Research Paper *IJBARR*
Impact Factor: 4.729 *E- ISSN -2347-856X*
Refereed, Listed & Indexed *ISSN -2348-0653*

PRMOTING GOOD GOVERNANCE THROUGH RIGHT TO INFORMATION

Dr. Dinesh Kumar
Assistant Professor, Department of Laws, Panjab University, Chandigarh.

Abstract
The concept of open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). The citizens of India have a right to know. It is not enough merely to recognize philosophically or to pay lip service to the important social and political justification for the right to information. Therefore, disclosure of information in regard to the functioning of the government must be the rule, and secrecy an exception, justified only where the strictest requirement of public interest so demands. In this paper, the author is trying to analyze in brief judicial response towards the right to information as well as its role in promotion of good governance.

Introduction

No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. Today, an open society is the new democratic culture towards which every liberal democracy is moving and our society should be no exception. The concept of open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a).[1]

"Public business" is the peoples's business. The citizens of India have a right to know. It is not enough merely to recognize philosophically or to pay lip service to the important social and political justification for the right to information. It is not enough that by the virtue of official grace and incentives some information does somehow become available. Citizens of a self-governing society must have the legal right to examine and investigate the conduct of its affairs, subject only to the limitations imposed by most urgent public necessity. To that end they must have the right to simple speedy enforcement procedure geared to cope with the dynamic expansion of government activity.[2]

Therefore, disclosure of information in regard to the functioning of the government must be the rule, and secrecy an exception, justified only where the strictest requirement of public interest so demands. Fortunately all modern governments believe that 'openness' is one of the principles of good governance. It serves three purposes; firstly, evaluation of the government by the citizens; secondly, their participation in the decision making; and thirdly, it casts a duty on the electorate to keep an eye on the deeds of its representative and not sit idle after exercising their franchise after five years.

In this paper, the author is trying to analyze in brief judicial response towards the right to information as well as its role in promotion of good governance.

The Evolution of the Concept

The term "open government" has generally been preferred . . . . to that of "Freedom of Information," as the subject has been laws which establish a public right of access to government records. As such legislation has been adopted, several languages have provided for expressions of the basic principle. Swedish was first by far, with offenligetsprincip (with similar expressions in other Nordic languages), usually being translated as "the publicity principle". Although the United States is committed to the words "Freedom of Information" … by the U.S. Act, Americans also use "the people's right to know" and "open government".[3]

[1] *S.P. Gupta* v *Union of India*, AIR 1982 SC 149.

[2] Rodney D Ryder (2006) *Right to Information (Law-Policy-Practice),* Wadhwa Pub., Nagpur.

[3] *Id*., p. 9.

The U.S.A was the first country[4] among the leading democracies to enact the Freedom of Information Act in the year 1966. This was amended in the year 1974 and another law; Privacy Act was passed as a companion piece of legislation to the earlier Act. The amending legislation set time limits with in which the documents must be produced and subject those officials who arbitrarily withhold information to disciplinary proceedings. Applicants has a right to seek de novo hearing for not getting information from the administration and under such a proceedings, the onus is on agency to sustain its action. The Act has considerably reduced the secrecy in the government affairs.[5] Even the exemptions under the Act are subject to judicial review.[6]

The 1978 French law has contributed transparence administrative, usually translated into English as "open government" or "administrative openness". From the former Soviet Union, we have the word glasnost for the principle "that every citizen has the inalienable right to obtain exhaustive and authentic information on any question of public life that is not a state or military secret."

The growing recognition that opens government is a part of effective democracy, led to the enactment of Freedom of Information Act, 2000 in England. It took at least twenty year of campaigning.[7] The Act guarantees to every person a general right to access to information held by a large number of authorities. The requests for access under the Act would be responded within twenty working days. Information can be delayed beyond twenty days if it involves public interest.[8] The Act also casts an obligation on public authorities to publish information about their structure, policies and activities. According to the critics to the Act, what the government in its Openness Code promised has already been taken by the Act, 2000.[9] Still enactment of the Act has shown the political commitment of the government that it is serious about securing the right of information to the people.

The right to information is the result of a great democratic movement in the rural India. Over the last decade, the Mazdoor Kishan Shakthi Sangathan (MKSS) pioneered an agitation for people's right to information. It has evolved a programme called Jan Sunwai, i.e., public hearing, wherein public demand accountability from the government officials and the legislators. For the first time in the rural India the MKSS established that it is possible to fight corruption with transparency. Jan sunwai was their weapon.

---

[4] Canada; enacted Access to Information Act -1982, Australia; Freedom of Information Act , 1982, England; Freedom of Information Act, 2000, New Zealand; Official Information Act,1982.However, Sweden has been practicing openness in administration since 1766 under the Freedom of Press Act. For details see: Shriram Mahashwari (1981) *Open Government in India*, pp. 1-3.

[5] The publication of pentagon papers and the exposure of Watergate scandal by Washington Post reporters became possible due to this Act.

[6] Davis (1972) *Administrative Law*, pp. 68-87. P.P. Craig (1994) *Administrative Law*, pp. 124-25. *National Labour Relation Board* v. *Robbin Tyre and Rubber Co.*, 437 US 251 (1977). S.P.Sathe (1998) *Administrative Law*, pp. 505-507.

[7] *http://www.cfoi.org.uk/foiact2000.html*

[8] The class exemption is provided to three categories (a) policy formation; (b) effective conduct of public affairs; and (c) criminal investigation. It also exempts information relating to defense, international relations, economy, crime prevention, immigration, personal information, confidential commercial interest, other enactments relating to health and safety. The government has decided not to implement the Act before 2005. In the absence of implementation of Act, 2000, the present law in Britain remains based upon Openness Code 1994. It is insufficient as it contains fifteen broad exemptions.

[9] *The Freedom of Information Act*, 2000. Also see: H.W.R. Wade (2000) *Administrative Law*, pp. 64-66. Faizan Mustafa (2003) pp. 54-56.

Legislative Provisions in India

In India like England, rule is secrecy and the disclosure of information is an exception. As Prof. S.P. Sathe pointed out that colonial culture of secrecy and distancing from the people is still the ethos of the Indian Administration.[10] It is argued that government officials require to be open, frank complete and professional while discussing the administrative policies or at the time of decision-making. If such advices become public, government official shall not be able to discuss the administrative matters freely. This is the reason, which may be given for secrecy. In country like India, the bureaucracy has to serve the political agenda of government and most of the decisions are taken on the extraneous consideration, which no administration wants to disclose.

(A) The Constitution of India and the Evidence Act, 1872

The Constitution of India protects certain type of communication among the high-level constitutional functionaries. Article 74(2) provides that advice tendered by ministers to the president shall not be inquired into by any court and Article 163(3) contains the similar provisions in the states. Non-disclosure of information is being protected under the Indian Evidence Act, 1872; Section 123 provides that no one shall be permitted to give evidence from unpublished official records relating to any affairs of state, except with the permission of head of the department who shall give or withhold such permission as he thinks fit. Section 124 extends the same privilege to the confidential official communication. It gives unlimited powers to the administration not to disclose information even in the interest of justice and fair play.

(B) The Official Secrets Act, 1923

It prohibits the disclosure of official information indiscriminately. Section 3 provides penalty for spying, disclosure of official information for any purpose prejudicial to the safety or interests of the state. Section 4 deals with the evidence of communication with foreign agents being relevant in the proceeding for prosecution of a person for the offence under section 3. Both these sections can be justified in the name of national security and foreign enemy. Section 5 is controversial. It virtually prohibits the disclosures of any information which government considers being confidential. The section makes both the maker and taker of the information liable. Interestingly the word secret has not been defined by the Act. So in the absence of definition, it is for the government to treat any official information as secret. Fortunately, this Act applies only to government departments and not to other authorities like university; company etc. Liability under the Act does arise even if information is received for public good. However, the Act provides for criminal liability and thus mens rea becomes essential ingredient, which saves the individual from its liability. This Act carries the legacy of British Raj into the democratic and sovereign republic. The Act, 2005 shall have an overriding effect on the Official Secrecy Act, 1923, which is reduced to be ineffective.

Supreme Court on the Right to Information

In a series of judgments, the Supreme Court of India has held that the disclosure of information about government and the right to know about government flow from the guarantee of free speech and expression in Article 19(1)(a) of the Constitution of India. The judgments of the apex court shall be discussed in the following paragraphs under the sub-headings; (i) public interest (ii) freedom of information as part of Article 19(a) and (iii) within the ambit of right to life under Article 21.

(A) Public Interest

The Supreme Court sowed the seeds of right to information in the landmark judgment, State of Punjab v Sodhi Sukhdev Singh.[11] No doubt, this case was decided in favour of state as it was allowed to withhold documents. However, Justice Subba Rao in his dissenting opinion observed that at the time when Evidence Act, 1872 was passed, the concept of welfare state had not been evolved in India and therefore, the words affairs of state used in Section 123 of that Act could not have comprehended the welfare activities of the state. He further observed that if non-disclosure of a particular state document was in public interest the impartial and uneven dispensation of justice by court was also in public interest. Thus, the final authority to allow or disallow the disclosure of document lies with the court after the inspection of the document. In Amar Chand v Union of India,[12] the Supreme Court rejected the claim for privileges on the ground that statement of Home Minister did not show that he had examined the question as to whether their disclosure would jeopardize public interest.

[10] Freedom of Information: Some Lessons from the Commonwealth, Liberty, Equality and Justice: Struggle for a New Social Order, (ILS Law College, Platinum Jubilee Commemoration Volume) 2003.

[11] AIR 1961 SC 493

[12] AIR 1964 SC 1658

Again in State of U.P. v. Raj Narian,[13] the court held unless the document belonged to a class, which deserves immunity from disclosure; it should be inspected by courts in camera for deciding the privilege to withhold or disclosure based on public interest involved. In another case,[14] the court held that service record of employee could not be said to be privileged document and he has a right to claim information in this regard. The law was squarely set by the apex court in S.P. Gupta v. Union of India.[15] In the instant case, government claimed the privilege over the correspondence between Law Minister, Chief Justice of High Court and Chief Justice of India, pertaining to the transfer of high court judges and non-confirmation of an additional High Court judge. The court rejected the claim of the government and recommended that the century old provision of section 123 of Indian Evidence Act, 1872 enacted to some extent keeping in view needs of empire builder. It must change in the context of republican form of government, which the people of India have established.

(B)Article 19(1) (a)

Right to information is a part of right of free speech and expression guaranteed under Article 19(1)(a). Justice V.R. Krishna Iyer observed that right to express one's thought is meaningless if it is not accompanied by related right to secure all information on matters of public concern from relevant public authorities. However, to ensure that there is no harm in inserting freedom of information on a specific corollary to Article 19 of the Constitution.[16] In Bennet Coleman and Company v. Union of India,[17] the court observed that it is indisputable that by freedom of press meant the right of all citizens to speak publish and express their views and freedom of speech includes within its compass the right of all citizens to read and be informed.

Again, in Express Newspaper v. Union of India,[18] the court observed that the basic purpose of freedom of speech and expression is that member should be able to form their belief and communicate them freely to other. The fundamental principle involved in this is people's right to know. On the same principle, the court allowed media to interview prisoner waiting for execution. This right to acquire information then includes the right to access the sources of information.[19] The court held that the disclosure of information concerning the functioning of government and right to know flows from the right of speech and expression. In another landmark judgment,[20] the apex court held that right of the voters to know about the antecedents including criminal past of the candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. Voters speak or express by casting votes and for this purpose, information about the candidate to be selected is must.

In Ozair Husain v. Union of India,[21] the court held that it is the fundamental right of the consumers to know whether the food products, cosmetics and drugs are, of non-vegetarian or vegetarian origin, as otherwise it will violate their fundamental rights under Articles 19(1) (a), 21 and 25 of the Constitution.

[13] AIR 1975 SC 865

[14] *State of U.P.* v *Chandra Mohan Nigam,* AIR 1977 SC 2411

[15] AIR 1982 SC 149

[16] AIR 1982 SC 149

[17] AIR 1973 SC 783

[18] 1985 SC 641

[19] *Prabha Dutt* v *Union of India,* AIR 1982 SC 6.

[20] *Union of India* v *Association for Democraties Reforms,* AIR 2002 SC 2114.

[21] AIR 2003 Del. 103-04

(C) Right to life

Freedom of information as a part of right to life as envisaged under Article 21 of the Constitution. In R.P. Ltd v. Indian Express Newspaper,[22] the court observed that it must be remembered that people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic, which citizens of a free country aspire, in the broad horizon of the right to life under Article 21 of the Constitution. In a recent judgment the apex court held that the public authorities cannot deny flatly any document on the ground of confidentiality.[23]

Right to Information's Role in Promoting Good Governance

One of the ultimate goals of any society is the empowerment of all its citizens through access to and use of information and knowledge, as a corollary to the basic rights of freedom of expression and of participation in the cultural life and scientific rights of freedom of expression and of participation in the cultural life and scientific progress. In support of this goal, more and more governmental information is being produced and made available through the Internet and the World Wide Web. Some of this information has restrictions on public access and use because of intellectual property protection, national security, privacy, confidentiality, and other considerations.[24]

Following a review of the successful experience of Commonwealth freedom of information laws, the Expert Group on the Right to know recommends the following Principles to the Commonwealth Heads of Government:

1. Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislature and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.
2. The legislation should contain a presumption is favour of maximum disclosure.
3. The right of access may be subject to only such exemptions, which are narrowly drawn, permitting government to withhold information only when disclosure would harm essential interests such as national defence and security, law enforcement, individual privacy or commercial confidentiality, provided that withholding the information is not against public interest.
4. Decisions under the legislation should be subject to independent review capable of ensuring compliance.[25]

The judicial thinking on the subject of right to know and criticism by the various agencies of the non-disclosure of the information by the government departments has compelled the central government to enact the long awaited law on the subject to make the public authorities open, transparent and accountable. The Right to Information Act, 2005 provides for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.[26]

According to the provisions of the Act an application can be made to the central or state information officer as the case may be. The applicant is not required to give reasons for requesting the information. On receiving the information the officer concerned shall provide information within thirty days or reject the application. Where the information sought for concerns the life or liberty of a person shall be provided within forty hours. This is the most comprehensive right and includes many things in its ambit for the benefit of citizens.

Section 8 further provides that information relating to any occurrence, event or matter except (a), (c) and (i) of the above which has taken place twenty years before the date of request, shall be disclosed. Section 10 allows the part information in case complete information cannot be given. Section 11 provides for the information relating to third party.

---

[22] AIR 1989 SC 203

[23] *K. Ravi Kumar* v *Banglore University*, AIR 2005 Kant. 21

[24] Rodney D Ryder, (2006), p. 102.

[25] Commonwealth Expert Gropu meeting on Right to Know and promotion of democracy and Development, Marlborough House, London, dated 1 March 1999.

[26] *Statement of Objects and Reasons, Right to Information Act, 22 of 2005.*

The Indian Act of 2005 should not have granted class protection to the some of the security organizations. By doing so, citizen grievances against these organizations cannot be redressed in the lack of complete information. However, general law of the land should prevail and these organizations may be covered under provisions of judicial review. Section 8 of the Act, 2005 should be made applicable to these organizations, which provides that after the twenty years of occurrence all type of information may be disclosed to all in the larger public interest.

Section 20 provides for the penalties to the officials who have been failed to give information or have given false or misleading information or destroyed the information. The amount of such penalty shall be up to rupees 25,000. The commission can also recommend disciplinary action against the erring official. Penalty clause in the Act is loosely worded as criminal liability provision had been removed so the civil servants should not view the law as a draconian piece of legislation. It is said that strong penalty clause is required to the efficacy of citizen's right to know.[27] Our experience shows that strong punishment requires higher standard of proof. Most of the times, case cannot be proved in the want of it. Therefore, it is correct that nature of penalty under the Act is not that much strict and would be easily enforceable.

Conclusion

No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. It is only when people know how Government is functioning that they can fulfill the role which democracy assigns to them and makes democracy a really effective participatory democracy.

Open government laws are not simply for the satisfaction of citizens' curiosity. They usually derive from rights of access to records relevant to a legal interest, and there is a continuing connection between the interest which a citizen has in how the country is governed and a rights of access to records about government. Such a right of access may be important in disclosing inefficiency and even corruption.

The exposure and ultimate elimination of corruption are important in all countries. Resources are finite and governments needs to be efficient as well as effective in their application. Transparency in government in order to ensure that citizens' interests are pursued and protected by those in power is just one of the reasons access to information is essential to good governance.

[27] *The Tribune*, Chandigarh, 26 June 2005, p. 10.