updated-max=2010-01-01T00:00:00-08:00&max-results=50>

¹⁷ Justice Y. K. Sabharwal, "Right To Information And Good Governance", Vol. VII, ISSUE 4, Nyayadeep, 29.

Legal Recognition to Right to Information:

There is no provision in the Constitution of India, which specifically provides for the citizen's right to know. However, this right can be inferred from the opening words of the preamble 'we the people' constitutes India into a democracy and secures for her people social, economic and political justice, liberty of thought, expression and belief. Further Article 19(1)(a) provides that freedom of thought and expression which indirectly includes right to get information. Article 21 guarantees right to life and personal liberty to citizens. Right to life is incomplete if the basic human right is not cherished i.e. right to know. Article 39(a), (b) and (c) provides for adequate means of livelihood, equitable distribution of material resources of the community, to check concentration of the wealth and means of production. All these rights shall be unfulfilled if right to information is not granted ahead of all rights. Taking material from the above constitutional provisions the judiciary has created and secured the right to know to citizens. Section 123 of the Indian Evidence Act, 1872 is against the general spirit of the law of evidence if read in isolation. However, if it is read with Section 162 of same Act, it gives a ray of hope against the power of the Government. Section 162 provides that a witness summoned to provide a document shall if it is in his possession or power bring it to the Court notwithstanding any objection which there may be to its production or to its admissibility. The validity of any of such objections shall be decided by the Court. The Court if it sees fit, may inspect the document unless it refers to the matters of state. Thus by virtue of this section the validity of any objection to the production of a document shall be decided by the Court. These provisions¹⁸ under the Constitution and Evidence Act provide very thin line of reasoning for citizen's right to know but the apex Court has picked it up it as a golden line and interpreted these provisions of the law in favour of citizens. Freedom of information is the result of judicial thinking. The judiciary has interpreted the strict provisions of law, e.g. Section 123 of Evidence Act, 1872 in such a manner that no prejudice should be caused to the citizen's right to know. The apex Court expanded the horizon of Article 19(1)(a) to the extent that it should include in itself right to information also. Thus, the edifice of freedom of information is created by the judicial decisions. The judgments of the apex Court shall be discussed in the following paragraphs under the sub-headings; (i) public interest (ii) freedom of information as part of Article 19(a) and (iii) within the ambit of right to life under Article 21.

The public authorities cannot deny flatly any document on the ground of confidentiality. In the instant case, petitioner wanted to challenge appointment of respondent. It cannot be said that the request of the petitioner in this regard, is unreasonable in the given circumstances. The Court held that in such circumstances the authorities normally have to provide information to a citizen, if the document has nexus with the judicial remedy in accordance with law.¹⁹

¹⁸ Article 74(2) provides that advice tendered by ministers to the President shall not be inquired into by any Court and Article 163(3) contains the similar provisions in the states. Non-disclosure of information is being protected under the Indian Evidence Act, 1872 : Section 123 provides that no one shall be permitted to give evidence from unpublished official records relating to any affairs of state, except with the permission of head of the department who shall give or withhold such permission as he thinks fit. Section 124 extends the same privilege to the confidential official communication.

¹⁹ K.Ravi Kumar v. Bangalore University, AIR 2005 Kant 21.

Anatomy of the Right to Information Act, 2005:

The Indian Act of 2005 should not have granted class protection to some of the security organizations. By doing so, citizen grievances against these organizations cannot be redressed in the lack of complete information. However, general law of the land should prevail and these organizations may be covered under provisions of judicial review. Section 8 of the Act, 2005 should be made applicable to these organizations, which provides that after the twenty years of occurrence all type of information may be disclosed to all in the larger public interest. In fact, Section 24 and second schedule are not required. Section 8 is sufficient which, exempts certain information from disclosure if it affects national interests etc. The Central Bureau of Investigation and Central Vigilance Commission has required the Government to exempt them from the operation of the Act.²⁰ It is also learnt that the President of India has suggested to the Government that communication between the head of the state and the Prime Minister should be kept confidential²¹. It is worth mentioning here that the highest Court of the land in India has observed that high level constitutional functionaries should have candor and frankness in expressing their views. They would not be affected if they feel that the correspondence exchanged between them would be liable to be disclosed. It would not be fair to them. While performing constitutional duties, to say that they are made of such weak stuff that they would hesitate to express their views if they apprehend subsequent disclosure²².

The record of the Central and various State Governments and Information Commissions and PIOs on the above-expected roles has been mixed so far. There is variance in performance between and within states explained largely by the commitment of the state government and the quality of the officials concerned. Information Commissions have been formed but the general opinion is that the Commissioners have a lackadaisical attitude. It has been found that the Central Information Commission is in a complete mess. The Commissioners at the CIC hear on an average 3 or 4 case a day. Files are lost and the appellants have to repeatedly file their cases. Cases come up for hearing after seven months or so. Commissioners are unwilling to impose penalty on guilty officers. This encourages the PIOs to refuse requests for information at the first level. This means that a good portion of applications ultimately graduate into appeals before the CIC.

The orders of the CIC are disturbing for many reasons. It has passed several orders wherein one or both parties have not been heard. This violates principles of natural justice. The CIC must have decided over 2,000 cases by now, of which a negligible percentage (about 5 or 6 decisions) impose any penalty on officers. With such misguided soft approach of the CIC, guilty officers merrily go scot-free. This can create doubts in people's mind about the efficacy of the RTI Act. It is unconscionable that the very body created to bring about greater transparency in the working of public bodies is itself unable to furnish any information about its own operations. The Central Information Commission, which oversees the right to information, has failed to provide even basic information about its own, like the number and status of cases and appeals pending with it. It has been accused of not keeping any records of judgments

²⁰ Times of India, New Delhi Chandigarh, July 15, 2005, p. 9.

²¹ The Sunday Tribune, Chandigarh, June 26, 2005, p. 2.

²² S. P. Gupta v. Union of India, AIR 1982 SC 248.

and orders passed on RTI application or of pending cases. In States also, the picture is not very promising. There is political pressure at the state level, which means that information commissioners cannot function freely, and have to tailor their judgments to suit the needs of politicians. Village secretaries are also supposed to assume the role of information officers (in each panchayat) under the RTI Act, but according to Dileep Reddy a State Information Commissioner in AP, in many villages the sarpanch has usurped the role of information officers, which is against the law.

Recently, the Centre, in a bid to strengthen the RTI division within the personnel department and for granting financial autonomy to State Information Commissions has decided to launch a Rs. 300 crore scheme under the Eleventh Plan to fund capacity building, training programs, awareness and educational campaigns relating to RTI. Bihar has started a unique experiment whereby RTIs can be filed through telephones. The RTI call center in Bihar has been working since January 2007. Taking a leaf out of Bihar's book, the department of information technology (DIT) has come up with the idea of setting up an RTI call center which will allow applicants to seek information over the phone from any of the central government departments and organizations across the country. Some PIOs have implemented the Act in right earnest and people have benefited a lot. Moreover several NGOs like Parivartan are contributing a lot in popularizing the Act and optimizing its impact.

The implementation of RTI has been better in states that adopted RTI Act before 2005. This means that with time its implementation and use would definitely pick up. The impact includes its use by the general public and by the marginalized groups, change in the mindset and attitude of people as well as the authorities. On the flipside, there have been cases where information seekers were bullied, intimidated and charged exorbitant money to get the information. When a social activist filed a simple RTI query on the distribution of food grain and kerosene under the Public Distribution System (PDS) in his district in Bihar, the supply officer sought a whopping Rs. 78,21,252 for providing him the information. A person was even jailed in Bihar when he sought some information from a district magistrate. Ordinary citizens fear physical retaliation in invoking RTI against powerful people. This can, therefore, be attempted only by strong NGOs with an established reputation and wide mass support or politicians with countervailing muscle power, and not by ordinary citizens however patriotic and public-minded they might be. An ordinary citizen just cannot muster the courage to walk into a police station and demand factual information on the detenus, duration of custody, prescribed documentation, etc. There are numerous cases of torture and harassment against those seeking to invoke RTI. This ruins the spirit of RTI.

A look on the RTI applications filed so far makes it evident that over 75% applications have been filed by men. According to June 2009 study by Price Water House Coopers only 13% of the rural population has knowledge about Right to Information Law. A study in 2008 by Transparency international India reveals that less than 1% of those living below poverty line, in Bihar, one of the most corrupt States in India knew about RTI. People in power or in system have used it more. Similarly people living in metros have taken recourse to RTI more. Majority RTI applications are for personal reason or advantage, many of them pertain to service matters. Most of the applications are by the same people. There is better response from authorities when innocuous information is sought. But when information meant to expose some wrongdoing is sought, information is difficult to come by and those in power collude to torture the information seeker. But it cannot be denied that the RTI has given a boost to the

freedom of speech and expression. RTI's role in corruption reduction is impacting although in poverty alleviation it has not been felt as yet.

Concluding Remarks

True democracy cannot exist unless all citizens have right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless citizens are well informed on all sides of the issues in respect of which they are called upon to express their views. One sided information, disinformation, misinformation and non-information all equally create uninformed citizenry which makes democracy a farce when medium of information is monopolized either by state or any other organization. This is particularly so in a country like ours when about 65 per cent of the population is illiterate and hardly 11/2 percent of population has an access to the print media which is not subject to pre-censorship.²³ The Government has shown political will by enacting the Right to Information Act, 2005. However, struggle for achieving 'openness' in the governmental affairs is not over. The object of the Act can be further achieved if the Government constitutes the commissions envisaged under the Act within the time limit and by appointing the officers of the calibre and competence to the posts named under the Act. The Government should use Right to Information Act, 2005 to improve the delivery system of the administration. Also as indicated in Act the Government should take the Right to Information Law to the Rural Public, evolve methods to popularize and enable them to know the Policies and various schemes of the Government to take important decisions in the Participatory Democracy. The meaningful participatory Democracy can survive only when the Fundamental Right to know information which is guaranteed under the constitution reaches the rural public in full form.

²³ Union of India v. Association for Democratic Reforms, AIR 2002 SC 2414 at 2127.