



RIGHT TO INFORMATION ACT : A DEMOCRATIC WEAPON

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“Democracy requires an informed citizenry and transparency of Information which are vital to its functioning and also to curtail Corruption and to hold Governments and their instrumentalities accountable to the government.”

The craving for knowledge and information never has ceased its gripping charm over any class, group, sect, age, or gender of people. The urge to know is one of the basic essentials of human instincts which not only forms a part of its very being but also furthers its development. It has been observed that superiority and power come with the acquisition of knowledge or information about things. But here the concern is about official information, which belongs not to the state, the government of the day or civil servants, but to the public. Officials do not create information for their own benefit alone, but for the benefit of the public they serve, as part of the legitimate and routine discharge of the government's duties. Information is generated with public money by public servants paid out of public funds. Therefore, it cannot be unreasonably kept secret from citizens. Over the past few years, the Right to Information has gained increasing prominence, in the human rights and the democratic discourse. As more and more countries have embraced democratic norms and adopted commitments to more open, responsive government, so too has there been an increase in the passage of laws which have entrenched a legal right to access information from governments and even from private bodies under certain specified circumstances. Different terminologies have been used : Freedom of Information, Access to Information, the Right to Know etc. but fundamentally, the concept remains the same.

Right to information is guaranteed to every citizen of India under section 3 of the Right to Information Act, 2005. This right is a potent weapon in the hands of citizenry to gain access

to public records. It not only provides information but also fosters accountability and transparency on the one hand and strengthen the democratic principles of a polity on the other. Right to Information has evolved as a "necessary corollary to the right of free speech as a peripheral or penumbral right without which the primary right would be less secured."

At the heart of the Right to Information are two key ideas :

- The right of the public to request access to information and the corresponding duty on the government to meet the request, unless specific, defined exemptions apply;
- The duty of the government to proactively provide certain key information, even in the absence of a request. In practice, this requires governments to develop legislation, setting out the specific content of the right as to which information can be accessed from where, how, when and at what cost and the duties cast on relevant bodies to provide information, including the circumstances, under which information can legitimately be refused. Experience has shown that legislation is only a first step in operationalizing the right. Effective implementation requires a genuine commitment to opening up to scrutiny at all levels of government, adequate resourcing, improved records systems and infrastructure and education for the public on their right and obligation under the new law.

Access to government records and information is an essential requirement for modern government. Access facilitates public knowledge and discussion. It provides an important guard against abuses, mismanagement and corruption. It may also be beneficial to governments as openness and transparency in the decision making process can assist in developing citizen trust in government actions and maintaining a civil and democratic society.

Lack of information denies people the opportunity to develop their potential to the fullest and realize the full range of their human rights. Individual personality, political and social identity and economic capability are all shaped by the information that is available to each person and to society at large. The practice of routinely holding information away from the public creates 'subjects' rather than 'citizens' and is a violation of their rights. This was recognized by the United Nations at its very inception in 1946. Freedom of Information is a fundamental human right and the touchstone for all freedoms.

It is important that access to information is recognized as a right because it :

- Accords sufficient importance, as being inherent to democratic functioning and a pre-condition to good governance and the realization of all other human rights.
- Has become part of the accepted international obligations of the state. This means that the right to access information attracts the guarantee of protection by the state.
- Distances it from being merely an administrative measure by which information is gifted by governments to their people at their discretion since a legally enforceable right cannot be narrowed or ignored at the whim of government.
- Creates a beneficiary of a legal entitlement on the one hand and a duty-holder on the other violation of which is attended with a legal remedy.
- Signals that information belongs to the public and not government. The idea that everything is secret unless there is a strong reason for releasing it is replaced by the idea that all information is available unless there are strong reasons for denying it.
- Sets a higher standard of accountability.
- Gives citizens the legal power to attack the legal and institutional impediments to openness and accountability that still dominate the operations of many governments. It moves the locus of control from the state to the citizen, reinstating the citizen as sovereign.

How Right to Information Strengthens Democracy?

The importance of freedom of information as a cornerstone right is more than an accepted notion. It is an obvious fact of life, which has been articulated as a Fundamental Right in numerous international conventions. However, the right to access to information has not been realized by the majority of India's people. Rather than protecting citizens' right to information, India and many other developing countries have created a 'poverty of information' by developing an official culture of secrecy. Restrictions on the free flow of information, especially between government and citizens, has resulted in not only eroding the democratic principles enshrined in the Indian Constitution but also in the failure of government policies and development schemes for bettering the lot of the poor. Through Right to Information following aims can be achieved.

Realizing Participatory Democracy

Information is often withheld even when people are engaged in exercising the most basic of democratic rights, the vote. In the absence of a continuous flow of information it is difficult to know as to how ministries are functioning, how politicians have performed or the experience and qualifications of new candidates. In the absence of such information, elections may end up promoting only narrow interests as voters fall back on caste, religious or class affiliations as the basis for their choice. Likewise, in the absence of a right to scrutinize the financial details of political party funding—some of it no more than bribes—citizens are unable to ensure that special interest groups, including criminal elements, do not co-opt their representatives for private gain. Better-informed voters mean better-informed choices, more responsive legislators and better governance.

Making People the Centre of Development

The sad fact is that while poor people throughout the world have strong views on their own development destinies, they remain excluded. Tragically, this has resulted in governments taking advantage of the marginalized populations they should be helping. For example, from the Pacific to Africa to South Asia, the rural poor and indigenous communities who are so heavily reliant on their local natural resources for survival have often been excluded from decisions about their use and sale that have been made by governments dominated by the urban elite then co-opted the benefits. Likewise, women, who battle discrimination across the countries, continue to be ignored and their contribution to development undervalued. With assured information, marginalized groups will be given their rightful voice and a powerful tool to scrutinize and engaged with the development processes being directed at them. Much of the failure of poverty reduction and development strategies to date can be attributed to the fact that for years they have been designed behind closed doors by governments who consulted with ‘experts’ but shut out the very people who were supposed to be benefitted. According to an estimate, only 15 to 20 percent of the funds reach the real beneficiaries. Millions of rupees meant for development and people’s benefit are lost because they are diverted to things they were never meant to support or wrongly used or just stolen through corruption. The ordinary citizens of India and the poor persons are not expected to ask for an account of where money has been spent. And when they do there is much surprise, anger and resistance from the bureaucracy and politicians. With the lack of access to information, people are unaware of the development schemes and are completely unequipped to engage in

informed participation in their own development even if given a chance. Therefore, decades of development have been lost through decision making uninformed by the realities of those without a veritable voice. Even the donors or suppliers of funds have been complicit in keeping development planning processes closed. Multilateral institutions, such as the World Bank and the International Monetary Fund, are now beginning to open up, following pressure from civil society groups, but much more work still needs to be done.

Increases Trust Quotient in Government

Democracy and national stability are enhanced by policies of openness that engender greater public trust in their representatives. This is a crucial aspect of effective governance—without the support and trust of the people, governments will be more likely to face resistance to their policies and programs and implementation will be more difficult. A Commonwealth Foundation study in 1999 which sought the views of some 10,000 citizens in over 47 Commonwealth countries has shown that there is a growing disillusionment of citizens with their governments : "Citizens are suspicious of the motives and intentions of their governments. They feel ignored or even betrayed by their elected representatives. Indeed, they feel suspicious of the very programmes and agencies created to meet the needs they have. They feel neglected, ignored and uncared for."The integrity of governments needs to improve and be seen to improve. Open government and access to information provide a means of achieving both these ends.

Facilitates Market-Based Economic Growth

The world is relying on free markets to quicken development. But markets, like governments, do not function well in secret. Openness encourages a political and economic environment more conducive to the free market tenets of ‘perfect information’ and ‘perfect competition’. Foreign and local investors need to be able to rely on the routine availability of timely and accurate information about government policies, the operation of regulatory authorities and financial institutions and the criteria used to award tenders, provide licenses and give credit. Easy access to some information that is not mired in bureaucratic processes creates long-term investor confidence in the local economic environment. A guaranteed right to information lays the foundation for market-friendly good governance principles of transparency and accountability, which in turn encourage strong growth. Not merely economic growth, but also economic equity is promoted by access to information. The liberation from government of

information that would otherwise have remained unutilized increases economic opportunity for the less powerful as much as for the big player. A worker can access information about labour regulations and their entitlements, a businessperson can find out about licensing requirements, taxation and trade regulations, and farmers can get hold of land records, market trend analysis and pricing information.

Rooting out Corruption

Denial of information has perpetuated the political, social and economic exclusion of millions, aided in the illegitimate retention and abuse of power by select segments of society. It has facilitated widespread corruption which is destroying the rule of law and has created a mutually supporting class of overlords who need secrecy to hide their dark deeds in dark places. 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. It is, therefore, important to identify the sources of corruption inherent within the character of the state machinery. These include a determined denial of transparency, accessibility and accountability, cumbersome and confusing procedures, proliferation of mindless controls, and poor commitment at all levels to real results of public welfare.

Corruption is leaching away the economic lifeblood of many societies. It is not coincidental that countries perceived to have the most corrupt governments also have the lowest levels of development or that countries with access to information laws are also perceived to be the least corrupt. A guaranteed right to access information is, therefore, an essential and practical antidote to corruption, which is rife in many countries.

In 2002, of the ten countries scoring best in Transparency International's annual Corruption Perceptions Index, no fewer than eight had effective legislation enabling the public to see government files. Of the ten countries perceived to be the worst in terms of corruption, not even one had a functioning access to information regime.' The right to access information acts as a source of light to be shone on the murky deals and shady transactions that litter corrupt governments. It enables civil society and especially the media to peel back the layers of bureaucratic red tape and political high handedness and get to the shard facts.

Enhances Vigilance of Media

In robust democracies, the media acts as a watchdog, scrutinizing the powerful and exposing mismanagement and corruption. It is also the foremost means of distributing information,

where illiteracy is widespread, radio and television have become vital communication links. Unfortunately, this power to reach the masses has often been perceived as a threat by closed governments, which have carefully regulated private ownership of the press and attempted to curb the media's ability to gather news, investigate and inform. Satellite television and the Internet are making slow inroads, but even the content of these are sometimes restricted. Where the media is unable to get reliable information held by governments and other powerful interests, it cannot fulfill its role to the best of its abilities. Journalists are left to depend on leaks and luck or to rely on press releases and voluntary disclosures provided by the very people they are seeking to investigate. Lack of access to information also leaves reporters open to government allegations that their stories are inaccurate and reliant on rumour and half-truths instead of facts. A sound access regime provides a framework within which the media can seek, receive and impart essential information accurately and is as much in the interests of government as it is of the people.

Because of the above few reasons, Right to Information is very important. It secures for every citizen the enforceable right to question, examine, audit, review and assess government acts and decisions, to ensure that these are consistent with the principles of public interest, probity and justice. It promotes openness, transparency and accountability in administration, by making government more open to continuing public scrutiny. Information is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the higher would be the responsiveness of government to community needs. The information is generated for the purposes related to the legitimate discharge of public duties by a public functionary in a public office. Therefore, the Government and the public officials are 'trustees' of this information for the people to whom the information belongs. An enforceable right to information enables members of the public to obtain access under the law to documents that may otherwise be available only at the discretion of government.

Important Judicial Pronouncements Relating to RTI

In order to understand the effectiveness of a Fundamental Right it is important to analyse the various aspects in which the right has been given effect by the Judiciary. A few landmark cases have been taken to highlight the various facets relating to Right to Information: In *Bennett Coleman v. Union of India*, for the first time, right to know as a Fundamental right

was realized and consequently the Supreme Court ruled that the right to freedom of speech and expression guaranteed by Art. 19(1) (a) included the right to information.

In *State of UP v. Raj Narain*, Justice Mathew thoroughly stated, “It is not in the interest of the public to cover with a veil of secrecy the common routine business ... the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.”

In *Secretary, Ministry of I&B, Government of India v Cricket Association of Bengal*, the Supreme Court held that the right to impart and receive information from electronic media was included in the freedom of speech.

In *S.P. Gupta v. Union of India*, the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was illustrated by the Apex Court of India.

In *People’s Union for Civil Liberties v. Union of India*, the right to information was further elevated to the status of a human right, necessary for making governance transparent and accountable.

It is said that Rome was not built in a day. It equally applies to every system. In our country where a number of citizens are poor, illiterate and from working class, to get the desirable result of any development or law it requires time and sincere effort. As it is found that the people are gradually becoming aware of law and utilizing it to get the benefits, it will surely strengthen the process of good governance and curb corruption. By enacting the Right to Information Act India has moved from an opaque and arbitrary system of government to the beginning of an era where there will be greater transparency and to a system where the citizen will be empowered and the true centre of power. Only by empowering the ordinary citizen can any nation progress towards greatness and by enacting the Right to Information Act 2005 India has taken a small but significant step towards greatness and by enacting the Right to Information Act 2005 India has taken a small but significant step towards that goal. The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused. Thus with the enactment of this Act India has taken a small step towards achieving real Swaraj.

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