

CHAPTER-I

RIGHT TO INFORMATION

“HISTORICAL BACKGROUND”

1. Introduction :

Accountability as well as transparency and information constitute two of the seven specific aspects of 'governance' identified by the 1992 World Bank document on *Governance and Development* in its quest for 'good governance'. Consequently, the citizen's right to information is increasingly being recognized as an important instrument to promote openness, transparency and accountability in public administration. In fact, invisible government has become obsolete in this age of liberalization and globalization. The citizens, the stake holders, the consumers of public services, the beneficiaries of development programmes, the civil society organizations, the business and commercial houses – all must get the information they require from the public authorities relating to their administration, operations or decisions.

2. Historical Prospective of RTI :

In the life of Indian Republic, the first political commitment to the citizen's right to information came up on the eve of the Lok Sabha Elections in 1977 as a corollary to public resentment against suppression of information, press censorship and abuse of authority during the Internal Emergency of 1975-77.

In its election manifesto of the 1977, the Janata Party promised "an open government," and declared that it would

not 'misuse the intelligence services and governmental authority for personal and partisan ends." Pursuant to this commitment, the Janata government headed by Morarji Desai constituted in 1977 a working group to ascertain if the Official Secrets Act, 1923, could be modified so as to facilitate if the Official Secrets Act, 1923 could be modified so as to facilitate greater flow of information to the public.

The working group comprising officials from the cabinet Secretariat and the Ministries of Home Affairs, Finance and Defence laboured for months to recommend that the Act of 1923 should be retained without change. This 'no change' recommendation was far from popular expectations.

The events which helped create political commitment to the right to information for the second time had resemblance with the historical context out of which the principle of public access to information evolved in Sweden.

The National Front Government's renewed commitment to this right was the outcome of the people's frustration over the earlier government's reluctance to part with the information relating to ***Bofors and other deals*** (Guha Roy 1990).

In its 1989 Lok Sabha Election Manifesto, the National Front Committed itself to "open government", and declared unequivocally that "people's right to information

shall be guaranteed through Constitutional provisions".

Reintegrating this commitment, the then Prime Minister V.P. Singh, in his first broadcast to the nation in December 1989 said, "We will have to increase access to information. If the government functions in full public view, wrong doings will be minimized. To this end, Official Secrets Act will be amended and we will make the functioning more transparent. Right to information will be enshrined in our Constitution."

Sadly, despite such strong commitment, there was actually no headway towards transparency and openness in our governmental functioning.

Subsequently, the National Agenda for Governance of the present multi-party coalition called National Democratic Alliance (NDA) declared: "Our first commitment to the people is to give a stable, honest, transparent, and efficient government capable of accomplishing all-round development. For this the government shall introduce time-bound programme of needed administrative reforms..." In pursuance with this commitment, the NDA Government introduced the **Freedom of Information Bill, 2000** in the Parliament.

After having been pending for about two years the Bill was finally passed by the parliament on 4th December, 2002 and it received the assent of the President of India on 6th January, 2003.

Meanwhile, instead of waiting for a central legislation, half a dozen states have enacted their own laws on right to information (RTI). These include Goa (1997), Tamil Nadu (1997), Rajasthan (2000), Maharashtra (2000), Karnataka

(2000) and Delhi (2001). Besides, Madhya Pradesh has issued wide-ranging administrative directives on dissemination of information upto the level of Gram Panchayats.

The Tamil Nadu Act, for instance, has imposed more than twenty restrictions on the application of the right. The Goa and Karnataka Acts, on the other hand, have several good features. However, in all these states, the concerned citizens and civil society organizations still complain about denial of information on important issues relating to public interest.

The Freedom of Information Act, 2002 has evoked lot of controversy on various issues. Some of them are notably as follows :

- (a) The Act exempts from disclosure "information exchanged in confidence between the Central and State governments or any of their authorities or agencies." It is commonly felt that this is too wide a clause to cover a lot of such information which should otherwise be available to the people.
- (b) A major lacuna of the Act is that it does not specifically provide for penalties against the officials who in violation, of the law, would either refuse to provide information or give false, misleading or incomplete information.
- (c) In this age of economic liberalization when the governments are keen on outsourcing many of their traditional functions to private agencies and

allowing foreign direct investments in telecom, power, banking and other major sector, the Act, however, does not apply to the private sector, in contrast to the South African law enacted in the same year which specifically brought the private sector under its purview so that there could be no disparity between the public sector and the private sector engaged in similar commercial activity.

- (d) The most serious shortcoming of the Act lies in that it provides for appeals only within the government bodies. It not only bars jurisdiction of courts but also ensures that no appeal should lie even with an independent body.

It has taken India 77 years for transition from an opaque system of governance, legitimized by the Colonial Official Secrets Act, to one where citizens can demand the right to information. The recent enactment of the Freedom of Information Act, 2002 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater the responsiveness of government to community needs.

3. Constitutional guarantees

The fact that right to information is included in the constitutional guarantees of freedom of speech and expression has been recognised by Supreme Court decisions challenging governmental control over newsprint and bans on the distribution of newspapers. In a landmark case the petitioners, publishers of one of the leading national dailies, challenged restrictions in the Newsprint Control Order on the acquisition, sale and use of newsprint. The Supreme Court struck down the restrictions on the basis that they interfered with the petitioners' right to publish and circulate their paper freely, which was included in their right to freedom of speech and expression. In a subsequent case,

the Supreme Court held that media controlled by public bodies were required to allow both sides of an issue to be aired.

The right to know has been reaffirmed in the context of environmental issues that have an impact upon people's very survival. Several High Court decisions have upheld the right of citizens' groups to access information where an environmental issue was concerned. For example, in different cases, the right to inspect copies of , applications for building permissions and the accompanying plans, and the right to have full information about a municipality's sanitation programme have been affirmed.

The overall impact of these decisions has been to establish clearly that the right to freedom of information, or the public's right to know, is embedded in the provisions guaranteeing fundamental rights in the Constitution. Various Indian laws provide for the right to access information in specific contexts.

Section 76 of the Indian Evidence Act, 1872, contains what has been termed a 'Freedom of Information Act in embryonic form'. This provision requires public officials to provide copies of public documents to anyone who has a right to inspect them.

The Factories Act, 1948 provides for compulsory disclosure of information to factory workers "regarding dangers including health hazards and the measures to overcome such hazards", arising from their exposure to dangerous materials. While this is an excellent provision, in practice it is violated with impunity. The Environment (Protection) Act, 1986, and the Environmental Impact

Assessment Regulations provide for public consultation and disclosure in various circumstances. For example, the Environmental Impact Assessment Regulations allow for a procedure for public hearings and publication of the executive summary of any proposal for any project affecting the environment by the person seeking to execute that project. Although this provision is meant to facilitate citizen input, in fact it is too limited and environmental groups have had to go to the courts to get more complete disclosure.

Regardless of these provisions, the system of governance in India has traditionally been opaque, with the State retaining the colonial Official Secrets Act (OSA) and continuing to operate in secrecy at the administrative level. The OSA enacted in 1923 still retains its original form, apart from some minor amendments in 1967. These provisions have been roundly criticised.

The Central Civil Service Conduct Rules, 1964 bolster the provisions of the OSA by prohibiting government servants from communicating any official document to anyone without authorization. Section 123 of the Indian Evidence Act, 1872 also prohibits the giving of evidence from unpublished official records without the permission of the head of the relevant department, who is free to grant or to withhold such permission as he or she sees fit.

4. The campaign for the right to information

Objections to the Official Secrets Act have been raised ever since 1948, when the Press Laws Enquiry Committee

recommended certain amendments. In 1977, a Working Group was formed by the government to look into the possibilities of amending the Official Secrets Act. Unfortunately, the Working Group did not recommend changes, as it felt the Act related to the protection of national safety and did not prevent the release of information in the public interest, despite overwhelming evidence to the contrary. In 1989, a Committee was set up which recommended limiting the areas where government information could be hidden and opening up of all other spheres of information. But no legislation followed from these recommendations.

In the last decade or so, citizens' groups have started demanding the outright repeal of the Official Secrets Act and its replacement by legislation making the duty to disclose the norm and secrecy the exception.

The recent enactment of the Freedom of Information Act, 2002 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater the responsiveness of government to community needs.

Interestingly, in India, the movement for the right to information has been as vibrant in the hearts of marginalized people as it is in the pages of academic journals and in the media.

In the early-1990s, in the course of the struggle of the rural poor in Rajasthan, the Mazdoor Kisaan Shakti Sangathan (MKSS) hit upon a novel way to demonstrate the importance of information in an individual's life through public hearings or Jan Sunwais. The MKSS's campaign demanded transparency of official records, a social audit of government spending and redressal

machinery for people who had not been given their due. The campaign caught the imagination of large cross-section of people, including activists, civil servants and lawyers.

The Press Council of India drew up the first major draft legislation on the right to information in 1996. The draft affirmed the right of every citizen to information from any public body. Significantly, the term 'public body' included not only the State, but also all privately-owned undertakings, non-statutory authorities, companies and other bodies whose activities affect the public interest. Information that cannot be denied to Parliament or state legislatures cannot be denied to a citizen either. The draft also provided for penalty clauses for defaulting authorities.

Finally in 1997, a conference of chief ministers resolved that the central and state governments would work together on transparency and the right to information. Following this, the Centre agreed to take immediate steps, in consultation with the states, to introduce freedom of information legislation, along with amendments to the Official Secrets Act and the Indian Evidence Act, before the end of 1997. The central and state governments also agreed to a number of other measures to promote openness. These included establishing accessible computerized information centers to provide information to the public on essential services, and speeding up ongoing efforts to computerize government operations. In this process, particular attention would be placed on computerization of records of particular importance to the people, such as land records, passports, investigation of offences, administration of justice, tax collection and the issue of permits and licences.

In 1997, two states passed right to information

legislation (Tamil Nadu and Goa) and the Government of India appointed a working group, headed by former bureaucrat and consumer rights activist HD Shourie, to draft what was reworked into the Freedom of Information Bill, 2000.

This Bill includes some provisions that were not in the Shourie draft, such as the requirement that urgent request in cases involving life and liberty should get a response within 48 hours.

However, the Act has been criticized on several grounds, it provides for information on demand, so to speak, but does not sufficiently stress information on matters related to food, water, environment and other survival needs that must be given pro-actively, or *suo moto*, by public authorities. The Act does not emphasize active intervention in educating people about their right to access information — vital in a country with high levels of illiteracy and poverty — or the promotion of a culture of openness within official structures.

The most scathing indictment of the Bill has come from critics who focus on the sweeping exemptions it permits. Restrictions on information relating to security, foreign policy, defence, law enforcement and public safety are standard. But the Freedom of Information Bill also excludes Cabinet papers, including records of the council of ministers, secretaries and other officials which effectively shields the whole process of decision making from mandatory disclosure.

The Bill provides for a fee to access* information, but without specifying what the minimum or maximum amounts would be. Most important, there is no mechanism to punish delay or refusal to grant information. So there is no compelling

reason for the official concerned to provide answers.

Despite all these shortcomings, legislation guaranteeing the right to information is a major step towards ensuring a participatory developmental process in the country.