

**A Brief History of Information Legislation in India; A Legislative Study****Dr. Kailash Kumar**

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'Information' as a term has been derived from the Latin words 'Formation' and 'Forma' which means giving shape to something and forming a pattern, respectively. Information, thus, adds something new to our awareness and removes the vagueness of our ideas. Information is indispensable for the functioning of a true democracy. People have to be kept informed about social and economic. Free current affairs and broad issues - political, exchange of ideas and free debate are essentially desirable for the Government of a free country.

Since little confidence can be reposed in democratic states to ensure the well-being of their people, the question that continues to worry civil society is: how do we ensure that pressing social issues come onto the political agenda? Or do we engage in a trade-off between democracy and well-being. At the heart of every political society's functioning is the fundamental understanding aimed at making the development and opulence existing in the society, hold more meaning to its citizens, irrespective of the economic and social differences that exist in its structure. Public discourse has largely been aimed towards engaging various agencies functioning at different levels within the social structure in making a meaningful dialogue on preparing a well-informed society. This Idea of a working dialogue between the instrumentalities functioning in the society led to a new system of administration, good governance. A system aimed to make the welfare ideal of yesteryears a more practicable goal in sync with the emerging developmental patterns all over the world. Good governance aimed at a paradigm shift in policies and implementation from a state-centric procedure to a citizen-centric needs and answers'. Such a system of good governance meant more participative governance, participation especially of those whose welfare it aimed at. Such participation would not be anything more than a semantic exercise if it did not give knowledge and information to the governed about the nature of governance. Thus knowledge and information became the guiding words for 21st century political and civil societies. This dissemination of knowledge and empowering people with information has taken the shape of legislative goals as well as popular movements.

All over the world, it is increasingly being realized that it is important that the access to government - controlled information should also help to bridge the knowledge gap between the rulers and the ruled, the managers and the beneficiaries and between the producers, distributors and the consumers. The inequality in knowledge is also responsible for social superiority and inferiority complexes reinforcing and perpetuating social and economic divides. These in turn create a political clout and leverage in favor of the possessors of the exclusive information quite disproportionate to the value of the information.

It is the endeavor of civil society groups to protect the common man against this mystique and awe and ensure that he is not in a disadvantageous position in his dialogue with the administration. Access to information has acquired much value today because it ensures transparency in administration, thus weeding out corruption from the public institutions. A Right to Information would lead to openness, accountability and integrity.

Legislative activity in the area of right to information has been a global phenomenon, many countries across continents indulging in giving a statutory form to this basic human right. Most countries have understood that freedom of expression and also a free press would remain just in the texts, if their enjoyment is hampered because of lack of information about public life and public law rights. History tells us that Sweden was the first country way back in 1810 to have a right to information which now took the shape of a constitutional content. United States followed with the Freedom of Information Act, a further boost to the first amendment freedoms under the US Constitution. Australia followed with legislation on the Freedom of Information Act enacted in December 1982. It gave citizens more access to the Federal Government's documents. With this, manuals used for making decisions were also made available. But then the Australian legislation is not a complete realization of this freedom. The right is curtailed where an agency can establish that non-disclosure is necessary for protection of essential public interest and private and business affairs of a person about whom information is sought. India has so far followed the British style of administration. In Great Britain, Official Secrets Act, 1911 and 1989 are intended to defend national security by rendering inaccessible to the public certain categories of official information. However, the government recognizes that access to information is an essential part of its accountability. A recent legislation governing access to public information includes Local Government (Access to Information) Act, 1985; the Environment and Safety Information Act, 1988, and the Access to Health Records Act 1990 is

such laws. On the other hand, Data Protection Act, 1984; the Access to Personal File Act; the Access to Medical Reports Act, 1988, and the Consumer Credit Act, 1974, all provide some protection for different aspects of personal information.

Article 19(1) (a) of the Indian Constitution guarantees the fundamental rights to free speech and expression<sup>1</sup>. The prerequisite for enjoying this right is knowledge and information. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression that includes the right to receive and collect information.’

Despite constitutional and legislative guarantees, information transmissions valuing a right of the individual has always found a place of less priority in the governmental agenda in many countries. The history of the right to Information is a history of struggle between the power of the state and civil society, including media. The degree of success has invariably been determined by their relative strengths, although external factors may have also sometimes played a role. Today it is difficult to mention any country that has enacted right to information legislation without it having proceeded by civil society pressure in varying degrees<sup>2</sup>.

Despite a clear constitutional guarantee of the right to information, upheld by the Supreme Court in many landmark judgments, this particular constitutional freedom is not perceived as an operational instrument. Right to information had to become a part of the national policy and ethos. This was possible through a national law on right to information. In particular, civil society pushed for law for the following reasons<sup>3</sup>:

1. In the absence of law, people will be required to go to the court for enforcement of this fundamental constitutional right which will deter people from demanding information and, as a consequence, information which should be available as a matter of right will become a matter for the courts to decide.
2. Right to information (like other rights) has to function within reasonable limits. These limits are not defined anywhere which creates confusion and leads to blanket refusal of information. A separate law will ensure that the exemptions from disclosure of information are clearly defined so that officials do not act arbitrarily.

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<sup>1</sup> S P Gupta V/s Union of India AIR 1982 SC 149.

<sup>2</sup> Referred from Civil Society Declaration to the World Summit on Information Society, 08/12/2003.

<sup>3</sup> United Nations Development Programme Oslo Governance Centre

The Democratic Governance Fellowship Programme Civil Society and Right to Information: A Perspective on India's Experience, Pradeep Sharma, August 2004.

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3. Having a law provides an opportunity for the government to review and amend many of its other laws and rules that come in the way of implementation of right to information. In India, the Official Secrets Act, Indian Evidence Act and Civil Service Conduct Rules are examples of such laws and rules that need to be brought into conformity with the right to information legislation. The civil society demands on the Official Secrets Act have ranged from amendment of Section 5 of the Act to its outright repeal.
4. The law forces public authorities to lay down and streamline procedures for accessing information, including procedure for appeals against refusal. A clear procedure will empower citizens to access information easily. Having a law will ultimately lead to much needed reforms of the information management systems and will thus improve the quality of government functioning.
5. Right to information bolsters all other rights whose realization depends very crucially on availability of information. Its crosscutting nature makes it necessary that there be a separate law so that other rights are realized.

Firstly, the movement towards a right to information has been largely focused on interpretations to the freedom of speech and expression and the media's right in portraying governmental activities, the contemporary discourse of these movements largely concentrated on citizen's access to Information. The movement felt an urgency need to recognize that apart from the media's right to information, there was people's right to information to demand government transparency. The intensity of this need led to the remark that "right to information is too important to be left to the Press and media." This was a remarkable shift in the debate that rose right to information to a different footing.

Secondly, it founded the right to information debate within the constitutionally guaranteed right to life and liberty. From an abstract notion, right to information became a living and practical tool for people to protect their life and livelihoods.

Thirdly the debate addressed issues like transparency, accountability and ordering the expenditure of public money. It heralded a concept of social audit of public money, and a more responsive government.

The demand for right to information thus became a movement at grassroots level. The first

effects of this movement were at the least expected sections of the Indian society. A mass based organization called the MazdoorKisanShakti Sangathan (MKSS) took an initiative to lead the people in a very backward region of Rajasthan, a province in the federal structure, to assert their right to information by asking for copies of bills and vouchers and names of persons who have been paid wages mentioned in muster rolls on the construction of schools, dispensaries, small dams and community centers. On paper such development projects were all completed, but it was common knowledge of the villagers that there was gross misappropriation of funds with roofless school buildings, dispensaries without walls, dams left incomplete and community centers having no doors and windows.

The social audit that the debate addressed, took the shape of indigenous hearings, where politicians and other public officials were called and asked to attend and explain the action on people's petitions Jan Sunwai as it is called saw an enthusiastic popular response, an awakening amongst the population.

Movements such as these acquired intelligentsia support too, The Press Council of India lent its support to the movement, through a resolution which asked for transparency in every institution of public nature and easing the public restrictions on the confidential communications in governmental departments, among others. In May, 1997, a working group on Right to Information and promotion of open and Transparent Government, set up by the government, gave its report and proposed changes in the Official Secret Act and suggested a draft legislation on right to information, known as the Shourie Draft after its Chairman H D Shourie, a well-known consumer activist. The Shourie draft brought before judiciary and Legislatures within the purview of the proposed legislation. It also provided for oral requests for information, a provision on which other draft bills have been silent. It provided for release of confidential commercial information held by government if such a release was in the public interest<sup>4</sup>.

This and other legislative examples in the provinces in the federal unit greatly influenced a national legislation, the Freedom of Information Act, 2002<sup>5</sup>.

The basic strength of the legislation has been its inclusive approach. While the FOIA does not provide for a presumption that all public information is open unless limited by law, the FOIA

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<sup>4</sup> Refer Pradeep Sharma's Project Report with UNDP available in public domain on the UNDP website.

<sup>5</sup> Ibid.

does impose an important duty on every public authority to maintain records and publish information about the following: particulars of its organization, functions and responsibilities; description of its decision making processes in terms of procedures, powers and responsibilities of its officers and employees; norms for performance of activities; classes of records under its control; facilities provided for access to information; and particulars of the Public Information Officer to whom requests may be addressed. The definition of information within the FOIA, and most state Acts, includes certified copies of documents or records, taking notes and extracts, and inspection of records. Interestingly, some state Acts also include, within the definition of information, inspection of works and taking of samples of material from public works. This provision was effectively used by a Delhi-based NGO, Parivartan, to prove defalcation in the public works in Delhi. If state laws are repealed, following the enactment of the central act which does not have this provision, this unique tool in the hands of civil society will be lost.

Civil society's strong grassroots work caught the imagination of other concerned groups and citizens and it soon became an influential movement. Social audit through jansunwais (or public hearings) was a direct and innovative approach. Though it led to many successes, including enactment of right to information legislation at state and national levels, it is not a sustainable or replicable method. Attempts elsewhere to replicate it including those under the aegis of the state governments have met with partial success. Other methods like report cards and budget information, though important initiatives in holding public authorities accountable do not go very far in terms of recognizing citizens' access to information as a matter of legal right. These methods have also been used in conjunction with right to information acts but with little success.<sup>6</sup> There is, therefore, a need to institutionalize the social audit in the local bodies responsible for development and service delivery. A detailed methodology of social audit, built on the people right to access information held by public authorities, needs to be developed.

It is interesting how and individuals on movement caught on and many civil society groups and individuals got associated with it to form a network. These laws may not be perfect, and their implementation on the ground may initially face roadblocks, yet they mark recognition of the need to move from the culture of secrecy to that of greater openness. The networks are debating on 'the central act (FOIA) versus the state acts' with a view to ensure the best possible outcome such as inclusion, among others, of private parties and penalty clause in the legislation.

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<sup>6</sup>Ref. [www.Nic.in/trfd](http://www.Nic.in/trfd).

In a Year and a half of its establishment the Central Information Commission gave out more than 540 decisions on a whole range of applications dealing with topics as varied as government file noting, communication between the President and Supreme Court and even Income tax statements. The effectiveness of the CIC is demonstrated by the fact that it could take the citizens one step closer to the administration. The success of the Information legislation can be ensured if there is a multi-lateral organization bringing all the stakeholders government, media and public organizations and citizens on a common platform. Capacity building programs shall include sustained strategic engagement of the key players.

The information legislation could as well herald an institutionalized social audit Programme, which will account for increased transparency in public life.

After so many years the efforts of lots of activists has become true in the year of 2005, when Parliament has passed the Right to Information Bill, 2005. Before passing this Act, nobody has right to information from any government office or private office. But after passing this Act, information's bringing from any govt. offices becomes very easy.<sup>7</sup>

In another case<sup>8</sup> the court held that the respondent is directed to add the marks obtained by the petitioners in the written examination to the marks obtained by them in the vive-voce test and prepare a combined merit list along with the other selected candidates. The respondent is directed to amend the notice dated April 10, 2007 issued by the Registrar (Vig.), High Court of Delhi, New Delhi and declare the petitioners as selected for being recommended for appointment to the post in Delhi Higher Judicial Service. It is clarified that the petitioners would neither be entitled to, seniority or salary with retrospective effect. Their seniority shall be reckoned from the date of their appointment and salary as allowable be paid from that date only. Rule is made absolute accordingly in each petition. There shall be no order as to cost.

In another case Supreme Court held that applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed especially in matters pertaining to judicial decisions.<sup>9</sup>

Any information which is depending upon the confidence and in the interest of the examinee this kind of information's cannot be supplied to the applicant held by the Apex Court of India.<sup>10</sup>

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<sup>7</sup> RTI, ACT, 2005 came into force on dated 12/10/2005.

<sup>8</sup> Hemani Malhotra V/s High Court of Delhi on 3 April, 2008.

<sup>9</sup> Khanapuram Gandaiah V/s Administrative Officer, AIR 2010 SC 615.

<sup>10</sup> Central Board of Secondary Education V/s Aditya Bandopadhyay, (2011) 8 SCC 497.