

# Right to Information

Shivani Singh

## LEARNING OBJECTIVES

- To learn about the factors that contributed to the evolution of RTI. ✓
- To illustrate the provisions of RTI existing in India, the UK and the USA.
- To assess the effectiveness of RTI in contemporary times.
- To acquaint the students about the emerging trends pertaining to pro-people rights movements in the twenty-first century.

One of the essential prerequisites for the success of democracy is vigilant, enlightened and aware citizenry which is capable of participating in the affairs of the state. For meaningful participation by the people in the public affairs, information must be made available to the people so that they are able to make rational choices from among the plethora of options available to them. Also, information regarding their rights and entitlements relating to public welfare is must so that they are able to criticize and question the authorities and power holders. This will ensure transparency, openness and accountability on the part of the policy-makers and the implementing agencies.

In reality, the government in most of the countries is not eager to let the people have the necessary information easily. Despite democracy in several countries, the functioning of the government is secrecy-oriented, especially in the Third World countries. The government has a strong tendency of not disclosing information about its functioning to the general public.

For democracy and especially in twenty-first century, knowledge and information is power. As a result, countries all over the world have enacted comprehensive laws to facilitate access to information. Edmund Burke had rightly remarked, 'All persons processing a position of power ought to be strongly and awfully impressed with the idea that they act in trust and are to account for their conduct in that trust to the one great master, author and founder of society.'

As Madison said in 1822, '[P]opular government without popular information, with means of acquiring it, is but a prologue to a Farce or a tragedy, or perhaps both' (Bhattacharya 2000).

## Evolution of RTI in India

According to UNDP Practical Guide Book on RTI, 2006, the Right to Information is a product of both institutions and culture. Institutions are the formal arrangements, shaped by laws and the structure of government. Culture is rooted in the history and practice of government. Culture is often more powerful than formal arrangements, particularly in societies that are undergoing a process of democratic transition and/or whose political systems still reflect traditional social methods of interaction (Bhattacharya 2000).

## Global Trends

The United Nations General Assembly adopted a resolution, 59(1) in 1946 which stated, 'Freedom of information is a fundamental human right and ... the touchstone of all freedoms to which the UN is concentrated'. In 1948, the General Assembly adopted the Universal Declaration of Human Rights which guarantees 'freedom of opinion and expression'. The international covenant on civil and political rights adopted in 1966, the United Nations Commission on Human Rights established the UN Special Rapporteur on freedom of opinion and expression in 1993, the Commonwealth Law Ministers' Meet in 1980 and the Rio Declaration on Environment and Development in 1992 have endorsed Right to Information. According to a paper prepared by the World Bank Information Centre, 'People have a right to information from a public institution and a right to participate in the development of policies and projects that affect their lives.'

For UNDP, the Right to Information is not only fundamental to an open and democratic society but is a key weapon in the fight against poverty and in accelerating human development. Also, the UNDP Oslo Governance Centre convened a seminar on the Right to Information to explore how UNDP can strengthen its support for promoting and protecting the Right to Information in countries where UNDP is working.

Apart from the above declarations through various international resolutions, Right to Information also received further impetus from the 'governance discourse'.

Governance is one of the most widely used concepts in the Public Administration, particularly since the late 1980s and early 1990s in the era of LPG, that is, Liberalization, Privatization and Globalization. The concept of governance was for the first time highlighted in a World Bank document on the Sub-Saharan Africa. Governance includes national governance, international governance, corporate governance and local governance. The government is one of the actors in governance. Governance is not synonymous with government, the latter being endowed with formal authority. Thus, governance encapsulates the government, but goes beyond it and encompasses non-governmental mechanisms to meet the needs and aspirations of citizens. The four key components of governance are accountability, transparency, predictability and participation. Accountability and transparency refer to the right of citizens to information regarding government activities; predictability refers to the rule of law and timely dispensation of justice at affordable costs to all. Transparency is concerned with accountability and service to the people (Ahmad 2009).

Within this broad area of governance, two terms that have gained currency and are used simultaneously are misgovernance and good governance. The statist failures in Soviet Russia, crisis followed by the dismal performance of states in Sub-Saharan Africa and deteriorations elsewhere have brought into focus the inability on the part of the states to govern themselves, giving rise to the concept of 'misgovernance'.

Good governance, on the other hand, leads to sound economic human and institutional development. The first element of good governance is respect for the rule of the law. The second feature of good



governance is to have a special care for the disadvantaged and weak. A third equally important aspect is that good governance implies tolerance and broad-mindedness.

From its leading experience in many developing countries, the bank came to realize that good governance is central to creating and sustaining an environment which fosters strong and equitable development, and it is an essential complement to sound economic policies.

The concept received an adequate attention in a 1992 report, entitled 'Governance and Development' that defines governance as the manner in which power is exercised in the management of a country's economic and social resources for development. Three distinct aspects are identified in the conceptualization of governance, (a) the form of political regime (parliamentary or presidential, military or civilian, authoritarian or democratic), (b) the process by which authority is exercised in the management of a country's economic and social resources and (c) the capacity of the government to design, formulate and implement policies in general to discharge government functions.

More pronounced political meaning of governance appeared in the directives of the Organization of Economic Cooperation and Development (OECD) countries laying down conditionalities for receiving economic assistance. The OECD document sought to link development assistance with (a) participatory development, (b) human rights and (c) democratization. The key components of governance (Chakrabarty and Bhattacharya 2003) were identified as:

1. legitimacy of government,
2. accountability of political and official elements of government,
3. competence of government to make policy and delivery services and
4. respect for human rights and Rule of Law (inducing individual and group rights and security, a legal framework for economic and social activity and participation.

From the above analysis it is clear that Right to information is a pre-requisite for good governance.

## Indian Scenario

No specific mention has been made about the RTI in the Indian Constitution; it emanates from the Right to Equality (Article 14), Right to Freedom of speech and Expression (Article 19(1)(a)) and Right to life and Personal Liberty (Article 21) as per various Supreme Court decisions and interpretations. However, article 19(1)(a) of the constitution, which includes the right to freedom of speech and expression, includes the right to information. Article 21 of the constitution which guarantees to every citizen the right to life and personal liberty implies that the right to know should be extended to all citizens.

The Supreme Court of India in the following cases has constantly ruled in favour of the citizen's right to know:

- Benett Coleman vis-à-vis Union of India.
- Rajnarain vis-à-vis UP Government.
- S.P. Gupta vis-à-vis Union of India.
- Cricket Association of Bengal vis-à-vis Ministry of Information and Broadcasting.
- Government of India and PUCL vis-à-vis Union of India.

At this juncture, two landmark cases relating to transparency and openness in government need mention. In the state of Uttar Pradesh vs. Raj Narain (1975), Justice Mathew held that to cover with the veil

of secrecy, the common routine business is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics of self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.

### RTI in Various Countries

**Sweden**—the first country, which guaranteed the right to information to its citizens in 1766 as a part of provisions of Freedom of the Press Act.

**USA**—Freedom of Information Act, 1966.

**Norway**—Freedom of Information Act, 1970.

**Australia and New Zealand** are having law on Freedom of Information since 1982.

**Canada**—Access to Information Act, 1985 and the complementary Privacy Act, 1983.

**Denmark**—Access of Public Administration Files Act, 1985.

**UK**—Freedom of Information Act, 2000.

**South Africa**—Promotion of Access to Information Act, 2000.

**India**—Right to Information Act, 2005.

In the other case of *S.P. Gupta vs. Union of India* (1982), Justice Bhagwati argued that the concept of an 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). Therefore, disclosure of information with regard to the functionary of the government must be the rule and secrecy an exception justified only when the strictest requirement of public interest so demands (Chakrabarty and Bhattacharya 2003).

In the landmark case on the Freedom of the Press in India, *Benett Coleman and Co. vs. The Union of India* (AIR 1973 SC 783), the court remarked, 'It is indisputable that by the freedom of the press is meant the right of all citizen to speak, publish and express their views and freedom of speech and expression included within its compass the right of all citizens to read and be informed'.

In the case of *Indian Express (Bombay) vs. Union of India* (1985), the Supreme Court remarked, 'The basic purpose of the Freedom of Speech and Expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know' (Bava 2009).

In view of the above implicit provisions in the constitution of India, orders of Supreme Court of India and the developments all over the world pertaining to Right to Information, one significant move in this direction was the recommendation of the Fifth Pay Commission regarding 'openness' in administration. Defending the repeal of 'the Colonial Official Secrets Act, 1923', the commission insists on openness which means 'giving everyone the right to have access to information about the various decisions taken by the government and the reasoning behind them'. Except what is detrimental to the interests of the nation, the security of the state or its commercial economic and other strategic interests may not be made public, 'nothing should be held back just to subserve the interests of individual bureaucrats and politicians'.



Further, the Fifth Central Pay Commission (1994-1996) expressed the need for 'openness' in government. As the Commission observed, 'Experience of other countries shows that we too will have to initiate the process by passing a Right to Information Act, somewhat on the lines of Canada and the United Kingdom'.

The conference of Chief Ministers held on 24 May 1997 issued a statement along with an Action Plan for Effective and Responsive Government at the Central and State levels. The Chief Ministers recognized that secrecy and lack of openness in the government business are largely responsible for the corruption in official dealings.

In 1998, National Democratic Alliance (NDA) government introduced the Freedom of Information (FOI) Bill 2000 in Parliament and subsequently passed in 2002. The Act could not be enforced due to the lack of notification.

Just before the framing of the Right to Information Act by the Government of India, a workshop was organized on the theme by the Commonwealth Human Rights Initiative (CHRI) at New Delhi on 7 September 2001. CHRI's position in this regard was explained 'as a right that was central to the realization of all other human rights, as a tool for fighting corruption, for ensuring transparency and accountability and most of all for enabling informed participation by the people'.

Freedom of Information Act, 2002 was repealed and the new act, Right to Information, came into force in October 2005 by the United Progressive Alliance (UPA) under the Congress leadership with Left parties lending support to it.

## Role of Civil Society Organizations (CSO)

The Right to Information is the result of continuous struggles of many activists and citizen's groups. The genesis of this right began with an NGO called the *Mazdoor Kissan Shakti Sangathan (MKSS)* which started a movement in Rajasthan under the leadership of Ms Aruna Roy, demanding information relating to the government's development projects. The MKSS raised the slogan '*Hamara paisa, hamara hisab*' fighting for transparency in government records, inspection of village panchayat's records and accounts. In the early 1990s, MKSS organized several *Jan Sunwai* (people's hearings) between December 1994 and April 1995 in Rajasthan. These grassroots movement spread to other states and asked 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 centres. The divisional commissioner of Bilaspur, Madhya Pradesh and Anna Hazare in Maharashtra also played an important role. Subsequently, the national campaign for People's Right to Information (NCPRI) was formed in the late 1990s which became a broad-based platform for action. The sustained campaign by MKSS finally led to the political acceptance of the people's Right to Information.

Public interest litigations (PIL) filed in courts by social activists and the Supreme Court decisions in various cases also played a crucial role in facilitating this Act.

In 1996, a report was submitted by the Press Council of India to the Government of India on a draft model on RTI prepared by Justice P.B. Sawant, the Chairman of the Press Council of India.

Finally, the department of personnel, the government of India constituted a working group on 2 January 1997 under the chairmanship of bureaucrat and consumer activist H.D. Shourie to draft legislation. This working group submitted its comprehensive report in May 1997. To remove certain grey areas of the bill, The Press Council of India, Press Institute of India, NCPRI and the Forum for Right to Information unanimously submitted a resolution in 1998 to the Government of India for amending the proposed Bill.