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Transparency, Accountability and Promptness: Right to Information

Bharat¹

I am for truth no matter who tells it. I am for Justice no matter who it's for or against

- Malcolm X

Abstract

It is rightly said that 'Government is dependent on its people and not the vice versa', with growing importance of information dissemination in this new era has made right to information a necessary right. India being the largest democracy realised the importance of RTI and with passage of time several bills and acts were passed like Official Secrets Act, The Public Records Act and Freedom of Information Bill, after this the masterpiece came 'The Right to Information Act, 2005'. The Supreme Court in Bennett Coleman & Co. v Union of India, observed that right to information should be treated as a fundamental right under Part-III of Indian Constitution likewise Right to Freedom of speech and expression. Internationally also the Group of Freedom of Information (FIO) advocates proposed 28th September each year as International RIGHT TO KNOW DAY. The basic concept and characteristic behind the making of RTI is maximum disclosure, limited scope for secrecy, easy and affordable access to information in public interest and monitoring and recording. RTI has spread openness and created a layer of transparency and accountability among the citizens and the government. It has also imposed some reasonable restrictions on taking out information for instance DRDO, BSF, NSF, Intelligence Bureau and Assam Rifles etc, are being excluded. Though this move of the government was played in order to target corruption in government department but if we look and the situation nothing has changed at the core level. If a country wants efficiency than it should improve problems at ground level and RTI has made a lot of positive changes and there is still a long way to go. RTI has been a very comprehensive tool for successfully making privacy of an individual a matter of fact, because this act is aimed for bringing a transparent and accountable layer between the public and the government. An

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efficient representative democracy presupposes full access to information held by public authorities by making disclosure of information in the public domain. The Supreme Court observed that right to information is an essential ingredient of a participatory democracy². In view of the global developments and international communities coming together shrinking their distances, the expression 'liberty' appearing in Article 21 of the Indian Constitution needs to be given an extended meaning and instead of confining it to the freedom of body, it should be extended to include within it, for instance, right to know and have information.

Right to Information and its Historical Background in India

A draft legislation titled as freedom of information bill was finalised by a committee headed by Shri H.D. Shouri in 1997, but the matter was put off. It was because of the initiative taken by Shri Ram Jethmalani (the then Union Minister of Urban Development). He placed and circulated an administrative order in the Ministry which help the citizens take and views any copies of any file of the department, as citizens do have the right to seek information and the government has an obligation to provide them the information. Deterred by the directions issued by the Supreme Court, the government accelerated the passage of the right to information bill and finally the freedom to Information Bill was passed by both houses of the parliament in December 2002 which received president assent in January, 2003. But due to some corrections and problems to be looked upon, a fresh bill entitled Right to Information Bill 2004 was placed before the Lok Sabha on 23 December 2004 which was sent to the Parliamentary Standing Committee for some amendments and suggestion from opposition party were deliberated. It include employment, public grievances, law and judiciary for mamining it and making recommendations. The committee proposed nearly 146 amendments and it was finally passed by the Lok Sabha on 11 May, 2005 and Rajya Sabha on 12 May, 2005.

Few acts which were also related to Right to Information or storage of official data are, public records act which established a cohesive regulatory framework for public records at the public record office and other places of deposit. This act was passed by the parliament of the United Kingdom and got royal assent on 23 July, 1958. Going back when India was a colony of Britain, the official secret Act 1923 was passed by British and it is still in force. It is India's anti-

² Reliance Petrochemicals Ltd., v. Proprietors, Indian Express Newspaper, (P) Ltd., Bombay (1989) SC 190 (India).

espionage (spy) act over from a century. With this act one cannot access or get files prohibited for public use which means this act has somewhat limiting nature, nor will government release any information which may disturb or affect international relation with any foreign state negatively.³

This is related with right to information in Section 8(a) to (j) which states types of information which cannot be provided to the public. The right to information act is a path making legislation which brings to light the secrecy of administration. It is an effective means to promote democratic ideology. The act is powerful instrument to fight against corruption. By realising this significance the Second Administrative Reform Commission had prepared a detailed blueprint for revamping the public administrative system. The second Administrative Reform Commission, government of India has published its first report in —Right to Information: Master key to good governance. Through this report the commission directly mentioned that access to information can empower the poor and weaker sections of society to demand and government information about public policies and actions, thereby led to welfare of all.⁴

Right to Information and Freedom of Press

Once Malcolm X, said that Media is a tool that helps in shaping the public opinion. For a developing country like India, to get developed and stand on the same level with other First World countries it very important to study and improve the ground level issues, this is because of media that the government comes to know about these problems. The online reports published by bloggers and television reports published by media house have not only helped the government to know about the progress but have also made public aware about the wrongdoings of the government, which is also relatable to RTI. In a very celebrated case of ‘Indian Express Newspaper v Union of India’, the supreme court observed that media is the fourth pillar of our democracy and have equal status and importance as that of Legislature, Executive and Judiciary.

The Indian constitution also recognises the freedom of press, it is a very much needed tool for a democracy like that of India to function. Indian media gives a positive criticism to the

³ N V Paranjape, Right to Information in India 33 (2014).

⁴ Sri Keshabananda Borah, *Right to Information: a key to good governance*, 2 IJHSI 11, 17 (2013).

policies and programmes of the government and gives their possible feedback from time to time. Talking about the effectiveness of Media law, the relation between both of them has been established in a very simple manner. As RTI is all about information in any form (given under section 2 of Act of 2005) and media too helps in giving and explaining it in a simple manner. The media though has been a bone for our democratic structure for instance it has deviated the public from important issues sometimes and also have made wrong allegations which lead to defamation. It is still a debated topic whether media is the fourth pillar of Indian Democracy or not?

Constitutional Validity, Objects and Reasons of RTI Act

The Supreme Court in the historic decision *State of Uttar Pradesh v. Raj Narayan* inter-alia observed⁵: "The people of this country have a right to know every public act, everything that is done in a public by their public functioning The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption."

The Supreme Court observed that freedom of speech and expression under Article 19(1)(a) impliedly includes freedom and the Right to Information.⁶ Therefore, as RTI has been treated as a fundamental right by this case, makes RTI as a very important and essential constitutional provision. The thing that makes RTI as constitution ally valid in the key about its reasonable restrictions mentioned in sub clause (2) of Article 19 and individual's social interests. Another important Supreme Court case which enshrined similar views is "*People's Union for Civil Liberties v. Union of India* (AIR 2003 SC 2363)".

Right to Information and protection to Whistle Blowers

Before building the relationship between the right to information act and the protection of whistle blowers, the concept of whistle blowing needs to be understood. The term Whistleblower is derived from the practice of English Hobbies who would blow their whistle when they noticed any commission of a crime. The blowing of whistle would alert both the perpetrator of crime to desist from doing it and general public of the possible danger. Whistle Blowing is the process in which insiders 'go public' with their claims of malpractice by, or

⁵ *State of Uttar Pradesh v. Raj Narayan* (1975) SC 865 (India).

⁶ *Benett Coleman & Co. v. Union of India* (1973) SC 106 (India).

within, organisations, generally after failing to remedy the problems from inside. And somebody who has the clue about the malpractice going inside, carry forward the information or leaks the information or blows out the whistle for public interests. For instance a recent example of whistleblower's act is the (in news) PNB (Punjab National Bank) Scam, where Mr. Hari Prasad S V, the whistleblower (the Nirav Modi scam), the Bengaluru-based entrepreneur wrote a letter to the Prime Minister's Office (the then Prime Minister Dr. Manmohan Singh) giving the government about the Fraud which Nirav Modi is doing and that it might be harmful for the Banking structure in India.⁷

Though many acts unfold after, not going in much deep Whistleblowers play a very important role in providing information about corruption and map-administration. They usually analyse the activities of the Public Authorities, Public Servants, NGOs, Private Organisations, Big business houses, etc.

With the murder of Satyendra Dubey, a young engineer working for the National Highways Authorities in late November 2003 the Whistleblower protection has become a debated topic. In order to appreciate the role of whistleblower in the society and public domain, to refer to a Supreme Court case 'Indirect Tax Practitioners Association v R.K. Jain, the four in this case observed that a whistleblower is a person who raises a concern about wrong doing occurring in an organisation or body of people. Usually, this person is from same organisation.

In the instant case, Justice UL Bhat who was at that time the President of Custom, Excise and Gold (Control) Appellate Jurisdiction (CEGAT) had written a letter to Chief Justice of India on 18 September, 1997, that the respondent had published objectionable editorials in the Excise-Law Times Vol. 86 (1996) containing wrong facts and cooked data. Finally, after a long discussion and deliberation between the Judges and after a long trial, the court observed that by writing the question in the editorial, the respondent had not made an attempt to scandalise the functioning of CESTAT (which was earlier CEGAT) instead he had tried to make an attempt to draw the attention of concerned authorities about the what's going and to implement the

⁷ N V Paranjape, Right to Information in India 234 (2014).

corrective measures and remove the malfunctioning in CESTAT, which is a public interest effort.⁸

With recommendation of the Law Commission of India, in its 179th report of 2001 had recommended to eliminate corruption from the public domain. After the Government Resolution, 2004 passed and its replacement with the Public Interest Disclosure and Protection to persons making the Disclosure Bill, 2010 came, the major reason behind the implementation of the bill was to get information about the wrongdoers.⁹

With the question rising about the protection of whistleblowers and a tough law to be introduced for the same, a Parliamentary Panel recommended in June 2011 that the whistleblowers protection should come for the elimination of corruption from the public domain. Hence, the Whistleblower's Protection Act, 2011 (No. 17 of 2014) was passed by the parliament on 27 December 2011 (it got assent from the President on 12 May 2014). This act is unique in its self because of a lot of reasons, for instance it protects the persons making the disclosure of information, this act also encourages the accessibility to file the complaint in an online format as provided in the Central Vigilance commission.¹⁰

Right to Information in relation to Right to Privacy

The similarities in both the rights is that they both by different judicial orders but treated as a principle of Fundamental Right in the Indian Constitution. Both of them are included in part 3 of Indian Constitution in Art. 19(1) (a) and Art. 21 for Right to Information and Right to Privacy respectively. RTI follows the principle of maximum disclosure and minimum secrecy, access to information is the basics of this act but as per the section 8 (1) which gives public authority an exemption from disclosure of information.

These provisions listed in this section and exempted from being disclosed and the Public Information Officer shall not be obliged to give such information, the ground for the same are given below:-

⁸ N V Paranjape, Right to Information in India 242 (2014).

⁹ *Ibid.*

¹⁰ N V Paranjape, Right to Information in India 243 (2014).

- A. Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, Strategy, scientific or economic interests of the State, relation with foreign state or lead to incitement of an offence.
- B. Information which has been expressly forbidden to be published by any Court of Law or Tribunal or the Disclosure of which may constitute contempt of court.
- C. Information, the disclosure of which would cause a breach of privilege of parliament or the state legislature.
- D. Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger interests warrants the disclosure of such information.
- E. Information available to a person in his fiduciary relationship, unless that competent authority is satisfied that the larger public interest warrants the disclosure of such information.
- F. Information received in confidence from foreign government.
- G. Information the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purpose.
- H. Information which would impede the process of investigation or apprehension or prosecution of offenders.
- I. Cabinet papers including records of deliberations of the council of ministers, secretaries and other officers.
- J. Information which relates to personal information the discloser of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual; sub-section (2) of section 8 provides that notwithstanding any of the exemptions listed above, a public authority may allow access to information.