

## **RIGHT TO INFORMATION: AN INTRODUCTION**

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“Freedom of information is oxygen of democracy a government which revels in secrecy not only acts against democratic decency but buries itself with its own burial”.

...Justice Krishna Iyer

The right to information Act 2005 is one of the most powerful legislation of the world. Came into force on 12<sup>th</sup> October 2005. This law seeks to end excessive secrecy in governance and upholds the democratic ideology by promoting openness and transparency in administration such transparency will make the executive more prompt responsive and friendly and facilitates intelligent.

No democratic government can survive without transparency and accountability and the basic need for result oriented functioning of the democracy is that people should have information about each and every act of the government. To make democracy meaningful and successful. Access of information to the citizen is a must. It is the only source to promote openness and transparency in a democracy.

Sources –

(a) U.N. recognition :

United Nations General Assembly in the year 1946 recognized freedom of information as a fundamental right while adopting resolution 59(1) which reads as :-

“Freedom of information is a fundamental human right and the touchstone to all the freedoms to which the U.N. is consecrated.”<sup>1</sup>

U.N. Universal Declaration of human rights in 1984 in Art.19 provided – “Everyone has the right to freedom to opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.”<sup>2</sup>

(b) Article 19(1) of the Constitution :

The Constitution of India (for short, the constitution’) guarantees the right to freedom of speech and expression as fundamental right under Art. 19(1)(a). The ambit of freedom of expression under this provision has been acceptably widened to include right to information.

(C) Open Government is democratic polity and its support by Supreme Court :

The trust is the basic need of a democratic government. It cannot hide its basic aim and object from the people on the plea of secrecy because openness should be the reality and secrecy is an exception. It is highly essential that all the citizens, in this age of information in the prevailing economic, social and cultural environment should get the opportunity of joining in the openness of participated democracy. Democracy and lack of open Government cannot co-exist.

However by means of public participation in a democratic Government, there would be greater exposure of the working of Government ensuring a better, clear, healthy and efficient administration. The concept of an open Government is the direct emanation from right to know which seems to be manifest in the right of speech and expression guaranteed under Art.19(1) of the Constitution of India.

S.P. Gupta's case:

The Supreme court in a land mark judgment in S.P. Gupta's case (S.P. Gupta V. union of India (AIR 1982 SC 149), speaking through Hon'ble Mr. Justice P.N. Bhagwati (former C.J.I.) for the majority, made a strong plea for open Government saying that an open Govt. is the new democratic culture of an open society towards which every liberal democracy is moving and India should be no exception to that. Since bureaucratic habits get encouragement in an environment of secrecy in policy making on an ever increasing range of subjects by the policy makers and their advice, an open Government where there is access to information in regard to the functioning of government has always been emphasized as an effective corrective to it. (para 66). In Paragraph 63 it was opined as under:

“..... where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their Government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who governed on their behalf to account for their conduct... the basic postulate of accountability is that people should have information about the functioning of the Government. It is only if people know how Government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy...”<sup>3</sup>

Journey of RTIA:

Right of information bill was passed by Loksabha and Rajyasabha on 11-05-2005 and 12-05-2005 respectively And it received the assent of the president on 15-6-2005 it is called as the right to information Act, 2005 (for short, 'RTIA') and has come into

force on 12-10-05 i.e. 120 days of its enactment. RTIA extends to the whole of India except the state of Jammu and Kashmir.

Prior to RTIA, the Freedom of Information Act, 2002 (for short, 'the Act') was enacted by the Parliament which was, on through examination, found to be defective in many ways as there were no penal provisions in the enactment of 2002 and even the notifications regarding its implementation were absent. These necessitate drastic changes in the Act by suggesting a number of amendments paying the way to bring a new legislation in the shape of RTIA and the Act was repealed vide section 31. RTIA is an improvement over its earlier version the Act. The scope and ambit of RTIA is much wider.

Main features of the Act:

RTI Act is enacted in order to bring openness, transparency, and accountability in administration. In order to ensure greater and more effective access to information, Govt. of India resolved that the Act of 2002 must be made more progressive, participatory and meaningful. Having been suggested certain important changes to be incorporated in the Act of 2002 to ensure smoother and greater access to information by a national advisory council on its deliberation on the issue, the govt. of India examined the suggestions and decided to make a number of changes in the law, which inter alia include establishment of an appellate machinery with investigating powers to review decisions of the Public information officers, penal provisions for failure to provide information as per law, provisions to ensure maximum disclosure and minimum exemptions and effective mechanism for access to information and disclosure by the authorities etc. and accordingly the Act of 2002 was repealed giving rise to RTI Act.

The term ‘information, as defined in section 2(f), means “any materials in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by public authority under any other law for the time being in force.”<sup>4</sup>

Section 5 contains the structure of the machinery for information provision. Every public authority shall within 100 days of enactment of RTIA, designate as many as Central Public information Officers or State Public Information officers as well as Central Assistant Public Information Officers or State assistant public information officers as the case may be. These officers are responsible to deal with request for information, from citizens and also to assist them in seeking information. Request desiring to obtain information shall be made in terms of section 6 either in writing or through electronic means to the public information officer.

The provisions of appeal and penalty have been inserted in sections 19 and 20 respectively. Central or State public information officer who is empowered to impose a penalty of Rs. 250/- each day till application is received or information is furnished, giving a reasonable opportunity of being heard before imposition of such penalty. However, the total amount of such penalty shall not exceed Rs. 25,000/-. The appeal shall be disposed of within 30 days of the receipt of the appeal or within such extended period not exceeding a total period of 45 days from the date of filing thereof, as the case may be, for the reasons to be recorded in writing.

#### CONCLUSION:

“The right to participate in the affairs of the country is meaningless unless citizens are well informed on all sides of the issues in respect of which they are called upon to

express their of which they are called upon to express their views. One sided information, disinformation, misinformation and non-information all equally create uninformed citizenry which makes democracy a farce when medium of information is monopolized either by state or any other organization. This is particularly so in a country like ours when about 65percent of the population is illiterate and hardly 11/2 percent of population has an access to the print media which is not subject to pre-censorship.”<sup>5</sup> The Government has shown political will by enacting the Right to Information Act, 2005. However, struggle for achieving ‘openness’ in the governmental affairs is not over. The object of the Act can be further achieved if the Government constitutes the commissions envisaged under the Act within the time limit and by appointing the officers of the caliber and competence to the posts named under the Act. The Government should use right to Information Act.2005 to improve the delivery system of the administration.

End notes:

1. Section 59(1) of U.N. recognition.
2. Article 19 of U.N. universal declaration of human right 1984.
3. S.P. Gupta V/S Union of India (AIR 1982 SC 149)
4. Section 2(f) of RTI Act 2005.
5. Union of India V/S Association for Democratic reforms, AIR 2002 SC 2414 at 2127.