

Right to Information - History of Evolution

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Introduction :

Information is a source of knowledge. The right to information is a means to empower the people. A democratic government is supposed to rule by the consent of the people. The people have a right to know every public act, everything that is done in a public way by their public functionaries. Flow of information makes the governance more participatory which is a vital component of successful democracy. The rights which are essential for the individual to lead a dignified life and which cannot easily be taken away by the government are called 'Fundamental Rights'. The historical background of fundamental rights is the foundation of the Right to Information. The most important contribution to the growth of liberal political tradition has come from England. Magna Carta, 1215; The Bill of Rights 1689; the Act of settlement, 1701, French Revolution etc. are the great constitutional landmarks. This paper attempts to focus the journey of right to information through these constitutional landmarks. Along with, it also throws light on the journey of the Right to Information Movement in India

Magna Carta -

It is regarded as the greatest event of the Norman era. It reiterates the customary privileges of the baron or feudal lords. King John, who was efficient and strict ruler, violated some customary privileges of English barons. He raised a few new taxes. Merchants of London and the Saxon Militia refused to co-operate with the king. On 15th June, 1215, Barons presented the terms of Magna Carta accepted by the King. Magna Carta was a mutual contract confirming the rival claims and privileges of various sectors such as monarch, barons and the church hierarchy.

On June 15, 1225, the barons, who had renounced their allegiance and taken up arms in order to enforce a settlement of their grievances, met King John at Runnymede and presented articles containing an outline of the concessions required. The King accepted the terms contained in the articles and executed the Great Charter. Upto the reign of Henry VI the charter was renewed thirty-seven times. The few terms of the Great Charter were -

- 1) The City of London was to enjoy its ancient customs and liberties.
- 2) No aid was to be imposed without the consent of the Commune Concilium (Parliament).
- 3) The Common Pleas were to be held in a fixed spot (in aliquocerto loco)
- 4) Fines were to be regulated according to the magnitude of the offence. Earls and barons were not to be fined except by their peers.
- 5) No sheriff, constable, coroner, or other officer of the Crown was to hold pleas of the Crown. These were reserved to the royal justices.
- 6) No freeman was to be arrested, imprisoned, put out of his freehold, outlawed, exiled, destroyed, or put upon in any way except by the lawful judgment of his peers or the law of the land.
- 7) Justice was not to be sold or denied to any one, or to be delayed.
- 8) Merchants were to be free to enter and leave the kingdom, and to remain there for purposes of buying and selling subject only to the customary tolls.

- 9) Justices, constables, sheriffs and other officers of the Crown were only to be appointed from upright persons possessing knowledge of the law.
- 10) Twenty-five barons were to be chosen as representatives of the nation, the King contracting to allow them to see that the terms of the Charter were enforced and observed fundamental assertion of the subjection of the King. (Keith A.B. Ridges' Constitutional Law of England, fifth edition, Pg.9)

The barons presented and the King accepted the above mentioned terms of the Charter.

The Bills of Rights, 1689 :

After petition of Right 1628, the Bill of Rights 1689 declared that freedom of speech and expression ought not to be impeached in any court or parliament. James II ascended the throne in 1685 and attempted to rule without parliament. He began by issuing a proclamation requiring payments of custom duties. The standing army was increased from strength of 6000 to 20000. With the help of a servile Court he secured judicial decision in favour of his assumed prerogative of dispensing with the observance of laws and he sought to exercise the suspending power also. By another proclamation James ordered that a Declaration of Indulgence in matters of religion should be read by clergy with their churches and is thereafter distributed throughout their district for which a bishop is responsible. Due to this declaration seven Bishops presented the petition that the King should not insist upon the reading and distribution and were charged with a conspiracy to diminish the royal authority. James tried to retrace his steps but it was too late. Thus, on 23rd Decmeber 1687 the King had abdicated. An adhoc assembly was constituted and formed Convention Parliament.

This Convention Parliament met on 22nd January, 1688 and in the course of subsequent proceedings enacted Bill of Rights the copingstone of the constitutional building. The Bill describes itself as "an Act declaring the rights and liberties of the subject and settling the Crown" (Cooper K.S., Desai S.K., Elements of Constitutional Law, fourth edition, Pg.51)

Some important declarations of Bill of Rights are -

1. The power of suspending or execution of law without consent of Parliament is illegal.
2. Levying money for and to the use of crown without approval of parliament shall be granted as illegal.
3. All commitments and prosecutions for petition are illegal.
4. The raising or keeping a standing army within Kingdom in time of peace without consent of parliament is against law.
5. Election of members of parliament ought to be free.
6. Freedom of speech and debates or proceedings in Parliament, ought not to be impeached or questioned in any courts or place out of Parliament.
7. Excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.
8. All grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.
9. For redress of all grievances and for amending, strengthening and preserving of laws, meetings of the parliament ought to be held frequently.

(Keith A.B., Ridges' Constitutional Law of England, fifth edition, Pg.17)

This Bill of Rights embodied the rights and liberties of the people and zone of freedom is established wherein no government may illegally operate.

Act of Settlement :

At common law the title of the Crown of England was governed by the feudal rules of hereditary descent applicable to land. The descent of the crown was varied and finally fixed by the Act of Settlement. Under the terms of the preamble to the Statue of Westminster, any alteration in the law concerning the succession to the Throne requires the assent of the Dominions and further under the Act some limitations were made to the heirs of Princess Sophia, but the limitations were not altogether abandoned as they reflected the wishes of Parliament rather than the personal wishes of the crown.

French Revolution :

The declaration of the Rights of Man stated 'Men are born and remained free and equal in rights'. The aim of all political associations was the preservation of the natural and imperceptible rights of man. The Declaration of the Rights of Man was founded on the ideas of Voltaire, Montesquieu and Rousseau and the same was made a part of the preamble of the constitutions of Fourth and Fifth Republics. It was the first revolution in the world which brought about social transformation. It gave three important principles - liberty, fraternity and equality to the modern world on which the Republican states are dependants. Therefore the Magna Carta, The Bill of Rights and the French revolution have the foundation of Fundamental rights which further paved its way to Right to information. In Indian context the the right to information is deeply rooted in the Right to freedom under the Indian Constitution

The Journey of Right to information in India :

The demand for fundamental rights and their constitutional guarantees had its deep root in 19th century. It was implicit in the formation of the Indian National Congress in 1885, which wanted the same rights and privileges for Indians that the British enjoyed in their own country. The first implicit demand for fundamental rights appeared in the Constitution of India Bill, 1895, described by Mrs. Annie Beasant as the Home Rule Bill, envisaged to guarantee to all citizen freedom of speech and expression, right to personal liberty, right to property, equality before the law, equality to admission to public offices and right to petition for redress of grievances etc. The Constitution of the Irish Free State in 1921, which contained a Bill of Rights, had also a profound effect on political thought in India.

Constituent Assembly and Fundamental Rights :

In January 22, 1947, the Constituent Assembly solemnly pledged itself to draw up for India's future governance a constitution wherein "shall be guaranteed and secured to all the people of India, justice, social, economic and political, equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality."

The Advisory Committee consisted of 54 members with Sardar Vallabhbhai Patel as its Chairman. The Committee was constituted on February 12, 1947, with five sub-committees one of which was to deal with fundamental rights. The sub-committee on Fundamental Rights consisted of J.B. Kripalani, M.R. Masani, K.T. Shah, Rajkumari Amrit Kaur, Alladi Krishnaswami Ayyar, Harnam Singh, Moulana Abul Kalam Azad, B.R. Ambedkar, Jairamdas Daulatram and K.M. Munshi. The core of the commitment to the social revolution lies in Parts III and IV, in Fundamental Rights and in the Directive Principles of State Policy. Both together constitute the conscience of the Constitution and gave strength to the pursuit of the said evolution in India. (Granville Austin, The Indian Constitution : The Cornerstone of a Nation, Pg.50)

In March 1948, the United Nations convened a conference at Geneva on the subject matter of freedom of information which was attended by fifty four countries. It passed a series of resolutions recommending constructive action and adopted three draft conventions for further considerations by the United Nations which ultimately, led the General Assembly of the United Nations to declare freedom of information is a fundamental human right. (Shallu Freedom of Press under the Constitution of India- A socio-legal Study 315, 1998) Article 19, The Universal Declaration of Human Rights:

Every one has right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. In 1960, the economic and social council of the United Nations adopted a Declaration of Freedom of Information, a derivative from Article 19 of the Universal Declaration of Human Rights, 1948. Sweden became the first country in the world to enact a provision for access to official information for the citizens.

The Right to Freedom under the Indian Constitution:

The right to freedom is covered by Articles 19 to 22 and embraces the classical liberties of the individual. Of these, Article 19 is the most important as it originally guaranteed six fundamental rights, which may be described as six freedoms, viz., (a) freedom of speech and expression. (b) freedom of assembly; (c) freedom of association; (d) freedom of movement; (e) freedom of residence and settlement; (f) freedom of property, and (g) freedom of profession, occupation, trade or business. All these freedoms are the most important ingredients of human happiness and progress, as without them no individual can rise to the full stature of his personality.

The Right to Information Movement in India

India being a democratic country, the Indians who are the source of the constitution must assert their right to have a good government. People are sovereign and they must therefore be educated. The Right to Information is vital to democracy. It is a human right which is necessary for making the governance transparent and accountable. The basic objective of the Right to Information is to provide for freedom to every citizen to secure access to information under the control of public authorities consistence with public interest, in order to promote openness; transparency and accountability in administration. The Right to Information promotes transparency, empowers the citizen reduces corruption, increases efficiency, makes officials accountable and put an end to their indifference and arrogance. Unless the citizens are informed of their right in the form of information, probably they can not assert their rights and make the government accountable for this action.

The Supreme Court held in various cases that R.T.I. is a fundamental right. The Supreme Court said in *Indian Express Newspapers v/s Union of India*, that Democratization of Communication, Freedom of Speech of the Press of Information and of assembly are vital for the realization of human rights. [AIR(1985) SC 641]

The Supreme Court in *Secretary, Ministry of Information and Broadcasting, Government of India v/s Cricket Association of Bengal*, said that the Freedom of Speech and expression includes right to acquire information and to disseminate its freedom of speech and expression is necessary for self expression which is an important means of free conscience and self-fulfillment. [AIR(1995) SC 161]

The Supreme Court said in *Bennett Coleman and Co. v/s Union of India* that the freedom of speech includes within its compass the right of all citizens to read and to be informed. The judicial decisions mentioned in above cases made the right to information a fundamental right but it has been our experience that mere judicial

declaration of a right being a fundamental right is not enough to make it reality. [AIR(1922) SC 788]

In mid 1990, a group of farmers from Rajasthan were cheated of their wages by the government for work they had rendered during a famine. As usual government officials denied the poor and illiterate workers of their wages, on the ground that their records did not contain proof of their work. As these records were kept classified, the workers felt that making these records available to public scrutiny would solve their problems. The Villagers anger and determination to hold the government accountable for its denial sparked the Right to Information movement, which snowballed into forcing the government to enact Freedom of Information Act (FIA). Mazdoor Kisaan Shakti Sangathan (MKSS-Organization for the empowerment of workers and peasants) in 1990 with the backing and support of Nikhil Dey and Shankar Singh and reputed social activist Aruna Roy moved to Devdoondri to stimulate this small movement of farmers towards a nationwide movement for the right to information. The MKSS demanded for transparency which led to an official enquiry, reporting that a bogus company had received illegal payments for labour that had never been rendered. The company, 'Bhairon Nath and Sons' was later traced to have been formed by government employees from Bhim, a small town in Rajasthan. To add to this, the Government auditors had cleared the project though this Company had not paid sales or income tax on the project, which was as large as Rs. 36 lacs and executed only on paper.

The MKSS then got the attention of a considerate government official and transcribed the details of the enquiry report, and through door-to-door visits made the inquiry findings public. This immediately led people to mobilize. This movement was met with the governments determined efforts to stifle the campaign. Giving into the effective protests and campaigning, the Chief Minister established the Committee on Transparency to study the feasibility of supplying photocopies of bills, vouchers and muster rolls. However, when the Committee recommended that it was practical, the State Government declared the Committees' findings secret. But Jan-Sunwai - Hearing has been instrumental in achieving some fraction of what the MKSS failed to secure. (Hartitas Kaveri 'The Lawyers Collective', August 2003 Pg.4)

The Jan-Sunwai centers demand that the people have a Fundamental Right to information about all decisions and actions of the government that claims to represent them. The first Jan-Sunwai or public hearing was held in Kot Kirana in 1994. This met with a lot of success as public humiliation resulted in many corrupt people returning money, thus emphasizing the impact a public audit could have on corruption. According to Aruna Roy, it was a struggle for the right to know and the right to live that attracted others who were grappling with the problems of implementing participatory and responsible democratic systems. The MKSS practices Collective Responsibility; and accountability in its administration and is essentially a non-competitive pool of complementary skills and talents. The movement was greatly supported and endorsed by several eminent people including Harsh Mander, Nikhil Chakravorthy, Kuldeep Nayyar, Prabhash Joshi, Swami Agnivesh, Medha Patkar. However, Nikhil Chakravorthy saw in it a potential second war of independence. This gave rise to the formation of the National Campaign for Right to Information (NCPRI) which was supported in the Press Council of India (PCI). The PCI headed by Justice P.B. Sawant, in consultation with NGO's & journalists, lawyers and other public persons (250 eminent people in all) drafted the Freedom of Information Bill in 1995, which was comprehensive and powerful. Since the government continued

delaying the passing of the legislation. F.O.I. Bill was followed by many states enacting laws on its lines including the states of Rajasthan, Madhya Pradesh, Maharashtra, Goa, Tamil Nadu, Karnataka, Delhi and Andhra Pradesh, though one of them accepted the PCI bill in its entirety.

In 1997, a working group under H.D. Shourie presented the second draft of FIB. This draft was not accepted.

In 1999, in a show of support for the movement, Ram Jethmalani, the then Minister for Urban Development passed an administrative order, providing that any citizen would be entitled to inspect and take photocopies of any file in his ministry. The order relied on the two Constitution Bench decisions of the Apex Court holding that the citizens have the right to get information about all aspects of government functioning. Both the decisions held that the fundamental Right to speech and expression could be realized only if the citizens had effective right to access information available with the government. In a democracy, all public servants exercise power only on behalf of the people and it would be an anathema if what they did were hidden from the people.

The Cabinet Secretary, on the instructions of the Prime Minister, restrained Ram Jethmalani from giving effect to this order which led to the Centre for Public Interest Litigation and Common Cause filing writ petitions in the Supreme Court seeking a quashing of the Cabinet Secretary's restraint on Ram Jethmalani's order as it was, unconstitutional and violative of the citizens' Right to Information, a declaration that Section 5 of the Official Secret Act, 1923 was unconstitutional and a direction to the government to frame and issue suitable administrative instructions on the lines of the Press Council & F.O.I. Bill. This case was subjected to delay tactics by the government, which took repeated adjournments on the ground that it was enacting a right to information law.

The first visible step towards empowering people with a mechanism came in 2000 when the former N.D.A. Government introduced the Freedom of Information Bill in Parliament. In the history of India, the legislation for the right to information was the first step which came in response to the people's demand. It was soon referred to a Select Committee of the Parliament. In the court the then government continued taking adjournments on the ground that it was awaiting the selection committee report. Two years thereafter and many months after the Selection Committee had given in its report, there was no legislation enacted, the Supreme Court directed that if the legislation was not passed before the next date of hearing (in January 2003) it would consider the matter on merits and pass orders. It also directed that even if the legislation were passed, it would examine whether the legislation was or was not in conformity with the Right to Information as declared by the court.

In January 2003, with no other avenue for delay and the Supreme Court matter around the corner, the Government was forced to pass the Freedom of Information Act (FIA), 2002, but the Act did not come into force. Several states in India have passed laws to provide for right to information. In Maharashtra, Right to Information Act was passed in 2000.

However, the Act 2000 favored the government and continued with the theory of secrecy which is not fair in

democracy. Hence, Anna Hajare demanded a fresh Act. According to his demand, the state government appointed a committee in 2001, comprising senior serving and retired bureaucrats the former Union Home Secretary Dr. Madhav Godbole, eminent jurist Dr. Satyranjan Sathe, Shri. Narendra Chapalgaonkar and Shri. Anna Hajare himself to prepare a new draft. The committee handed over one of the world best

drafts, but the Bill based on the draft couldn't get immediate approval of legislators. Thus there was renewed threat of agitation by Shri. Anna Hajare and an Ordinance was promptly promulgated to pacify him. It lapsed in barely four months. The legislature finally adopted a Bill, replacing the Ordinance, in the budget session of 2003. It was, however, referred to the Government of India for its ratification, though, citizen activists argue, the central act on the matter had still not come in to force then and there was no question of a state legislation clashing with a still non-existing Act of the central government. To aggravate the matter, Government of India did not bounce back the state bill, but kept its tossing from one desk to another in New Delhi. Anna Hajare declared fast-unto-death from August 9. As a result things moved at a break-neck speed both in New Delhi and back in Delhi. While Anna Hajare fast entered barely the third day, the Act was notified on August 11, 2003. Maharashtra Right to Information Act 2002 was very effective Act. This legislation was held as the most progressive in the country. The provisions and implementation of Act was very impressive. It was adopted as Model Draft by the Central Government. The Parliament of India has passed the Right to Information Act in May, 2005. This Act received Presidential assent in June, 2005 and came into full force from 13 October, 2005.

Conclusion :

There are four important benefits occurred by the Fundamental Right - i.e. freedom of speech and expression are -

- 1) It helps an individual to attain self-fulfillment.
- 2) It assists in discovery of truth.
- 3) It strengthens the capacity of an individual in decision making.
- 4) It provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1) (a) of the constitution of India. Thus, every citizen has a Fundamental Right to use the best means of imparting and receiving information for his overall development on the basis of which right to information is deeply enrooted.

References are mentioned within the article.