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RIGHT TO INFORMATION AND ITS ROLE AS A TOOL OF GOOD GOVERNANCE IN INDIA WITH SPECIAL REFERENCE TO THE RTI ACT, 2005*

INTRODUCTION

India is a country which follows a Democratic System of Governance. Democracy is a form of government in which all people have an equal say in the decisions that affect their lives. Ideally, this includes equal (and more or less direct) participation in the proposal, development and passage of legislation into law. While there is no specific universally accepted definition of “democracy” equality and freedom have both been identified as important characteristics of democracy since ancient times. These principles reflect that all citizens have equal access to legislative processes. But broadly speaking, the people of India are largely living in the darker side of the governance of the country and are often uniform about the public affairs and are dominated by those who wheel power in the executive, legislative and judicative spheres. [1]

The concept of ‘governance’ is as old as human civilization. The word governance means the process of decision making and the process by which decisions are implemented or not implemented. Good governance is associated with efficient and effective administration in a democratic frame work. It is citizen friendly, citizen caring and responsive government. Under a democratic government, citizens have an obligation to become informed about public issues, to watch carefully how their political leaders and representatives use their power and express their own opinions and interests.

Democracy can never be practiced to the fullest if there is no *transparency*, and *accountability* that is requisite in a proper democracy. Information is *sine que non* for the functioning of democracy. Government openness is a sure technique to minimize administrative faults. [2]

Like some countries of the world, the Constitution of India has no express provision for right to information to the citizen of India. Under the Constitution of India it is an implied notion, which is developed by many of the judicial pronouncements delivered by the Hon’ble Supreme Court and High Courts. The concept of Right to Information on the citizens has now been accepted as fundamental rights. The area of Right to Information is hiding in the Article-19(1) (a) of the Constitution of India. Freedom of information is thus, one of the components of freedom of speech and expression guaranteed by the Constitution of India. Though the Indian Constitution has no express provision guaranteeing the right to information, it has been recognized by the Courts in plethora of cases as implicit in Article(19)(1)(a), which guarantees to all citizens the right to free speech and expression, and Article 21 of the Constitution which guarantees the Right to Life in accordance with due process to all citizens. The right to information has been recognized

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by Supreme Court in its decisions since 1973. It was first recognized in *Bennett Coleman V Union of India* [3], famously known as the 'Newsprint case', where for the first time the Supreme Court said that readers had the right to read newspapers and this emanated from their right to know which was a part of freedom of speech and expression.

Concept of Right to Information

Information and knowledge are critical for realizing all the human aspirations. People who have access to information and who understand how to make use of the acquired information in the process of exercising their political, economic and legal rights become empowered, which in turn enable them to build their strengths and assets. In view of this, the Right to Information seeks to set up the facilitation, which forms the basis for healthy debate on the issues of vital importance to every section of the society.

Justice Krishna Ayer says that information is power and the way it is used by the rulers at National or International level, affects the mass media. There is a need for the citizen's right to know and the creation of an open society, where human rights become meaningful. Information and Communication are powerful tools and have a potential to shape and share social and political developments depending on the classes concerning this resources. The further observes that riches culture future, in a pluralistic society like India, can flourish only if, the information orders is free and equal and the calculus of Communication is at the call of human order and focus on social justice.[4]

The pillars on which a strong and effective law on right to information rests are discussed below:

1. **Participation of the People:** People's participation is one of the main need to carry out the governmental works. They must be involved in the planning processes and must know exactly how things are being done. People must have sufficient information about the governmental plans and policies so that it enables them to give their opinion well in time to do the required changes and modification.
2. **Principle of Accountability:** As ours is a democratic system of governance henceforth the governance from the village to the central level needs to be accountable to the people. A Right to Information will ensure that people can hold public bodies accountable on a regular basis.
3. **Transparency:** It is essential that there should be complete transparency in all public governmental dealings. Transparency holds the officials accountable for the 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.
4. **Limitations of discretion powers given to officials:** Officials can abuse their discretion to suit various political or other vested interest, as well as to misappropriate funds. In absence of legislation of 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 the poor people or villagers, given the cost, distance and delays involved. The Right to Information is therefore important to check abuse of administrative discretion and to ensure fair process.
5. **Protection of Civil Liberties;** The Right to Information is essential for protecting the civil liberties of citizens by making it easier for civil society groups to monitor wrong doings like custodial deaths and the abuse of preventive detention legislation.
6. **Effective and proper implementations of schemes of the Government;** There are numerous schemes for providing food, housing, employment and education that are run by the Central or State Governments. There has been a wide spread criticism that these funds have been misappropriated or misused on a large scale. By providing the entire information on these schemes to the public would make the administration more accountable.

7. **More effective Media:** Even if the Government provides for the right to information, the citizen's resorts to media like news paper, radio, television etc for day to day information about government activities, It is essential that media must have an access to information. The media's right to information is not a special privilege but rather an aspect of the public's right to know. By providing right to information, media and citizens would together make the government more accountable.

Access to information and openness are of crucial importance in ensuring the accountability of the government and to expose corruption and malpractice. 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 people's participation in matters relating to Governance. Hence Right to Information must be guaranteed by strong legislation and the process of law making must be participatory. [5]

Right to Information Act, 2005 and its Impact on Indian Society with reference to certain cases

Democracy becomes meaningful only when people have a sense of participation in the governance. Transparent governance increases public participation and lends greater legitimacy to the State. One way of participating is by exercising the right to access to information from bodies which spend public money, or perform public services. Following the enactment of Right to Information Act, 2005 all citizens of India now have the "Right" to access to information. It further recognizes that sharing of information using the tool of RTI, is healthy and an essence of open government.

It was in this context that right to information gained even more importance, and a need arose to impose a legislation upon it and the Right to Information Bill, 2004(RTI Bill 2004) was tabled. This bill was further amended in 2005 with many recommendations of the Parliamentary Standing Committee and was approved by the parliament and the then President APJ Abdul Kalam gave his assent to national Right to Information Act 2005.

The Act begins: - ***An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of Central Information Commission and State Information Commissions and for the matters connected therewith or incidental thereto.*** [6]

The basic object of Right to Information Act is to empower the citizens, promote transparency and accountability in the working of Government, control corruption, and make our democracy work for the people in real sense. An informed citizen will be better equipped to keep necessary vigil on the instruments of the Government and make more accountable to be governed. The Act has created a practical regime through which the citizens of the country may have access to information under the control of public authorities.

The Right to Information Act 2005 recognizes that in a democracy like India, all information held by the government ultimately belongs to the people. Making information available to the people is simply a part of normal government functioning because public has right to know about the workings of the public officials. The Act seeks to establish that transparency is the norm and secrecy is an exception in the working of government institutions. The RTI Act gives all citizens the right to ask questions, and demand answers about governance and development issues that affect their lives. The provisions of the Act are intended to balance the rights of liberty as against

the duty to protect the security of the state, public order, decency or morality or incitement to an offence which are protected under Article 19(2).

The Right to Information Act, after its enactment in the year 2005 has tremendous impact and success stories in implementation of the government policies that affects the society in one form or the other. The following cases illustrate how citizens have used the Right to Information provisions in different context to uncover corruption, foster greater transparency and exact accountability from public servants. It goes to show the power of RTI places at the disposal of Civil Society- the need to use it effectively and judiciously.

1. Adarsh Society Scam

The applications filed by RTI activist Yogacharya and Simpreet Singh in 2008 were instrumental in bringing to light links between politicians and military officials among others. The 31 storey building which had permission for six floors was originally meant to house war widows and veterans. Instead the flat went to several politicians bureaucrats and their relatives.

2. Public Distribution System in Assam

In 2007 members of an anti corruption non governmental organization, Krishak Mukti Sangram Samiti filed an RTI that revealed the irregularities in distribution of food meant for people below poverty line. The allegations of corruptions were proved and several officials were arrested.

3. Appropriation of Relief Funds

Information obtained through an RTI application by an NGO based in Punjab, 2008 revealed that bureaucrats heading the local branches of Indian Red Cross Society used the money intended for the victims of kargil war and natural disasters to buy cars, and other luxuries. The officials were found responsible and the funds were transferred to Prime Ministers relief fund.

Hence, besides these many more success stories could be seen where the RTI ACT proved to be effective in good governance of India.[7]

Right to Information and Good Governance

Information is crucial for good governance as it reflects and captures Government activities and processes. It is said that information is the oxygen of democracy. If people do not know what is happening in their society, if the actions of those who rule them are hidden, than they cannot take a meaningful part in the affairs of the society. Access to information not only provides openness, transparency and accountability in administration but also facilitates active participation of the people in the democratic governance process.[8]

Right to Information can be used as an effective tool to usher in a regime of good governance. The major characteristics of good governance include: strategic vision and consensus orientation, participation, rule of law, transparency, responsiveness, equity and inclusiveness, effectiveness, efficiency and accountability. Internationally the campaign for good governance has included the right to information a significant element.

A direct relationship exists between right to information and good governance. For RTI Act to achieve its purpose, the public should have access to government information. This provides them the opportunity of being informed of what the government does for them, why and how it does it. It aims to put an end to inconsistent government practices and helps in establishing a responsive state. Public participation, respect for rule of law, freedom of expression and association, transparency and accountability, legitimacy of government, and the like which are the core values of good governance can only be realized if right to information is implemented in the right spirit.

The Right to Information Act, 2005, is a weapon in the hands of civil society. It is an important legislation that provides opportunities to the civil societies to be involved in governance and social

transformation processes by using the Act as a weapon to monitor, review and evaluate government policies, programmes and schemes. RTI Act helps the civil societies to infuse greater transparency and accountability in administration of developmental programmes and can arrest the abuse of power.

Loopholes and grey areas in operating the Right To Information Act, 2005

This Law empowered the Indian Citizen to seek information from Public Authorities thus making the government and its functionaries accountable and responsible. Unlike many other countries which took several years to operationalise this Act post the enactment, India took only a few months to bring it into force. This time was inadequate to change the mindset of the people in Government, create infrastructures, develop new processes and build the capacity to deliver information under this Act. The loopholes pointed out in execution of this Act are:

Firstly, the official mindset does not seem in favour of sharing any information. The main obstacle is the attitude of the bureaucracy which is accustomed to the working in closed corridors. While most of the departments say 'no' directly to any information sought, but there are enough grounds in the Act on the basis of which information won't be given or would be delayed.

Secondly, the Act stipulates a penalty in case of information is denied without adequate reasons. There may be cases where administrative accountability can be dispensed by deliberate act of government in lieu of paying this meager amount.

Thirdly, under section 7(9) information can be declined if it disproportionately diverts the resources of the public authority. This provision gives a lot of discretion to the public authorities and safeguards it is not misused.

Fourthly, express bar on jurisdiction of court gives a freehand to all administrative decisions under the Act.

These are the loopholes and grey areas that have come to notice in operation of the Act.

Suggestions/Recommendations

Freedom of Information is a fundamental right of the citizens of India and Right to Information Act is indeed a commendable step to ensure an open democracy. The following points can be considered as some suggestion that may lead the Act to go a long way in achieving the accountability and transparency of the Act.

1. Despite passing of the Act ten years back, yet the Act has failed to make much heed way as well as the Public Information Officers(PIO) or State Public Information Officers(SPIO) have not fully implemented the same for which a mandatory provision needs to be added making it mandatory for all public authorities to establish a system.
2. Most of the information cases deals with seeking the personal information. Information sought on public interest is rarely seen. Hence it is necessary to set up a public education campaign on "how to access information and its application" at panchayat level, school level etc, in order to make the citizens feel empowered. In order to properly manage the demand for information from the NGOs in general and citizens in particular, a concerted effort would be needed to create mass awareness among the people. A multimedia approach should be adopted to educate and train people as to how to decide and select what information should be sought for.
3. In order to reduce pendency of information cases, there should be speedy disposal of petitions. One of the drawbacks of having governmental officers as PIO was that most of them did not know the procedures of working commissions. So it can be suggested that

Manual for public authorities should include the procedures for appearing for hearings before the information commissions while dealing with information cases.

4. A comprehensive information management system should be developed by each public authority for storage and retrieval of data and information that may be shared with anyone who seeks to inspect and use the information for development purpose.
5. The main object of the Act is to achieve or provide for setting out the practical regime of Right to Information for citizens to secure access to information under the control of public authorities. In doing so it is highly advisable that the security of the state is not compromised even at least a bit.
6. Exclusions of certain departments have invariably resulted in sheer hindrances of the aims and objectives of the RTI Act. So recommendations can be made to include certain departments like CBI, CVC, and Police Departments should be brought under the purview of the Act.

India can proudly proclaim that its citizens have been bestowed with specific RTI which will unquestionably lead them towards the path of development. Although there are still some short comings yet it can be overcome with the growth of the democratic atmosphere as it happens to be the largest democracy in the world.

Conclusion

Information is power and that the executive at all levels attempts to withhold information to increase its scope for control, patronage, and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and proactive dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption. Fighting corruption which has been a major anxiety of our country for decades has an answer potentially in the hands of RTI. This can be achieved by growth of comprehensive information management system and by the promotion of information literacy among the citizens. This will positively lead to ultimate recognition of the objectives of RTI and could be used as an effective weapon for good governance of India.

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