



STRENGTHENING THE INSTITUTIONS OF RIGHT TO INFORMATION IN INDIA

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It has taken India eighty two years to transition from an opaque system of governance, legitimized by the Colonial Official Secrets Act, to one where citizens can demand the right to information. Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our government and public institutions function, we cannot express any informed opinion on it. Democracy revolves around the basic idea of citizens being at the centre of governance. And the freedom of the press is an essential element for a democracy to function. It is thus obvious that the main reason for a free press is to ensure that citizens are informed. Thus it clearly flows from this, that the citizens right to know is paramountⁱ.

The enactment of the Right to Information Act (RTI), 2005 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs. Right to Information Act 2005 provided Central Information Commission as national forum and State Information Commission in the state level. It is appropriate to examine the establishment and operation of institutions of right to information in India. Eleven years had elapsed since the Right to Information Act came into force in India. In this juncture, a detailed study in the area of strengthening institutions of rights to information still remains unexplored.

Evolution

Sweden adopts world's first access to information law in 1766. The law establishes press freedom, including the freedom to print and disseminate materials about the government, courts, and parliament. The law, which forms part of Sweden's constitution, recognises that press freedom is contingent upon access to information and states "to that end free access should be allowed to all archives, for the purpose of copying such documents in loco or obtaining certified copies of them".

France's Declaration of Human and Civil Rights, 1789, which still forms part of the French Constitution establishes at Article 14 that: "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration." Although this declaration has not been used as the basis for asserting a right of access to information in France, it does seem to provide for a public "right to know" about the spending of taxes.

UN General Assembly Resolution, (1946), 59(1) on Freedom of Information says: "Freedom of Information is a fundamental right and is the touchstone of all the freedoms to which the United Nations is consecrated. Freedom of Information implies the right to gather, transmit and publish news anywhere and everywhere without fetters. As such it is an essential factor in any serious effort to promote the peace and progress of the world." This language was not however clearly understood or defined at the time as the right to request and receive information from public authorities.

United States of America enacted Freedom of Information Act in 1966, The Freedom of Information Act (FOIA) is a federal law that establishes the public's right to obtain information from federal government agencies. The FOIA is codified at 5 U.S.C. Section 552. "Any person" can file a FOIA request, including U.S. citizens, foreign nationals, organizations, associations, and universities. In 1974, after the Watergate scandal, the Act was amended to force greater agency compliance. It was also amended in 1996 to allow for greater access to electronic information. An interesting article of the adoption of the US FOIA, and President Lyndon Johnson's reluctance to sign it, can be found on the website of the National Security Archive, along with a history of subsequent amendments.

Council of Europe adopts Recommendation to member States on the Access to Information Held by Public Authorities in 1981. This non-binding recommendation urges member states to ensure that "Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative and judicial bodies." The recommendation reflects the trend in Europe to recognise a right of access to administrative information, as reflected in laws such as France's 1978 law on the "improvement of relations between the public and the administration" and the Netherland's 1978 "law on openness of the administration"ⁱⁱ.

In 1975, Supreme Court of India rules that the people of India have a right to know. Supreme Court declared that the right to information is a fundamental right in 1982. Government appointed a committee in 1997 under the Chairmanship of HD Shourie to study the draft bill. The Shourie Committee report referred to a Parliamentary Committee in 2000. Freedom of



Information Act passed in both houses of Parliament in 2002 and Presidential has given assent in 2003, but is never notified. Tamil Nadu became the first State to have passed a law on Right to Information in 1997. Government of Madhya Pradesh passed executive order to its departments to implement Right to Information and Goa enacted the law on Right to Information in 1997. Rajasthan and Karnataka enacted the law on Right to Information in 2000. New Delhi, Maharashtra and Madhya Pradesh enacted Right to Information Act in 2001, 2002 and 2003 respectively.

The Congress Party comes to power as a part of a UPA coalition government in May 2004 and the UPA formulates a “minimum common programme”, which again stresses the Right to Information. The communist parties pressed the coalition government to bring this law. The Right to Information Bill introduced in Parliament in December 2004 and immediately referred to a Parliamentary Committee. However, Bill only applicable to the central government. The Bill considered by the Parliamentary Committee and the Group of Ministers. And the Bill was revised that covering the central governments and the state introduced in Parliament. The Right to Information Bill passed by both houses of Parliament in May 2005 and it received the assent of the President of India in June, 2005. The Right to Information Act comes into force on October, 2005 and it repealed the State Acts on Right to Information.

The Right to Information Act provided a ray of hope for common people as it promises transparency and accountability in governance and captured the imagination of masses soon. The law has a potential to be a crucial catalyst in challenging the power equation between the common masses and the ruling classes besides curtailing corruption. The object to create this Act was to serve a larger public interest to question the age old hierarchical traditional system of governance and to strengthen foundation for a true participatory democracy.

Right to Information

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

The Act defines information in section 2(f) as any material in any form, including the records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force. Sec. 2(i) defines the word ‘record’ as including (a) any document, manuscript and file, (b) any microfilm, microfiche and facsimile copy of a document, (c) any reproduction of image or images embodied in such microfilm and (d) any other material produced by a computer or any other device.

The right to information is defined in section 2(j) as a right to information accessible under the Act which is held by or under the control of any public authority and includes a right to (i) inspection of work, documents, records, (ii) taking notes, extracts or certified copies of documents or records, (iii) taking separate samples of material, (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Right to Information Act 2005 established Central Information Commission as national level and State Information Commission in the state level. Section 12 of the Act speaks on Constitution of Central Information Commission.

(1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Central Information Commission shall consist of—

(a) the Chief Information Commissioner, and

(b) such number of Central Information Commissioners not exceeding ten as may be deemed necessary.

Section 15 of the Act speaks on Constitution of Central Information Commission.

(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the _____ (name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner; and

(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessaryⁱⁱⁱ.



Constitutional Status

The term Information Commission has been defined as a body which is established by a government, under the constitution, or by law, or decree, the functions of which are specifically defined in terms of promotion and protection of right to information. Central Information Commission and State Information Commissions are established under the law.

On persistent demand of the Members of Parliament that the Office of the Commissioner for SCs & STs alone was not enough to monitor the implementation of Constitutional safeguards, a proposal was moved for amendment of Article 338 of the Constitution (46th Amendment) for replacing the arrangement of one Member system with a Multi-Member system while the amendment to Article 338 was still under consideration, the Government decided to set up a Multi-Member Commission through an administrative decision vide Ministry of Home Affairs' Resolution dated 21.7.1978. The first Commission for SCs & STs was, therefore, set up in August, 1978.^{iv} The statutory National Commission for Scheduled Castes and Scheduled Tribes came into being consequent upon passing of the Constitution (Sixty fifth Amendment) Bill, 1990 which was notified on 8-6-1990.

Consequent upon the 89th Constitution (Amendment) Act, 2003, Article 338 stands amended; the National Commission for SCs and STs has been bifurcated into the National Commission for Scheduled Castes and National Commission for Scheduled Tribes.^v

Article 340 of the Constitution provides for the appointment of a Commission to investigate the conditions of and the difficulties faced by the socially and educationally backward classes and to make appropriate recommendations. Pursuant to the direction of the Supreme Court in the Mandal case judgment, the Government of India enacted the National Commission for Backward Classes Act, 1993 (Act No. 27 of 1993) for setting up a National Commission for Backward Classes at the Centre as a permanent body.

The setting up of Minorities Commission in India was envisaged in the Ministry of Home Affairs Resolution dated 12.01.1978 which specifically mentioned that, "despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote National Integration the Government of India attaches the highest importance to the enforcement of the safeguards provided for the Minorities and is of the firm view that effective institutional arrangements are urgently required for the enforcement and implementation of all the safeguards provided for the Minorities in the Constitution, in the Central and State Laws and in the government policies and administrative schemes enunciated from time to time. Sometime in 1984 the Minorities Commission was detached from Ministry of Home Affairs and placed under the newly created Ministry of Welfare.^{vi} With the enactment of the National Commission for Minorities Act, 1992, the Minorities Commission became a statutory body and renamed as National Commission for Minorities.

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Government of India) to review the Constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women.

The National Commission for Scheduled Castes, National Commission for Scheduled Tribes and National Commission for Backward Classes have constitutional status. National Commission for Minorities and National Commission for Women are functioning in accordance with constitutional safeguards of the minorities and women.

The Chairperson of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for the Scheduled Tribes and the National Commission for Women will be ex-officio members of the National Human Rights Commission.^{vii}

The constitutional status will give more teeth for the Central Information Commission and State Information Commission including independence and financial autonomy, etc. Fundamental rights of the citizens are embodied in the Article 14 to 32. An Article (as 32 - A) has to be inserted in the constitution for the Institutions of Right to Information by way of amendment.

Selection Committee

Section 12 (3) of the Right to Information Act says that the Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—



(i) the Prime Minister, who shall be the Chairperson of the committee;
(ii) the Leader of Opposition in the Lok Sabha; and
(iii) a Union Cabinet Minister to be nominated by the Prime Minister. tc" (iii) a Union Cabinet Minister to be nominated by the Prime Minister." Explanation.—For the purposes of removal of doubts it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of the Opposition.

Section 15(3) of the Right to Information Act says that the State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(i) the Chief Minister, who shall be the Chairperson of the committee;
(ii) the Leader of Opposition in the Legislative Assembly; and
(iii) a Cabinet Minister to be nominated by the Chief Minister. Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of the Opposition.

The composition of the selection committee have political involvement, which against the independent appointments quoted in the Paris Principles. The selection committee shall not have political people. Chairperson and other members of the tribunals like customs, railway claims, income tax, etc. are appointed by the President on the recommendations of a Committee composed of the Chief Justice of India or his nominee, who is a Judge of the Supreme Court as Chairman, secretary of the law ministry and secretary of the concern department as members in India.

Likewise, Chief Information Commissioner and other commissioners of the Central Information Commission have to be appointed by the President on the recommendations of a Committee composed of the Chief Justice of India or his nominee, who is a Judge of the Supreme Court as Chairman, cabinet secretary and secretary of the law ministry. State Chief Information Commissioner and other commissioners of the State Information Commission have to be appointed by the Governor on the recommendations of a Committee composed of the Chief Justice of High Court concern as Chairman, chief secretary of the State and secretary of the department of law. This type of change in the selection committee for the Chief Commissioner and Commissioners of the state information commissions shall have independent appointment system without political intervention.

State Bench and District Commission

As per the Right to Information Act, any citizen has to right to file an application for any information as per the law to the public information officer with the sufficient fee. i.e., Rs.10/-. The public information officer has to provide the information within thirty days from the date of the receipt of the application. If the applicant is not received or not satisfied the information, he has right to file an appeal to the appellate authority. The appellate authority has to provide the information within the thirty days. Otherwise, the applicant has right to file a revision petition to the Central Information Commission, if it is related with the central government or State Information Commission, if it is related with the state government.

Generally, the appellate authority is available in the same office of the government. This is not providing sufficient opportunity for the applicant. hence, it has to be changed. In this juncture, it essential to see the other existing law also.

Section 26 of the proposed Protection of Consumer Act, 2015 says that there shall be established for the purposes of this Act, the following agencies, namely:— (a) a District Consumer Grievance Redressal Commission to be known as the "District Commission" established by the State Government in each district of the State by notification^{viii}.

Section 30 of Protection of Human Rights Act, 1993, defines that Human Rights Courts – For the purpose of providing for speedy trial of offences arising out of violation of human rights, the state government may, with the concurrence of chief justice of the High Court, by notification, specify for each district a Court of Sessions to be a human rights court to try the said offences;

Provided that nothing in this section shall apply if –

- a. A Court of Session is already specified as a special court,
- b. A special court is already constitutes, for such offences under any other law for the time being in force.^{ix}

Likewise, the appellate authority shall be a district level forum in relating with the state government applications. The appellate authority in relating with the central government, it may be at benches of the Central Information Commission.



Conclusion

To strengthen the Institution of Right to Information, the following measures are essential.

1. a) An Article (as 32 - A) has to be inserted in the constitution of India for the Central Information Commission and State information Commissions by way of amendment to provide constitutional status.
2. b) A change in the selection committee for the chairman and members of the Central Information Commission and State information Commissions shall have independent appointment system without political intervention.
3. c) The State Benches of the Central Information Commission has to be established to hear the appeals against public information officers of the central government and district commission has to be established to hear the appeals against public information officers of the state government.

It is duty of the parliament to make needful amendments in the existing right to information law to strengthen the institutions of right to information.

ⁱ http://www.legalserviceindia.com/articles/rti_dh.htm

ⁱⁱ <https://www.access-info.org/uncategorized/10819>

ⁱⁱⁱ <http://rti.gov.in/webactrti.htm>

^{iv} <http://ncsc.nic.in/index2.asp?sid=160>.

^v Prem Kumar Shinde(Ed.), *Dalits and Human Rights: Dalits: Security and Rights Implications*, Isha Books, Delhi, 2005, p.149.

^{vi} http://ncm.nic.in/Genesis_of_NCM.html

^{vii} Asish Kumar Das and Prasant Kumar Mohanthy, Op.Cit.,

^{viii} <http://www.prsindia.org/uploads/media/Consumer/Consumer%20Protection%20bill,%202015.pdf>

^{ix} *The Protection of Human Rights Act*, Gazette of India, Extra, Part II, Sec 1, 10th Jan.1996, pp. 1-16.