

A JUDICIAL AND LEGISLATIVE ROLE IN THE GROWTH OF RIGHT TO INFORMATION IN INDIA

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ABSTRACT

In a democratic country like our people have the right to know every act and activities, the government is doing in their name. It ensures not only the right of a citizen to know about the government activities but also empowers them to fight against corruption and partisan action of the government. It has been observed that any government which operates in greater secrecy is more prone towards the corruption as compared to a government which operate in greater openness. That's why, the information is considered as a significant step in empowering the people to combat the corruption. The Information helps in strengthen the foundation of the democracy. The purpose of this paper is to highlight the judicial as well as legislative role in the growth of the right to information in India. The findings of the paper will help the planners to frame an exact and benefiting legislative provisions on right to information in India.

Keywords: Right to Information, Judicial Role, Legislative Role.

INTRODUCTION

In the democratic governance the freedom of information is rightly considered as a strongest human right. In order to make the governments accountable, citizens of the country should be entitled to know, means have a right of access to all the official documents. Though freedom of information has been just beginning at a strong pace only in recent times, but it is hardly a new concept. The root of concept may be traced back in the 18th century. The period is considered as the age of enlightenment in the field of freedom of information. Quite earlier to it the plea for freedom of speech and expression was raised for the first time in the history of democracy by the Athenian Orator Socrates (B.C. 436-386), who committed suicide after his country was defeated and conquered by Philip of Macedon at the Battle of Chaeronea. His immortal speech "Logos Areopagicos" was a strong plea for restoring democracy and freedom of expression in Athens.¹

In 367B.C, Aristotle, the great Greek Political philosopher pointed out that," if liberty and equality, as is thought by some are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost".² During 1215 a revolution was started in England against the King by the Barons relating to their right which was named *Magna Carta*. This was also a revolution for freedom to know as this charter provides that all the freemen of our kingdom are entitled to know the provisions maintained under the charter.³In Great Britain, King Henry VIII (1534) banned the reading of the Bible in churches, for he thought that the ideas of liberty contained therein might make the common people restless.⁴ Alongside in East Asia, the Tibetan monasteries feared for long mass education more than Chinese invasion. The reason behind it that such monasteries ruled over the souls of the masses and over their rights and liberties.⁵

¹ Mdhu R. Sekhar , "Towards a vibrant Democracy", Yojana, January 2006, P.39.

² Dr. V.R. Godhaniya college, Porbandar, Post Graduate College, Centre of English, M.A.-Part-II available at [www.drvrinstitute.org/drvrorg_files/MA_PART-II_\(2010-2011\).pdf](http://www.drvrinstitute.org/drvrorg_files/MA_PART-II_(2010-2011).pdf)

³Para 1 of English translation of Magna Carta, available at www.bl.uk/magna-carta-english-translation

⁴ John M. Barry, "God, Government and Roger Williams'Big idea" available at www.smithsonianmag.com/history/god-government-androger-williams-big-idea-6291280/

⁵ Height of Darkness: Chinese Colonialism on the World's Roof available at www.reversespins.com/heartofdarkness.html

Undoubtedly, the freedom of information is out-come of in-depth philosophical scrutiny followed by reactionary political development and favourable public opinion. Accordingly, researcher undertakes extensive research relating to origin and development of freedom of information.

Judiciary and Growth of Right to Information

Before as well as after the independence of the Country, the Press was only the source of providing the information to the common public that's why the freedom of Press was inevitable. The Press had played a significant role during the colonial rule, from Tilak to Gandhi, every leader who had mobilised the people against colonial rule had used the Press as a means of informing the people and educating them about liberal values. Tilak fought against the law of sedition, which as interpreted by the courts punished even an honest and non-violent criticism of the rulers in newspapers.⁶ Gandhi ji insisted on the truth and ahinsa (non-violence) for India's struggle for independence and such struggle could succeed only if the people could speak freely and fearlessly. The entire Gandhian movement highlighted the value of freedom of speech.⁷

Our Supreme Court, many times, declared that we had freedom of information, which was a part of freedom of expression guaranteed under Article 19 of the Constitution of India. Without freedom of information, freedom of expression remains meaningless. Article 19(1) (a) guarantees us the right to freedom of speech and expression. We shall go through some of the judgements that support the fact that Supreme Court has consistently recognized this right as implying a full right to information.

- The Supreme Court earlier in 1950 observed that the freedom lay at the foundation of all the democratic organisations and without providing the free political discussion on public education, the proper functioning of the processes of the popular government is not possible. Though the freedom of such amplitude might involve some risks of abuse but it is better to leave a few of its noxious branches to their luxuriant growth.⁸
- The fundamental right involved the people's right to know, so the freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of the people in the administration.⁹
- Supreme Court ruled that the right to freedom of speech and expression guaranteed by Art. 19(1) (a) included the right to information.¹⁰
- Justice Mathew explicitly stated: in a government of responsibility, all the elected representatives must be responsible towards the public for their conduct, there can be but few secrets. All the people of this nation are entitled to know everything and every public act done for public, by their public functionaries.¹¹
- The right to know is implicit in the right to free speech and expression and the disclosure of any information in relation with the functions of the government must be a rule.¹²
- The public interest in the freedom of discussion stems from the requirement that members of a democratic society should be sufficiently informed.¹³
- The freedom of speech and expression, as has been held repeatedly by the Supreme Court in different cases is the basic to and indivisible from a democratic polity. Reasonable restriction can be placed upon the freedom of speech and expression as well as State is also free to make laws in future imposing such restriction. Hence the right to know or be informed is the foundation of democracy and is derived from the plenary provisions of Art. 19(1) (a) of the Constitution of India.¹⁴

⁶ SP Sathe 'Tilak's Philosophy of law' in NR Inamdar (ed) Political Thought and Lectureship of Lokmanya Tilak, page 119.

⁷ Pk Tripathi 'Free Speech in the Indian Constitution: Background and prospect', yale law journal page 384(1957-1958) Reprinted in Pk Tripathi Spotlights on Constitutional Interpretation, 1972, page 213.

⁸ Romesh Thapper v. State of Maharashtra, AIR 1950 SC 124.

⁹ Attorney General v. Times Newspaper Ltd., (1973)3 ALL ER 54.

¹⁰ Bennette Coleman v. Union of India, 1973 AIR106.

¹¹ State of UP v. Raj Narainn, (1975) 4 SCC 428.

¹² S.P. Gupta v. Union of India, 1981 Supp SCC 87.

¹³ Indian Express Newspapers (Bombay) v. Union of India, AIR 1986 SC 515.

¹⁴ Secretary, Ministry of I & B, Government of India v Cricket Association of Bengal AIR 1995 SC 1236.

- The freedom of speech and expression also includes the right of the citizens to know about the affairs of the government.¹⁵
- The members of the democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect them so the right to get information in the democracy is recognised all throughout and being natural right flow from the concept of democratic set up.¹⁶
- The right to information was further elevated to the status of a human right, necessary for making governance transparent and accountable. It was also emphasized that governance must be participatory.¹⁷

Legislative Developments at the Centre

Most of the major political parties promised transparency and administrative reform in their election manifesto. That was given impetus at the 24 May 1997, a conference of the Chief Ministers of the States who discussed the action plan for the effective and responsive Government at the Centre and the States. This conference recognised that secrecy and lack of openness is one of the major factors of corruption in the official dealings and also contrary to the accountable and democratic Government. As a result of which two States passed the Right to Information legislation in the same year and the Government of India also appointed a working committee to draft the Freedom of Information Bill, 1997.¹⁸

The 'Shourie Committee' Draft

The working group appointed by the Government in the year of 1997 is known as the 'Shourie Committee' this committee was to make recommendations regarding secrecy legislation and to prepare draft legislation on the Freedom of Information. Unfortunately the committee could not receive the sufficient public consultation and the recommendations never came sufficiently in publication.¹⁹

National Commission on Review of the Constitution

The National Commission to Review the working the Constitution (NCWRC) in its report had observed: "lack of knowledge and access to information could be the reason for helplessness and distress of most of the common people in decision making processes. He remains uninformed, unaware and ignorant of the processes which vitally affect his interest. The Government procedures and regulations shrouded in a veil of secrecy and the clients even not allowed to ask from the officers who handle their cases and keep away from questioning because of the latter's snobbish attitude and bow – wow style. Therefore, there is a need that right to information should provide real material with guarantee. In order to ensure the free flow of information to the common people, skills must be mobilised by the Government. It is also a real time for discarding the traditional persistence on secrecy. In fact we should an oath of transparency in place of an oath of secrecy. Right to Information can usher many benefits, such as speedy disposal of cases, minimising manipulative and dilatory tactics of the babudom, and most importantly, putting a considerable check on graft and corruption in the country."²⁰

Freedom of Information laws have been made as a headline in more than 50 countries throughout the world over the past couple of years on various subjects such as safety, corruption, human rights etc. Information are being provided by the Governments in relation to their activities around the world, in fact a comprehensive Freedom of Information Act (FOI) have been adopted by many of the countries to facilitate access to the records held by the government bodies and many more countries are in a process of evolving such laws. More than half of the FOI Acts have been adopted in the past couple of years only; the growth of such transparency was in response to demands made by civil society organizations, the media and

¹⁵ Dinesh Trivedi, M.P. v. Union of India, (1997) 4 SCC 306.

¹⁶ Union of India v. Association for Democratic Reform, AIR 2002 SC 2112.

¹⁷ People's Union for Civil Liberties v. Union of India, AIR 2003 SC 2363.

¹⁸ Government of India's working group on Right to Information and promotion of open and transparent Government that gave its report in 1997.

¹⁹ Available at www.humanrihtsinitiative.org.

²⁰ Available at:

http://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fpolskie.weebly.com%2Fuploads%2F2%2F6%2F5%2F0%2F26502314%2Fpolitical_reforms_i_s_b_n.doc&ei=NiwtVcWZNIbbuQTn84DYB_g&usq=AFQjCNGohVaFsrq-nS-i3Jxud3YORI7u1A&bvm=bv.90790515,d.c2E.

International Financial Institutions. In addition many of the countries have also adopted some other laws that provides a limited access, including data protection laws that allow any individual to access their own records held by the government agencies as well as private organisations. Such specific laws have been enacted that provide the right to access in certain and particular areas such as health, environment, executive orders and or codes of practice.

There has been a variety of internal as well as external pressure on the government in relation to the adoption of the Freedom of Information laws. In most of the country's civil society organisations such as press and environmental groups played a key role in the promotion and adoption of such laws. International organisation demanded continuous improvements in the transparency and finally recognised themselves as the user of the Freedom of Information laws.²¹

With a view to encourage the development of right to know legislations in the developing countries, the United Nations Development Programmes (UNDP) has issued a report designed to highlight the awareness about the transparency laws and their value. The report described the ingredients of these laws, their advantages and their evolution, all with the goal of encouraging and helping UNDP countries to promote and adopt these laws into their offices. UNDP officials are advised to analyse the current state of these laws and identify the most important institutional allies and potential blockages. Other steps stated in the report include, raising awareness of the issue, supporting activities that feed local initiatives, providing for a dialogue between civil society and activists and offering expertise about the content of such laws.²²

The Commission observed that the Freedom of Information Bill, 2002 which was then pending before the Parliament, must be cleared to promote transparency in Government's functioning. It will strengthen democratic system. The Bill on Freedom of Information, 2002 was adopted by the Parliament without any amendment to provide the freedom to every citizens to secure the access to information consistent with public interest possess by the public authorities in order to promote accountability, transparency and openness, in the administration and in relation to the matters connected therewith or there to and it came to be known as the 'Freedom of Information Act, 2002.' The Freedom of Information Act, 2002 (Act 5 of 2002) though passed by the Parliament and also received the assent of the Present of the India, never came into force and became operative as it faced severe criticism from all corners due to certain inherent shortcomings.²³

It had no provisions for providing the information from any private bodies, companies as well as NGOs. The Act was applicable only to the public authorities and not to any other bodies that exercises public services, also lacks the penalty provisions for wilful refusal to provide the information. The competent authority could withhold the information on the ground of interference in the functions of the government office as well as the list of the exemption clause was long. Under this Act a person could seek the information but the authority was under no obligation to provide the information.²⁴

The cumulative effect of these shortcomings and lacunae in the Freedom of Information Act, 2002 was that it was replaced before the Parliament in the new form and development of 'Right to Information Bill, 2004' on the date of 22nd December, 2004 with more than one hundred amendments incorporating therein based the recommendations made by the Standing Committee of the Parliament and the group of ministers. The Bill was passed by the Lok Shaba on May 11, 2005 and by the Rajya Shaba on the very next day i.e. on May 12, 2005. It received the assent of the Present of India in June 15, 2005, came in the statute

²¹ David Banisar; Freedom of Information and access to Government records around the world, it is a report commissioned in 2002-03 by freedominfo.org and supported by a grant from the open society justice and the Harvard information infrastructure program at the Kenndy School of Government.

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²² The report was developed by Andrew Puddephatt, executive director of Article 19 in collaboration with the Oslo Governance Centre, a unit of UNDP's Democratic Governance Group.

²³ Versha Vahini, Right to Information Act, A critical overview, MDU Law Journal, 2006, Vol. xi, part-1, p. 182.

²⁴ Professor Ho hfields jural co-relatives of 'Right and Liberty' (freedom).

book and called, The Right To Information Act, 2005(22 of 2005). This Act came into force with effect from October 12, 2005.²⁵

CONCLUDING OBSERVATIONS

Freedom of information is the inalienable aspect of human right, in democratic states like India it is considered as potent weapon to control abuse of power by the public authority and is important element of elite citizenry which is first requirement of good governance. By now in many countries, freedom of Information is recognised as matter of legal or fundamental right, but from the perspective of researcher it is no less than a puzzle and mystery to unveil the history, growth and development of the concept. Many researches were being undertaken in this line but hardly few emphasized on socio-political background of the freedom of information especially of Sweden and other Scandinavian countries. In the course of research, it was felt that it is no less than an ideological revolution in which many learned staked their life and liberty.

Even though the freedom of information was proclaimed by King in the year 1766, its early growth was once again hampered by political shift in Sweden, and just after six years it was revoked and freedom of information was once again stalled. Nearly, for two hundred years it remained in dormant stage, and with American adoption in 1966, the repressed seed of freedom of information was sprout with great force. And this wave of information soon engulfed Europe including great Brittan. By late, in second world country like India it came in lime light by 2000s and after 2005, even third world countries are being influenced, and though there great disparities in their content and intent, many states recognised freedom of information as Legal Right. Few countries went a step further and declared FOI as matter of constitutional right. In this regard contribution of international organization especially of UN is admirable. With reference to India, it must be said that more than legislator it is the judiciary and Non-governmental organizations acted as precursor. It was only by hard struggle this freedom was recognized as legal right.

²⁵ Dr. Vinay N. Paranjape, Right to Information Law in India, Central Law Agency, first edition 2013, page 89.