

RIGHT TO INFORMATION

By

Dr. Ravinder Kumar Chadha
Director
Lok Sabha Secretariat, Parliament House
New Delhi 110001

Knowledge derives from the process people use to understand and analyse information. Information is a main ingredient of knowledge. Information content (not the physical form of the message or communication) usually leads to a decision action or behavioural change or it may add to ones knowledge. Freedom of communication is a precious acquisition of a democracy and its existence or otherwise is determined by the presence or absence of the right to communication. Right to information is implicit in the right to communication, which both an individual as well as popular Government need in order to arm them with the power that knowledge gives.

The Right to Access Information is a Fundamental Human Right

To deprive human beings of information is to rob them of an important opportunity to develop their potential to the fullest and is a violation of their human rights. Human beings need information to become what they should be. Their individual personalities, political and social identities and economic capabilities are shaped by the information available to them.

For more than fifty years, the international community has recognized that the right to access information underpins the realization of all other rights. At its inception, the United Nations called the right to freedom of information “*the touchstone for all freedoms to which the United Nations is consecrated.*” Later enshrined in the Universal Declaration on Human Rights, its status as a legally binding treaty obligation was affirmed in Article 19 of the International Convention on Civil and Political Rights which states: Everyone has the 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 frontier.” Over the years, the importance of the

right to access information has been acknowledged time and again in myriad international agreements, including the African Charter on Human and Peoples’ Rights, the European Convention on Human Rights.

The Right to Information (ROI) holds within it the right to seek information as well as the duty to give information, to create, store, organize and make it easily available, and to withhold it only when it is in the public interest to do so. The duty to enable access to information rests with government. Traditionally, the right was limited to getting information from government. However, the duty to release information is increasingly expanding to include multilateral organizations, international financial institutions, commercial and corporate bodies and civil society organizations, where their activities affect the rights of citizens.

The vast and valuable stockpile of information is created as part of the legitimate and routine discharge of governments’ duties. It is gathered and stored for the benefit of the public. It is generated with public money by public servants paid for with public funds. Governments hold all this information solely as trustees on behalf of the people and cannot hoard it or unnecessarily keep it from the public.

Access to Information is the Key to Democracy and Development

There is a strong relationship between intellectual freedom and the right to information. In other words, the concept of the right to information is based on the concept of the freedom of information. Freedom of information means intellectual freedom. Both intellectual freedom and the right to information are human rights, which protect the human life and human development. However, human rights, which protect our lives, need to be protected by a full democracy in the country. If there is not a full democracy, all members of the society can participate in the decision-making process and for this reason they need the right to information. Unless there is a true democracy in a country, the problem of the right to information cannot be solved, fully. We cannot say that there is full democracy in many developing countries despite they have become a bit more democratic since 1980. The index of democracy by World Bank indicates this situation clearly. In the majority of developing countries, democracy is not working completely. It is seen that only OECD (or developed) countries have established real democratic regimes. If we accept that a full democracy is a precondition for the right to information, it can be also said that developing countries do not have the chance to use the right to information wholly yet.

Making Participatory Democracy Meaningful

The public’s right to know is an intrinsic part of informed public debate, which has traditionally been dependent on the freedom to receive and impart information without government interference. However, it may also be argued that this does not mean a right to receive any type of information from the government. It is of paramount importance that any restrictions on information or expression regarding security matters must designate in law only the specific and narrow categories of information absolutely necessary to protect a legitimate national security concern. A threat to national security can be defined as ‘any expression or information that is intended to incite imminent violence, or is likely to incite violence. In addition, there must be a direct and immediate connection between the expression and then likelihood or occurrence of such violence’. The public interest in having information at all times must remain a priority consideration in any ROI Bill, and that any denial of this right be subject to independent review.

Access to information not only supports people-centered development, it is a core feature of participatory democracy. The underlying foundation of a democratic state is the existence of an informed population able to thoughtfully choose its representatives and hold government accountable.

“A popular government without popular information/ or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance; and people who mean to be their own government must arm themselves with the power that knowledge brings. The fight for information takes place between the public who want it and those in power who do not want them to have it. Madison’s philosophy suggests:

That secrecy impedes the political education of a community so that electoral choices are not fully informed.

That opportunities for individuals to respond meaningfully to political initiatives are blunted.

That a political climate is generated in which the citizen views government not with responsibility and trust, but with malevolence and distrust.

A better informed public can better participate in the democratic process;

Parliament, press and public must be able properly to follow and scrutinize the actions of government and secrecy is a major impediment to this accountability;

Public servants take important decisions which affect many people, and to be accountable the administration must provide greater flows of information about what they are doing;

Better information flows produce more effective government and help towards the more flexible development of policy; and

Public cooperation with the government will be enhanced by more information being available.

Facilitating Equitable Economic Growth

The international community is relying on free markets and equitable economic growth to quicken development. The right to information provides crucial support to the market-friendly good governance principles of transparency and accountability. Markets, like governments, do not function well in secret. Openness encourages a political and economic environment more conducive to the free market tenets of ‘perfect information’ and ‘perfect competition’. In turn, this results in stronger growth. Strong economies require informed citizens who are able to access strategic information that will ensure their success in business.

Tackling Corruption

A guaranteed right to access information is an essential, practical anti-corruption measure. Corruption undermines democracy. It creates a culture of impunity destroying the rule of law and creating a class of overlords who need secrecy to keep their dark deeds hidden in dark places.

Research shows however, that countries with access to information laws are also perceived to be the least corrupt. In 2002, of the ten countries scoring best in Transparency International’s annual Corruption Perceptions Index, no fewer than eight had effective legislation enabling the public to see government files. Of the ten countries

perceived to be the worst when it comes to corruption, not even one had a functioning access to information regime.

Handling Bureaucratic Channels

The right to information enables citizens and non-government organizations to peel back the layers of bureaucratic red tape and political sleight of hand and get to the ‘hard facts’. This knowledge, based on tangible evidence, gives people the confidence to take on powerful interests on the basis of sound information rather than simply theoretical suppositions and vague assumptions. Armed with information, even the most marginalized of citizens can take action in their own interests.

Bolstering Media Capacity

In robust democracies, the media acts as a watchdog, scrutinising the powerful and exposing mismanagement and corruption. It is also the foremost means of distributing information; where illiteracy is widespread, radio and television have become vital communication links. Unfortunately, this power to reach the masses has often been perceived as a threat by closed governments, which have carefully regulated private ownership of the press and attempted to curb the media’s ability to gather news, investigate and inform.

Where the media is unable to get reliable information held by governments and other powerful interests, it cannot fulfill its role to the best of its abilities. Journalists are left to depend on leaks and luck or to rely on press releases and voluntary disclosures provided by the very people they are seeking to investigate. Lack of access to information also leaves reporters open to government allegations that their stories are inaccurate and reliant on rumour and half-truths instead of facts.

Records Management

Records management issues must be addressed by a ROI law and improvements implemented prior to its introduction. One of the provisions of most ROI laws is that agencies must publish lists of the records series that they hold. Therefore series must be organized and captured within a record keeping system.

A nation-wide government records management policy is essential – not just to provide citizens with information but also to ensure that individual civil servants can be

held accountable for their actions. If there is no paper trail, chances of errant civil servants being identified and sanctioned are slight. Not only must the records exist, but they must also be readily accessible by those who need them. Records should not be simply kept in a capital city and members of the public are required to travel from rural areas if they want to consult them. Furthermore, documents of general interest should be prepared in a form understandable to the general public, especially such major documents as those of the Auditor-General to the Legislature. These can also be placed on the Internet at little or no cost for the benefit of those with access to it.

A sound records management policy will vest an agency with over-all responsibility for records management, usually in the form of a national archive. Such a central agency will provide guidance to departments on the creation, maintenance and disposal of file, and will itself serve as the ultimate custodian of documentation once it has ceased to be of use to a department. The national archive should conduct periodic records management audits of departments to ensure that the records management policy is being faithfully carried out.

The impact of the Technology

Improved access to information will not of itself enhance public participation in decision-making. Not everyone has access to technology, but all have a right to contribute to decision which affects them. This places a heavy burden on the mass media to include more investigation and interpretation of the actions of government than ever before. They will have access to information on behalf of the public at large, and it is a central feature of the media’s role for it to use this availability for the widest public benefit.

The Internet has greatly reduced the ability of governments to control what their people cannot access, and affords individuals and organizations unrivalled opportunities to carry information into the public arena. “Official secrets” banned in one country, perhaps more for political than for security or public interest reasons, can be quick to find their way onto the web. A court order suppressing a well-known person’s name in one country will quickly appear on a website outside it.

A country can, of course, continue to control people and web sites within its borders. China is among those who have tried to stop web sites from “leaking state secrets.”

The Internet, too, has struck a blow in favour of access to information and against the domination of news dissemination by a small group of media magnates. However, at the same time it has posed genuine problems for governments struggling to combat pornography and organized crime, which have been quick to seize on the opportunities the Internet presents for swift transmission of encrypted messages which are virtually untraceable, particularly if mobile telephones are used to establish links to service providers. We can, therefore, expect increasingly strenuous efforts by governments to enhance their ability to monitor transactions on the Internet.

The Commonwealth initiatives

Guaranteeing the right to access information offers the desperately sought after key that it is a **searching** for to deepen democracy, speed development and eradicate poverty. In 1991 Commonwealth recognised in the **seminal Harare Declaration** “the individual’s inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives”. More recently, at Column in 2002 the Commonwealth committed itself to “work to reduce the growing gap between rich and poor” and declared that “the benefits of globalisation must be shared more widely and its focus channeled for the elimination of poverty and human deprivation”. The right to information lays the foundation upon which to build good governance, transparency, accountability and participation, and to eliminate that scourge upon the poor – corruption. As such, it should be embraced as much by the hardheaded economist as by the high-minded reformer.

To its credit, the Commonwealth has recognized the fundamental importance of the right to access information on a number of occasions. As far back as 1980, the Commonwealth Law Ministers declared, “public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information.” Collective policy statements since then have encouraged member countries to “regard freedom of information as a legal and enforceable right.” The Commonwealth Secretariat has even prepared guidelines and a model law on the subject.

Open government is notoriously absent in the majority of Commonwealth member states, and citizens suffer as a result. Only 11 out of 54 Commonwealth countries viz. Australia, Belize, Canada, India, Jamaica, New Zealand, Pakistan, South Africa, Trinidad and Tobago, the United Kingdom and Zimbabwe – have passed

legislation guaranteeing the right of information. Of these, some contain serious deficiencies. Many Commonwealth countries actually have guarantees of the right to information enshrined in their constitutions (usually as part of the right to freedom of speech and expression, rather than as a separate right). However, only handfuls have actually practically implemented the constitutional guarantee of freedom of information through enabling legislation.

Indian Scene

As far as India is concerned, the freedom of information is by necessary implication included in the freedom of speech and expression guaranteed under Article 19(1) (a) of the constitution, which provides that all citizens shall have right to freedom of speech and expression. The only limitation recognized on the above fundamental right is what is found in Article 19(2) which provides that nothing is sub-clause (a) clause 1 of articles 19 shall affect the operation of any existing law, or prevent the state from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause, in the interests of the sovereignty and the integrity of India, and security of the State, friendly relations with the foreign States, Public order etc. The official Secrets Act, 1923, which follows the British statute of 1911, is also to protect national security. But its scope is so wide that anything and everything can come under its ambit.

The most repugnant clause concerns “Wrongful communication of Information and penalizes any one who possesses information” which is likely to assist directly or indirectly on enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India”. The act was strengthened in 1967, with only Shri M.L. Sondhi, MP protesting that administrative change was long overdue. Janata Government committed themselves to reform but its working committee in 1975-77 denied that there was a need for any change. The 1948 Press Law Committee and the First Press Commission Report (1954) were convinced that the official secrets legislation was being used in reasonable manners. However, second Press Commission (1982) was more forthright demanding the drastic amendment of the catchall provision and a proper freedom of information law and policy. But it was S.N. Jain’s report for the Press Council (1981) which stimulated rethinking, arguing that many governmental demands areas a bogey, that there was a need for independent assessment of prosecutorial discretion and freely available information except in certain expected areas.

Mr. V.P. Singh, the then Prime Minister in the two day meeting of state Information Secretaries committed on 18 April, 1990 that the “National Front Government will suitably amend the official Secrets Act so that the people have increased access to information”. This he said was in tune with Government firm commitment for “transparent functioning”. States as well as Centre could take steps to see that “unnecessary blockage of information” are avoided. For this there is a need to promote closer cooperation between the center and states in the field of information and media.

Later it was the need to enact a law on right to information was recognized unanimously by the Chief Ministers Conference on “Effective and Responsive Government” held on 24th May 1997 at New Delhi. In its 38th Report relating to Demands for Grants of the Ministry of Personnel, Public Grievances and Pension, the Parliamentary Standing Committee on Home Affairs recommended that the Government should take measures for enactment of such legislation.

In order to make the Government more transparent, and accountable to the public, the Government of India appointed a Working Group on Right to Information and Promotion of Open and Transparent Government under the Chairmanship of Shri H.D./ Shourie. The Working Group was asked to examine the feasibility and need for either full-fledged Right to Information Act or its introduction in a phased manner to meet the needs of open and responsive Governance and also to examine the frame work of rules with reference to the Civil Service (Conduct) Rules and Manual of Office Procedure. The said Working Group submitted its report in May 1997 along with a draft Freedom of Information Bill to the Government. The Working Group also recommended suitable amendments to the Civil Service (Conduct) Rules and the Manual of Departmental Security instructions with a view to bring them in harmony with the proposed Bill.

The draft Bill submitted by the Working Group was subsequently deliberated by the Group of Ministers constituted by the Central Government to ensure that free flow of information was available to the public, while, inter alia, protecting the national interest, sovereignty and integrity of India, and friendly relations with foreign States.

The proposed Bill is in accord with both articles 19 of the Constitution as well as article 19 of the Universal Declaration of Human Rights.

In our present democratic frame work, free flow of information for the citizens and non-Government institutions suffers from several bottlenecks including the existing

legal frame work, lack of infrastructure at the grass root levels and an attitude of secrecy within the Civil Service as a result of the old frame work of rules. The Government proposes to deal with all these aspects in a phased manner so that the Freedom of Information Act became a reality consistent with the objective of having a stable, honest, transparent and efficient Government.

The proposed Bill will enable the citizens to have an access to information on a statutory basis. With a view to further this objective, clause 3 of the proposed Bill specifies that subject to the provisions of this Act, every citizen shall have right to freedom of information. Obligation is cast upon every public authority under clause 4 to provide information and to maintain all records consistent with its operational requirements duly catalogued, indexed and published at such intervals as may be prescribed by the appropriate Government or the competent authority.

The Bill seeks to achieve the above objects.

Role of Libraries

First of all, we have to discuss the ethical aspects of the library profession connected with the intellectual freedom and the right to information for understanding the primary reason for the existence of libraries. Libraries, especially public libraries, as information and cultural centers have important responsibilities in safeguarding the public’s right to information.

When we look at the distribution of the public libraries in the world, it can be seen that there is an inequality and unbalance. The ratio of public library use is 0.2% in Uganda but 57.6% in the United Kingdom. While 1.145.611 people use only one public library in Uganda, there is a public library for every 2.851 person in Finland. According to the collections of public libraries, in the United Kingdom, 2.29 books are per person but one book per 30000 persons in Uganda.

It is clearly seen that there is a strong relationship between the level of development and the use of public libraries. For the use of public libraries in a country there must be enough public libraries and educational facilities. Development is the foundation, which increase the public library use and consequently the right to information. Library services, and of course the right to information can be thought as a part of the national information policy. However, most of the least developed and developing countries generally do not

have national information policies. Lack of a national information policy in a country affects library services and the right to information negatively.

Conclusion and Recommendations

Human development can be described as a comprehensive economical, social, cultural and political process, which aims at the constant improvement of the well being of the entire population and of all individuals. The right to information as a human right is a result and/or product of the human development. The phrase of the right to information for a person who is hungry, who does not have enough money to live; who is not educated and who does not have freedom, does not have any meaning in either. In the same way a country, which has the problem of hunger, education, economic and political freedom cannot give the priority to the right to information. Of course, information is a power, which plays important role in solving these problems. But governments and individuals generally are not aware of this power, and say: first comes the right to eat, the right to work, the right to have a shelter, the right to have social security, in short the right to live and then the right to information.

There should be proper **public records policy**, for both past and contemporary records, like the Public Record Act, 1958 of UK whereby information contained in government documents is kept duly indexed and is made available for public inspection.

Government should announce a “**Publication Policy**”. All the documents being published by the government as well as published in the past should be organised and made accessible to public. Government should make all its background papers, Annual Reports, Legal documents, Committee and Commission Reports and other documents available to its people.

Government accountability to Parliament should be assured by making all possible information available to the Parliament. An **Information Committee** of the Parliament should be established which can examine and report the Governments response to various requests for information.

National Referral Centre of Government Publication should be established, some where in the central part of India, where a copy each of the publication brought out by Central, state and Local Governments is kept for reference and archival use.

Number of **depository libraries** of Government Publications may be established in various parts of the country, where copies of the select Government Publication may be kept for reference use.

All the publications published by the Government should be brought to the notice of public through proper advertisements, catalogues, bulletins, etc.

Aggressive marketing techniques should be adopted to make available government information to its people.

If we are serious about our information needs a basic rethink is called for as many things as are lacking for want of definition and purpose. **A public records policy, an increase in Parliament acceptability to extract information, a sensible revision of official secrets Act, proper publication policy** and above all proper implementation of freedom of information Act are necessary to make functioning of Government “**transparent**” to the public eye.