

Right to Information and Good Governance: A Technical Dimension

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Abstract

The people's democratic responsibilities do not just begin or end with the right to cast their votes; they are also required to nurture the democratic system in the day- to- day functioning towards better Governance. While transparent Governance is an essential feature to restore accountability and increase in efficiency, accountability of the Governor to be governed is also an essential feature of good governance. The Right to Information is one such dimension that creates an environment of sharing of information and provides to each and every citizen of India the basic Constitutional and democratic right to gain access to certain information held by the Public Authority. The Right to Information can be said to have been heralded as one of the most significant reform towards the onset of public administration in India. This far reaching law is like a ray of hope which has the ability to disperse the darkness of secrecy and bad effects of corruption, and ensure transparency and accountability which are the hallmarks of an efficient and good going Governance. It basically acts as a catalyst which facilitates the onset of a new value system and rejuvenation of hope in order to establish a better, educated and a happier society.

Key words:*Right to Information, Democratic Values, Transparency, Good Governance*

“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”

Aristotle

I. Introduction

In the recent years, there has been an unstoppable global trend towards the recognition of the right to information by countries, inter-governmental organizations, civil societies and the people. The modern trend is towards more

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open Government² and the right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings which forms the crucial underpinning of participatory democracy. The access of the citizen to information and the responsiveness of the government to community needs are the basic necessities to bring right to information because without right to information and good governance, people cannot adequately exercise their rights as citizens or make informed choices.

The right to information is not just a modern phenomenon but its source may be found in Bhagvad Gita. Text 17 of chapter 4 of Shree Bhagvad Gita provides- "*Truth about the Action must be known; Truth about the Inaction must be known; Truth about the Prohibited Action must be known; mysterious are the way of action*". It is very hard to understand the intricacies of action; hence one should properly know what action is, what forbidden action is, and what inaction is.³

The origin of the modern right to information can be traced back in Sweden, where the Freedom of Press Act of 1766 guaranteed public access to Government documents. It is thus an integral part of the Swedish Constitution, and the first ever piece of freedom of informed legislation. The concept of "public access" basically means that the general public is to be guaranteed an unimpeded view of the activities pursued by the Government and local authorities; all documents handled by the authorities are public unless the legislation explicitly and specifically states otherwise. Henceforth, many countries had adopted this principle and also drafted legislations incorporating the same which said that every individual shall have appropriate access to information concerning the decision-making process and an effective access to judicial and administrative proceedings, including redress and remedy should also be provided.

In India, the first legislation concerning the Government information was enacted in the year 1889 during the British Rule in the form of the Official

²C.K. TAKWANI, LECTURES ON ADMINISTRATIVE LAW, 492-93 (Abhinandan Malik et al. ed., 5th ed. 2012).

³A.C. BHAKTIVEDANTA SWAMI PRAPHUPADA, BHAGAVAD- GITA "AS IT IS", 216-17 (SriPrabhupada et al. ed., 2nd ed. 2011).

Secrets Act which was later substituted by the **Official Secrets Act of 1923**. Information related to security of the State, sovereignty of the country and friendly relations with foreign states is provided by this law. It also contains provisions which prohibit disclosure of non-classified information. However, it was felt that under the Official Secrets Act, the entire development process had been shrouded in secrecy and practically the public had no legal right to know as to what are the process that needs to be followed in designing the policies affecting them and also how the programmes and schemes were being implemented. The lack of openness and transparency in the functioning of the government gave way to growth of inefficiency and corruption in the working of the public authorities. Hence the Right to Information Act, 2005 was intended to remedy this evil and provide appropriate links to the government.

The Right to Information Act didn't repeal the Official Secrets Act, 1923, but was enacted to have an overriding effect over it. The official secrets act focuses on the act of the person by which, he knowingly passes some information or material to some enemy which is an offence with prescribed punishment thereof whereas the Right to Information Act is an administrative

enactment which introduces the duties and obligations of the administrations in public authorities to assist all citizens of the country in accessing the information through proactive disclosure of information.

II. The Right to Information Act, 2005

The need for the legal status to the right to information is a cause and concern today. Our Country has observed the judicial pronouncements and democratic need of such right during the past years. The law commission of India's 179th report and Reports of number of Committees and Councils working on this particular subject and area sensitized the government of India to enact a specific law on the right to information. Likewise, in May 2005 the right to information Act (22 of 2005) was passed by the Parliament. The act in its preamble provides for freedom to every citizen to secure access to information⁴ and for setting up the practical regime of right to information for all citizens to secure access to

⁴*Id.* at 494.

information under the control of public authorities in order to promote the accountability and transparency in the working of each and every public authority. Its statements and Reasons prefixed to the statute are rich with global rhetoric, profound humanism and national passion for implementation of the commitment to provide such right. It acts as a resolution to establish a statutory infrastructure for effective and expeditious provision towards the right to information to the citizens of India.

The Right to Information Act, 2005 was enacted by the Government of India, in order to combat corruption and to hold Governments and their instrumentalities accountable to the governed, while preserving the paramount of democratic ideal.⁵ The Act aims at the Central Public Information Officer or State Public Information Officer on receipt of request for information, shall expeditiously as possible, provide information within 30 days of receipt of the request, either provide information on payment of such fees or reject the request for any reason specified. This act is a Parliament's obvious concern to strengthen the law on citizen's right to information.

III. Right to Information and Constitutional Safeguards

The Right to Information Act, 2005 if studied closely is a democratic fundamental right product which needs some fundamental changes and democratization. The main aim of the right to Information Act is to ensure efficiency, transparency and accountability in public life.⁶ It requires all public authority, except the ones that handle work relating to national security, to publish all information about their functioning at regular intervals through various means of communication, which includes the internet as well. The very enactments of the Right to Information Act is to provide for setting out the practical regime of right to information for citizens to secure access to information and all this is carried out by the public authorities through the constitution of a Central Information Commission and State Information Commissions.

⁵ P.K. DAS, HANDBOOK ON THE RIGHT TO INFORMATION ACT, 200(5th ed. 2016).

⁶ Abdul Jabbar Haque, *CHALLENGES OF CORRUPTION AND GOOD GOVERNANCE: A HUMAN RIGHTS PERSPECTIVE IN INDIA*, Vol. 46(1),IBR, 77-89 (2016).

The right to information is one of the fundamental rights implicit in the Indian Constitution. The fundamental right towards information is the sine qua non of the Indian democracy. The right to information is an integral part of the freedom of speech and expression which is enshrined in Article 19(1)(a) of the Constitution of India which is also regarded as the first condition of liberty. This right occupies a preferred position in the hierarchy of liberty giving comfort and protection to other liberties. The expression 'freedom of speech and expression' under Article 19(1)(a) of the Indian Constitution has been held to include the right to acquire information and disseminate the same. The said freedom consists of freedom to communicate or circulate one's opinion without the interference of anyone. It also includes the right to communicate through any available media be it in print or electronic or audio-visual form. The freedom to receive and disseminate information without any hindrance is also considered as an important aspect of freedom of speech and expression.

The Supreme Court in the case of *Secretary/Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal*,⁷ narrowly expanded its view on the provision of Article 19(1)(a) towards the right to information, in which it was held that the right to freedom of speech and expression would also include the right to receive and impart information. It was also held in the case of *S.P. Gupta v. Union of India*,⁸ that the right to know is implicit in right to free speech and expression. The court in the case of *State of Uttar Pradesh v. Raj Narain*⁹ observed that freedom of speech and expression includes right to citizens to know every public act, everything that is done in a public way, by their public functionaries.

In the case of *Peoples Union for Civil Liberties v. Union of India*¹⁰; it was held that people can play an important role in a democracy only if it is an open Government where there is full access to information in regard to functioning of the Government. Enlightened and informed citizens would thus undoubtedly enhance democratic values. In a Government of responsibility, where all the

⁷Secretary/Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal, (1995) 2 S.C.C. 161 (India).

⁸S.P. Gupta v. Union of India, (1981) Supp S.C.C. 87 (India).

⁹State of Uttar Pradesh v. Raj Narain, (1974) 4 S.C.C. 428 (India).

¹⁰Peoples Union for Civil Liberties v. Union of India, A.I.R. 2003 S.C. 2363 (India)

agents of the public must be responsible for their conduct, there is no room for secrets. The citizens have a right to know every public act, and everything that is carried out in a public way, by their public functionaries.

The Supreme Court earlier in the year 1950 observed that the freedom lay at the foundation of all democratic organizations, for without free political discussion on public education; the proper functioning of the processes of popular Government is not possible. The fundamental right invoked is the people's right to know. The members of the democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect them.

IV. The Concept of Good Governance

The concept of Good Governance has been in debate from almost three decades in context of theoretical approach.¹¹ The good governance can be said to have evolved in the world through a long way since the medieval period and the times of colonial rule. Almost all the member states of the comity of nations today are based on the principle of 'welfare state', which runs with active participation of their respective inhabitants, striving to achieve the common good and in the process affording optimum opportunity and interest. All this has led to the evolution of 'good governance', as opposed to mere governance, as the umbrella concept encompassing within it a system of governance that is able to unequivocally discover the basic values of the society where standards concern the economic, political and socio cultural issues including those involving human rights and follows the same through an accountable and upright administration. Governance can be said to be a "form of political system and the manner in which power is exercised in utilizing a country's economic and social resources for development, and also where the Government is defined as the

¹¹Abdul Rahim, *GOVERNANCE AND GOOD GOVERNANCE- A CONCEPTUAL PERSPECTIVE*, Vol. 9, No. 3, JPAG, 133 (2019).

“most powerful and coercive institution, which continues to be the major element of any system of governance”.¹²

The term ‘governance’ was first defined by the World Bank in its document “Governance and Development 1992” as the manner in which power is exercised in the management of a country’s economic and social resources for development.¹³ Over the years, the World Bank expanded its governance model to include elements of contracts, accountability, and so on. The Nations which deemed to be in need of ‘development’ could now be said that the only way to get ‘development’ is through ‘governance’.¹⁴ The concept of governance and good governance has been widely used in both academic and civil societies, in which the academic approach focuses mainly on the study of the different ways in which the power and authority relations are structured in a given society and secondly the civil society’s approach which lays emphasis on the role of state structures play in ensuring economic, social, and political equity and also accountability through open policy processes.¹⁵ The concept of good governance emerged mainly on account of the practices of bad governance which are moreover characterized by unaccountable governments, corruption and lack of respect for human rights. Hence the need to intervene in such cases had become rather urgent.

V. Good Governance: Components and Elements

The concept of governance is not new but it is as old as human civilization.¹⁶ A Good corporate governance include would adequate transparency and effective decision making to attract statutory and legal compliances,

¹²O.P. Minocha, *GOOD GOVERNANCE: NEW PUBLIC MANAGEMENT PERSPECTIVE*, Vol. 44, No.3, IJPA, 270-280 (1998).

¹³Dr. Rajeev Kumar Singh, *CONSTITUTIONAL DIRECTIVES AND PARADIGM SHIFT FROM GOVERNANCE TO GOOD GOVERNANCE: AN ANALYSIS*, 103 44(2), IBR, 45 (2017).

¹⁴G. Sampath, *Why Everyone Loves Good Governance*, The Hindu, July 6, 2015.

¹⁵ KRISHNA PAL MALIK, *RIGHT TO INFORMATION AND PROTECTION TO WHISTLEBLOWERS* 284-285 (2nd ed. 2016).

¹⁶ Abdul Jabbar Haque, *CHALLENGES OF CORRUPTION AND GOOD GOVERNANCE: A HUMAN RIGHTS PERSPECTIVE IN INDIA*, 81 46(1), IBR, 23 (2019).

transparency in business transactions, corporate objectives, and protection of shareholder interests.¹⁷

A Government in order to discharge its sovereign functions has to make accountable many constitutional obligations it should be capable of enabling, enhancing and deploying the power of the state for sustainable human development, in discharging these obligations. It is essentially a package to strengthen the institutions of Government and civil society with the objective of making governments more accountable, open and transparent as well as democratic and participatory.¹⁸

Good Governance thus means the efficient and effective administration in a democratic framework which involves a high-level organizational efficiency and effectiveness corresponding in a responsive way in order to attain the predetermined desirable goals in society. The factors affecting the quality of good governance would include limited Government, legitimacy of the Government, political and bureaucratic accountability, freedom of information and expression, cost-effective administration and transparency, a well-structured legal framework based on rule of law for protecting the human life, checking abuse of power and securing social justice.¹⁹

Good governance is defined in the report of the commission on Global Governance, according to which it is a normative conception of the values according to which the act of governance is realized. Also, the method by which the groups of social actors interact in a certain social context. The lack of a good definition of the concept of good governance is compensated by the identification of principles that gives strength to good governance in any society. A number of multilateral organizations which also includes the **United Nations Development Programme (UNDP)** and the World Bank have reflected on the elements of good governance, and on their relation towards development.

¹⁷Dr. Shivanand H. Lengati, *CORPORATE GOVERNANCE: FINANCIAL REGULATORY BODIES IN INDIA*, XVII, 1, ND, 94-95 (2016).

¹⁸Dr. Shaikh Sahanawaz Islam, *THE RIGHT TO INFORMATION AND ITS ADVANTAGES TOWARDS THE PROMOTION OF GOOD GOVERNANCE- A CASE STUDY OF PROTECTION OF HUMAN RIGHTS*, 70., IJLJ, (2012).

¹⁹Y.K. Sabharwal, Chief Justice of India, "Right to Information, Issues of Administrative Efficiency, Public Accountability and Constitutional Governance"

In its report, Governance for Sustainable Human Development, the UNDP acknowledges the following as core characteristics of good governance²⁰ namely:

1. Participation
2. Rule of law
3. Transparency
4. Responsiveness
5. Consensus orientation
6. Equity
7. Effectiveness and efficiency²¹
8. Accountability
9. Strategic vision.

Good governance, hence, seems to be a synonym for effective Government in the sense that the basic Government functions are 'development', whereas the fact remains that all governments carry out several more important extra developmental functions e.g. defense of country's frontiers, conduct of diplomacy and maintenance of domestic peace and world order.

The components of good Governance as per the World Bank, the United Nation Commission on Human Rights and Asian Development Bank, includes

1. **Accountability and responsibility:** a key requirement of good governance is accountability and responsibility, with all of the participants in the political and economic processes being accountable for their decision to each other.
2. **Transparency:**freely available and directly accessible information to those who will be affected by these decisions and their enforcement. In the context of governance, transparency refers to the availability of

²⁰KRISHNA NATH, *MAKING GOOD GOVERNANCE AND CORRUPTION FREE ADMINISTRATION IN INDIA*, (Jun. 15,2012, 9:30 PM), <http://fs.huntingdon.edu/jlewis/IPSA-RC48/IPSAmadrid12paperKrishnaKanth2012-06-15.pdf>.

²¹ Report of the Commission on Global Governance, *Our Global Neighbourhood*, (1995).

information to the general public and clarity about the functioning of government institutions.

3. **Rule of Law:** good governance requires fair legal frameworks that are enforced impartially. The rules must be known in advance and that they are actually in force and applied consistently and fairly, that conflicts be resolvable by an independent judicial system and those procedures for amending and repealing the rules exist and are publicly known.
4. **Equal Participation:** Good governance requires that civil society has the opportunity to participate during the formulation of development strategies and that directly affected communities and groups should be able to participate in the design and implementation of programmes and projects. This is an important aspect of governance as an essential element in securing commitment and support for projects and to enhance the quality of their implementation.

VI. Transparency in Public Administration

In the Indian context the nexus between the politician, bureaucrats, criminals and Police is a known clumsy fact²². The right to know or need of transparency in public administration becomes too important to keep it away any longer. The term transparency basically means to know the reasons, facts, logics and basis of the decision taken by the administration and in legal terms means that the citizen of India has a right to have access to the information about the government's actions. Transparency or the right to know, emanates from the fundamental right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Indian Constitution.

Transparency in public administration will make the executive more responsible and friendly also the red tapism prevailed in the administration will be minimized as the public becomes more intellectual. It will positively result in wiping out the authoritarianism and whimsical way of working of the powerful bureaucrats under the patronage of politicians.

²²S.C. GUPTA, 151 ESSAYS, 56 (3rd ed. 2009).

VII. Right to Information Vis-À-Vis Good Governance

Long back in the year 1952, it was held that bad governance sets a bad example²³ meaningless to say that good governance sets a good example. Good governance is thus nothing but a characteristic of the government system. The right to information acts as a vital tool for good governance. For a governance to achieve the tag of 'good governance', transparency and accountability acts as the two most important components. If there is lack of transparency, then the accountability cannot be fixed. Hence, for good governance, there should be maximum disclosure and minimum confidentiality. The Right to Information and Good governance can be said to have a close link among each other in the sense that right to information acts as a tool of achieving the goals of good governance. The important components of good governance are transparency, accountability, responsiveness and these are all promoted by the Right to Information. To cite an example of transparency, if the candidates contesting elections are required to furnish the statement of their assets than there should be no reason as to why the judges, bureaucrats and the Government servants should not file their property returns and be in public domain. There has to be a major difference towards the treatment of personal information of a private person and a public servant. The exemption may differ from a private person and a public servant. The public servant does not have the freedom to take shelter behind the right to privacy as is available to a common citizen even if privacy is notoriously difficult to define and narrowly as a right to control information about one's self. The sphere of individual autonomy is the field of action that does not touch upon the liberty of others but still the privacy should be valued and it must not obstruct the flow of information if under laws that piece of information is required to be submitted to a public authority. A police officer if conducting some investigation may happen to acquire some information of a rather personal nature about a citizen that surely may not be disclosed unless its nexus with public interest is apparent.

The enactment of the Right to Information Act can be considered to be one of the most important and historical landmarks in the adherence of public administration in India. After the introduction of the Right to Information, in

²³State of Bombay v. LaxmidasRanchhodas, A.I.R. 1952 Bom 468 (India).

order to measure governance as good or bad, we have to analyze the governing system before and after the introduction of the Right to Information Act 2005, and what transformation had taken place as such. The logic behind the Act is very much clear and straightforward. The welfare of the people can be considered as the goal of representative form of Government. The concept of democracy revolves around the basic idea of citizens at the center of governance, the rule of the people. Hence the people, who elect the Government and pays taxes, have the basic right to know the conduct or day-to-day functioning of the government. It can be said that the greater the access of citizens is to information about the government's activities, the more likely it is that the Government will respond to community needs. If the public's access is restricted than the citizen's feeling of 'powerlessness' and 'alienation' will be greater. Without the information about the government's activities, people cannot adequately exercise their rights as citizens or make informed choices about the Government policies or participate in elections.²⁴ Thus, the extent of the people's democratic rights is not limited to mere gaining of information but also to take legal action in the form of Public Interest Litigation etc., and to receive justice through the court of law. The Right to Information plays a vital role in cooperating good governance in India, a country where corruption and criminalization is always prevalent in the administration and the source of this corruption is the secrecy which they have inculcated for a long term. Hence the introduction of the RTI Act is one of the major steps towards reducing corruption and maintaining transparency and accountability in the administration.

“We live in an age of information in which the free flow of information and ideas determines the pace of development and well-being of the people. The implementation of the RTI Act is therefore, an important milestone towards our quest for building an enlightened and at the same time a prosperous society. Therefore, the exercise of the Right to Information cannot be the privilege of only a few”²⁵ said by Dr. Manmohan Singh, the former Prime Minister of India.

²⁴ Mishra, Parker, Nimgaonkar and Deshpande, *PRIVACY AND THE RIGHT TO INFORMATION ACT*, IJME, (2005).

²⁵ Dr. Manmohan Singh, former Prime Minister of India, Valedictory Address at the National Convention on RTI, October 15, 2006

Focusing upon the importance of the Right to Information Prime Minister Narendra Modi said "Digital India, which was the part of good governance campaign of the government, was complementary to RTI because putting information online brings transparency which in turn brings trust". He further added "RTI has become a tool of good governance. The RTI Act should not just be limited to a citizen's right but it should empower everyone to hold truth to power"²⁶

The RTI Act is one of the most important tool which controls corruption and delays in the implementation of Government sponsored programmes and also towards the functioning of public authorities and the most important aim of good governance is that the people who have access towards information and those who makes use of the acquired information in the processes of exercising their political, economic and legal rights becomes empowered and these enables them to build their strength and assets, so that their quality of life is improved. An informed citizen is better equipped to keep all the necessary vigil on the instruments of governance and to make the government more accountable to the governed. The Right to Information Act is a major step towards making the citizen informed about the activities of the Government. As has been said in the case of *S.P. Gupta v. Union of India*²⁷ "Open Government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. In a country like India which is committed to socialistic pattern of society, the right to know becomes a necessity for the poor, ignorant and illiterate masses".

The Right to Information and good governance are complimentary and supplementary to each other. Whereas good governance is characterized by the political and bureaucratic accountability, availability of freedom and information, effectiveness and efficiency, and law-abiding citizen and cooperation between the Government and society, the Right to Information Act helps in bringing all the above-mentioned myth into reality. Hence one can say that the Right to Information is a natural corollary of good governance. Rendering information is a crucial part carried out by the Government for good

²⁶ Prime Minister, Narendra Modi, addressing at the 10th Annual Convention of RTI law.

²⁷ *S.P. Gupta v. Union of India*, A.I.R. 1982 S.C. 149 (India).

governance through their activities and processes. When the citizen is unaware of the activities of the society and if the actions of those who rule over them are hidden, then they are not able to take a meaningful part towards the affairs of the society. The democratic governance process is facilitated when the people is allowed to take active participation in such process. The people's participation towards the Government activities, their respect for the rule of law, the fundamental right towards freedom of speech and expression, the accountability and transparency and legitimacy of Government etc., which happens to be the core values of good governance, can be realized only if the Right to Information is implemented in the right and trustworthy spirit. The result will be fruitful only after the above-mentioned scenario comes into existence through good governance.

VII. Conclusion

The right to information is one of the most important mechanisms that provide us with a priceless opportunity to redesign the processes of governance, particularly at the grass root level where the citizen's interference is in maximum level. It is an agent of good governance which makes the common people aware about the administration and also provides them with an opportunity to take part in the decision-making process. It helps in empowering the poor and weaker sections of the society to demand and get information about public policies and actions, thereby leading to their welfare. The right to information gives way for the good governance to exist because without good governance, no number of developmental schemes can bring improvements in the quality of life of the citizen's and the society at large.

From the above narrated study on the right to Information and good governance in the Indian context the first and foremost question that arises is whether such laws that has been implemented by the Parliament, effective or not and even if effective, then to what extent? Are the people able to feel the difference towards the service delivery after these laws came into force? The quarries can be solved only if we have a close look inside the functioning of the administrative wing of the Government. By doing so, we will be able to realize, whether the

government that has triggered a sense of empowerment, fails or is able to create the right institutional mechanisms to deliver the legalized services.

The right to information is a necessary facet of the government for the people, but it cannot be said to be sufficient to improve governance let alone good governance. There are major loopholes towards the better functioning of the government and its administration, and a lot more needs to be done in order to usher in accountability and transparency in governance. This would also include protection of whistleblowers, decentralization of power and fusion of authority with accountability at all levels. Although the right to information is a remarkable piece of legislation still it has some issues and challenges in its execution and implementation. It is well recognized that the right to information reduces the chances of corruption and the abuse of authority by the public servants. But how far the right to information has been able to reduce corruption is a matter of concern. Corruption has struck deep roots in our society and the administrative apparatus. At the very rug of the administration, there are corrupt elements that are causing great loss to the country as well as the public interest. Therefore, the only answer to combat such corruption would be to implement better machinery which should be geared up in totality. The technicalities of filing an RTI application should also be more simplified. Also, a constant vigil on what is happening from the public domain is a must in a vibrant democracy. For, democracy is for the people, by the people and of the people.