

RIGHT TO INFORMATION-GENESIS AND DEVELOPMENT IN INDIA: AN INSIGHT INTO CONSTITUTIONAL, JUDICIAL AND STATUTORY PERSPECTIVES

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ABSTRACT

Often said ignorance is the cause of bondage and liberation is the result of knowledge. Knowledge empowers the powerless, illuminates and enlightens the minds, narrow down the differences and helps to win trust to bridge the gaps. The gap between the governing class, the so called representatives of the people and administrators of the public affairs and the governed, the economically poor, educationally backward and politically unconscious people has widened and there is a clear deficit of trust in between. The misuse and abuse of authority delegated for bonafide use, the culture of opaqueness and secrecy by the former has resulted in corruption, nepotism and the uneven and inequitable distribution of power and resources. Corruption in any form is the basis of all injustice; it converts merit into demerit, the innocence into guilt and the vice-versa and thus hits at roots of a society and consumes its vital basis. It is in this backdrop that the need for some extraordinary measure of accountability was strongly felt which culminated in the recognition of the right of information of the subjects. In India a comprehensive legislation, Right to Information Act, 2005 has been legislated by the parliament which extends to the whole of India except the state of Jammu and Kashmir where the state legislature has enacted almost a verbatim of the central Act with slight modifications. However it needs a mention here that the Jammu and Kashmir government has recently made some amendments in the said Act which have been largely criticized as an attempt to subvert the process of accountability in the state.

Key words: Right to information, Information, Bureaucratic Accountability, Public Authorities.

Introduction

‘Right to information’ or ‘Right to know’, is a means, a mission for transparency and assistance. “The campaign to find political accountability through the election and other promises could not become fruitful as such promises were made only to attract voters and were forgotten latter on”.¹ The people’s right to know besides being a declared fundamental right has now received statutory recognition through Right to information Act, 2005(central)². Right to information is a facet of ‘freedom of speech and expression’ as contained in article 19(1) (a) of the constitution of India. Right of information, thus, indisputably is a fundamental right³. Serve the public, beyond serving oneself, recognize and support public’s right to know the public’s business, assist the citizens in their dealings with government, are the ethical principles (list not exhaustive) adopted and affirmed by the American Society for Public Administration (ASPA) to develop and inculcate professional excellence, truthfulness, honesty and integrity among its membership, in the delivery of public services⁴. Perhaps with the onset of the era of empowerment for the common man in India it is now no more possible for the government to hoodwink their people by blocking the channels of information. Often said ignorance is the cause of bondage and liberation is the result of knowledge. The era of ignorance, which is akin to slavery has its end.

General Basis and Development

People’s right to information, information regarding the functions of government and its instrumentalities is not something new or strange nor is it by way of any concession or grant to the people

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by their governments. Accountability both political as well as bureaucratic is the essence of good and legitimate governance. The recognition of the fundamental freedoms of man gave birth to the idea of democracy, which besides the incorporation of the principles of economic, social and political equality essentially means and postulates participation of people in decision making, policy formulation, implementation and evaluation thereof. Accountability, transparency and responsiveness are the basic principles of people's government what in common parlance is known as democracy. It is said that free speech and expression is basic to and indivisible from the democratic polity. This 'right of free speech and expression' which is an essential concomitant of democracy has been read and interpreted to include barrier free publication and circulation of information. Jefferson an important leader of American war of independence stated; "*Governments exist to protect and realize the inalienable rights of man.*"⁵ The most significant political document, "the declaration of independence" adopted by the thirteen American colonies in the year 1776 A.D, while declaring the snapping of their political allegiance from the imperialistic British Empire embodied certain inalienable rights of all man. The declaration among other things states, "*We hold these truths to be self evident that all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and pursuit happiness,...that to secure these rights governments are instituted among men*"⁶

Enumerating the basic postulates and principles of human rights, the Universal Declaration of Human Rights, adopted by the international community on December 10, 1948 and the subsequent covenant on civil and political rights adopted in the year 1966 faithfully recognize and incorporate the people's right of opinion, expression and of participation in the governing process of the modern states⁷. To the same effect Article 10 of the European Convention on Human Rights, inter alia, states as,

*"Every one has the right of freedom of speech and expression. This right shall include freedom to hold opinion and to receive and impart information and ideas without interference by the public authorities and regardless of frontiers."*⁸

Another aspect of the issue is the recognition of the tax payer's right to inspect, observe and audit the expenditure of the money paid by him to the state exchequer at the hands of state authorities. From the same stream flows the idea of social audit of the bureaucracy. The real spirit of constitutional governance based on rule of law necessarily postulates the establishment of an effective mechanism and means of accountability.

Now-a-days most of the constitutions of the modern states either directly or indirectly recognize or give effect to this citizen's right of expression, opinion, knowledge and evaluation of the general affairs of the state. The concept under consideration has achieved more or less universal acclamation and acknowledgement though the access to certain matters, agencies and information pertaining to intelligence, security and sovereignty of the state has been reserved.

Indian Scenario, Constitutional Basis and the Creative Role of Judiciary

M.K. Gandhi has rightly observed, Real Swaraj will come not by the acquisition of authority by the few but by the acquisition of capacity to resist authority when abused.^{8a} In India the colonial era legislation, Official Secrets Act, 1923⁹, legislated to prevent the disclosure of official documents and information pertaining to the civil and military affairs of the state went a long way even after political independence to dominate and curtail the right of subjects to know about the affairs, policies and formulations of the government. In the constitutional jurisprudence of the country, however, the role of the framers of the constitution and subsequent liberal explanation rather in-depth exploration of the concept of fundamental freedoms enshrined therein through the path breaking judicial pronouncements is pivotal and

worth mentioning to underlie and discuss the scope of the subject under consideration. Recognizing the sovereign power of the people that is people being the ultimate source of all power and authority, the objective resolution, moved by Pundit Jawaharlal Nehru on December 13, 1946 and adopted by the constituent Assembly on January 22, 1947, while laying down the philosophical ideals and objectives of 'sovereign independent India' inter-alia among other objectives stated in clause (4) as under:

*"Wherein all power and authority of sovereign independent India, its constituent parts and organs of government are derived from the people"*¹⁰

People's supremacy as the real stake holders of power is aptly reflected in the preamble to the constitution of India as well, when besides embodying the purpose and ideals which the constitution aims to secure it states,

"We the people of India do here by adopt, enact and give to ourselves this constitution".

In consonance with this solemn resolve and the spirit of the ideals which inspired the Indian freedom struggle, the Constitution of the country which reflects the joint and solemn will of the people expressly embodied certain fundamental freedoms with the aim to recognise, maintain and develop the worth and dignity of human person in general. Right of information, a derivative of the right of 'freedom of speech and expression' is contained in Article 19(1) (a) of the part III of the constitution. The creative role of judiciary in giving meaning, content and new dimensions to this fundamental right and freedom is a major example of judicial activism in protecting and ameliorating the rights of people against the mighty state authorities. This is in fact the constitutional obligation of the judicial organ of the state being the guardian of the people's rights besides the duty of interpretation of the constitution in light of the changing circumstances. In the famous case of *State of U.P v/s Raj Narain & others AIR 1974, SC 865*, the Supreme Court said:

*"In a government of responsibility like ours, where all the agents of the public are responsible for their conduct, there can be but few secrets. The people of this country have right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know which is derived from the concept of freedom of speech, though not absolute...The responsibility of officials to explain and justify their acts is the chief safeguard against oppression and corruption."*¹¹

Going further in *S.P Gupta v/s Union of India A.I.R 1982 S.C 149* while striking the balance between the compelling dimensions of public interest, namely, the right of citizens to obtain information competing with the right of state to protect the disclosure relating to its crucial affairs the apex court observed;

*"Disclosure of information must be the ordinary rule in matters relating to public affairs... while secrecy must be an exception only, justifiable only when it is demanded by the requirements of public interest."*¹²

The court further stated that in order to ensure the continued participation of people in the democratic process they must be kept informed of the vital decisions taken by the government and the basis thereof. Democracy therefore expects openness and openness is a concomitant of a free society. Sun light is the best disinfectant. Similarly in the case of *Indian Express Newspaper (Bombay) v/s Union Of India A.I.R 1986 S.C. 540*, the supreme court while determining the vires of a statute taxing newsprint observed that *"in sum the fundamental principle involved here is the people's right to know. Freedom of speech and*

expression shall, therefore, receive a generous support from all those who believe in the participation of people in the administration."¹³

Drawing parallels between the 'right of free speech, opinion and expression' and the real concept of 'democracy' the apex court in the case of *Union of India v/s Association for Democratic Reforms A.I.R 2002 S.C 2113* laid down that a successful democracy posits on 'aware' citizenry.¹⁴ Finally in landmark pronouncement delivered in *People's Union for Civil Liberties v/s Union of India A.I.R2004S.C 1442*; the supreme court while referring to all earlier authorities crystallized the law on the subject by declaring the 'right of information, indisputably, a fundamental right', a part and parcel of constitutional guarantees to the people.¹⁵

The Statutory Basis of the Right

By the time the right of information of the subjects received the status of a declared fundamental right the popular movement for accountability and transparency has already started and received recognition in the different states of the country which ultimately resulted in the enactment of the Right to Information Act, 2005 by the central legislature. The said legislation is a fine example of progressive, participatory and meaningful social welfare legislation. The preamble rather introduction to the Act states following as being the reasons, objectives and basis of the enactment;

- to ensure greater and more effective access to information, by setting out the practical regime of information;
- to promote transparency and accountability in the working of every public authority;
- to establish an informed citizenry and a system of transparency of information;
- to contain corruption and to hold governments accountable to the governed;
- to necessarily harmonize the conflicting interests in the disclosure and non disclosure of sensitive information;

The objective clause directly connotes that the statute embodies a declared mission, a means and a tool in the hands of common people to ensure transparency, accountability, efficacy and responsibility in functioning of public authorities. Section.3 of the Act provides for right to information of all citizens. It states;

"Subject to the provisions of the Act all citizens shall have right to information"

In nutshell the statute places an instrument in the form of a recognized statutory right with constitutional basis in the hands of common men to monitor evaluate and test the credibility of all public activities pertaining to the formulation and implementation of schemes, programmes and policies of the government made in running the affairs of the state. The provision for voluntary disclosure of information places a positive obligation on the state authorities to voluntarily publish, disclose and disseminate information under their control pertaining to the functions, duties and delivery of public services assigned to them and connected matters. Provisions dealing with exemption from disclosure of certain informations, prevention of the infringement of copyright, non- application of the Act to intelligence and security agencies, right of hearing to third parties before disclosure of information held in trust, prevention of contempt of court etc. harmonizes the "right" with other interests. Provisions for timely disposal, right of appeal, penalties, bar of civil courts interference and more essentially the appointment and constitution of designated authorities in all departments of the government with state and national commissions to hear appeals, investigate and monitor the implementation of the scheme of the Act makes the actual realization of the "right" more meaningful and somewhat substantive.

Way Forward

In order to practically realize the fruits of any public oriented or social welfare legislation there are certain general pre-requisites which I view as (not conclusive), a positive co-operation, co-ordination and collective effort of all concerned, education and awareness with respect to the scope of possible benefits of the scheme under implementation, a minimal knowledge of rights, duties, obligations and immunities of respective stakeholders emanating from the scheme, possible prevention of the misuse or abuse by the unscrupulous persons, and above all the political will to make the purpose behind the legislation a reality, a dream come true. The basic need is that the public officials need to develop a positive attitude towards the implementation of the scheme under consideration. The statute is no hindrance instead it strengthens the hands of public officials in delivering smooth and effective services to the public with more transparency, openness and confidence. A public official shall feel no hesitation in making the facts and figures public to prove his credibility and win over the lost trust. At the same time an onerous responsibility is cast upon the citizens in general and information activists in particular to respect and consider the real purpose behind the Act which is to ensure smooth, effective, timely and transparent delivery of public services. In the hands of unscrupulous persons the legislation may prove detrimental to public interest and hence counterproductive. The implementation of the Act at the grass root level faces certain peculiar difficulties which need to be addressed to achieve the true import of the legislation. These include:

- Lack of awareness among common masses about the rights and privileges under the "Act of 2005" in particular and other welfare legislations in general;
- Feeling of insecurity and lack of willingness in public officials to furnish information regarding the official activities under their control and supervision;
- Gap between the public functionaries and the beneficiaries of the public activities and welfare programmes;
- Misuse and abuse of the 'right' by some persons for political and other extraneous motives;
- Threat posed to the life and liberties of information seekers in some high profile cases;
- Covert efforts on the part of some motivated persons in political and bureaucratic circles to derail the actual import of the legislation;

Many of the aforementioned obstacles can be removed to a greater extent by organizing seminars, awareness camps, capacity building programmes for public officials, joint sessions of awareness for public and public functionaries, developing a proper check and balance mechanism to prevent the misuse and the enacting appropriate legislation to tackle the security or threat perceptions.

Conclusion

Right to information as already mentioned is a means to an end not an end in itself. A mere paper guarantee of rights by the constitution, their discussion and recognition by the higher judicial forums or the statutory enactment is of no value and use to the common man as long as he is devoid of the basic necessities of life. Majority of the population in India being illiterate, poor and ignorant is suffering exploitation at the hands of powerful. Political power, industrial economy, land and other resources are concentrated to a few only as compared to the bulk. In rising prices most of the people are unable to maintain the bare minimal needs of life. Adequate facilities of healthcare, drinking water, electricity, education, roads etc are a distant reality to majority in rural India which constitutes more than 70% of Indian population. The nominal and meager social welfare and other flagship programmes run by the government have been hijacked by the corrupt administrators in league with politicians with a share to selective people. Although the Act under consideration will to some extent empower the common man but there needs to be

an affirmative, honest and substantive action plan for effective realization of the socio-economic aspirations and to ameliorate the rights of the poor, powerless and alienated common man.

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