



Right to Information

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ABSTRACT: According to available literature on administrative behaviour in public administration, one of the essential elements of public accountability and control in modern democratic societies is the aspect of right to information. The concept of right to information is used to refer to the freedom of people to have access to government information which means that the citizens and non-governmental organizations should enjoy a reasonably free access to all files and documents pertaining to the governmental decisions, operations, and performance. In other words, it means openness and transparency in the functioning of government. Thus, the principle of openness and transparency looks antithetical to the factor of secrecy in public administration. As rightly observed by Paras Kuhad, the factor of secrecy as a componental part of executive privilege or transparency through right to information which of the two be adopted as a paradigm for governance. Both factors offer public interest as their rationale but for entirely different explanations. The reasonable question that arises is:

Can the two factors be harmonized to avoid apparent contradictory explanations and interpretations?

It is significant to note that in 1992, the World Bank released a document entitled "Governance and Development", which document has mentioned seven important elements of good governance one of them being right to information and transparency. Therefore, the topical issue of right to information forms the subject of this article.

Keywords: right to information, research, freedom of people, governmental operations, decisions, and good performance, openness and transparency, and paradigm for governance.

I. INTRODUCTION

In order to understand and to be able to compare and to articulate issues relative to right to information with reference to Africa as a continent of developing countries, research demands that we need to differentiate approaches and methods in order to educate and encourage citizens to the constitutional right of information as a means of freedom of people to have access to governmental information. This clearly implies that people and the organizations should enjoy a reasonably free access to all files and documents pertaining to the governmental policy decisions, operations and performance.

II. THE PURPOSE OF THE ARTICLE

From a research viewpoint the purpose of this article is to articulate the rationale of the constitutional right to information which contains two distinct principles namely, a) openness and transparency and b) secrecy as a componental part of executive privilege in modern public administration..

II. RIGHT TO INFORMATION

3.1 Meanings

According to available literature, right to information can be defined in the following manner.

Firstly, the concept of right to information means the freedom of people to have access to government information. It implies that the citizens and non-governmental organizations should enjoy a reasonably free access to all files and documents pertaining to the governmental decisions, operations, and performance. In other words, it means openness and transparency in the functioning of government. Thus, it is antithetical to secrecy in public administration.

Secondly, as rightly observed by Paras Kuhad, “secrecy as a component of executive privilege or transparency through right to information which of the two be adopted as a paradigm for governance. Both offer public interest as their rationale. Which in fact serves public interest and can they be harmonized?”

Thirdly, it is significant to note that in 1992, the World Bank released a document entitled “Governance and Development”. The document has mentioned seven aspects or elements of governance- one of them being transparency and information.

Fourthly, a constructed definition is necessary. On the basis of this kind of definition, explanation and description, it appears most appropriate to re-define the concept of right to information to mean: the freedom of permanent responsible citizens and registered or well known non-governmental organizations to have a reasonably free access to all files and documents pertaining to the governmental decisions, operations and performance with a clear view to enhancing the principles of openness and transparency, on the one hand, and, on the other hand, respecting the factor of confidentiality as a component of executive privilege in modern democratic government[S. B. M. Marume:1988].

Fifthly, key terms emerging from the above suggested definition are:

- a. freedom of permanent responsible citizens;
- b. registered or well known non-governmental organizations;
- c. reasonably free access;
- d. all files and documents;
- e. governmental decisions, operations and performance;
- f. enhancing principle of openness and transparency;
- g. respecting the factor of confidentiality as a necessary componential part of executive privilege; and
- h. modern government and administration.

Sixthly, there is an urgent need to reconcile the principle of openness and transparency, on the one hand, and, on the other hand, the factor of maintenance of confidentiality as a necessary componential part of executive privilege in modern government and administration.

3.2 Rationale

The constitutional right to information is necessary and important due to a number of important reasons as stated below;

1. It makes administration more accountable to people.
2. It reduces the gap between administration and people.
3. It makes people aware of administrative decision making.
4. It facilitates better delivery of goods and services to people by public servants including actual central government servants, officials of provincial and metropolitan, and local authorities.
5. It facilitates **intelligent and constructive criticism** of public administration.
6. It increases people’s participation in the administration of their country.
7. It promotes **public interest by discouraging arbitrariness** in administrative decision making.
8. It reduces the scope for corruption in public administration through reporting and exposition.
9. It upholds the democratic ideology by promoting openness and transparency in the running of public affairs.
10. It makes administration more responsive to the requirements of the citizens.
11. It reduces the chance of misuse and abuse of authority by the public servants.

3.3. Eminent administrative thinkers

- a) A careful literature review reveals that a number of statements made by eminent American and British administrative thinkers and practitioners highlight the importance of right to information.
- b) Relevant eminent administrative thinkers and practitioners include the following scholars and their respective contributions:

Woodrow Wilson: “I for one have the conviction that government ought to be all outside and not inside. I for my part believe that there ought to be no place where everything can be done that everyone does not know about. Everyone knows corruption thrives in secret places and avoids public places”

James Madison: “People who mean to be their governors must arm themselves with power which knowledge gives. A popular government without popular information or the means of acquiring it is but a prologue to a farce or tragedy or perhaps both”

Lord Action: “Nothing is safe that does not show that it can bear a discussion on publicity”

British Franks Committee (1972): “ A government which pursues secret aims, or which operates in greater secrecy than the effective conduct of its proper functions require, or which turns information services into propaganda agencies, will lose the trust of the people. It will be countered by ill-informed and destructive criticism

Justice Douglas of USA: “Secrecy in government is fundamentally antidemocratic perpetuating bureaucratic errors. Open discussion based on full information and debate on public issues are vital to our national health

c) Critical observations:

- i. To sum up, in the words of **Paras Kuhad**, “The secrecy system is less for safeguarding public or national interest and more for safeguarding government’s reputation, burying its mistakes, maximizing its power, shielding its corrupt practices, and manipulating the citizens.”
- ii. Openness and transparency constitute an important principle for democratic public administration.

3.4 Global scenario on right to information

Reference is made to a number of countries observing the constitutional right to information.

- **Sweden** was the first country in the world to introduce the right to information. It had conferred this right on its citizens through a direct constitutional provision, way back in 1766. In this country, **access to government documents is a right and non-access an exception.**
- **Sweden** was followed by **other Scandinavian countries** but very lately. Thus, **Finland** enacted the freedom of information legislation in 1951. Both **Denmark** and **Norway** have made the similar legislations in the same year (1970) in the democratization of the principle of right to information.
- **The United States of America (USA)** has granted the right to information to its citizens by the Freedom of Information Act (1966). This Act was amended in 1974 for **two purposes:**
 - i. to limit the exemptions (the documents which the administration may keep in secret); and
 - ii. to provide for penalties for withholding the information or acting in an arbitrary manner.
- **France, Netherlands** and **Austria** have made the similar legislations in the 1970s.
- **Canada, Australia** and **New Zealand** have done it in 1982.
- **Thailand** and **Ireland** have made the law in the year (1997).
- **Bulgaria** enacted it in 2000.
- In **South Africa**, the right to information is guaranteed by the constitution itself. This right of the citizens has been further reinforced by enacting legislation in 2000 by the majority rule government.
- In **Great Britain**, the Fulton Committee (1966-68) found too much of secrecy in public administration. Hence, it recommended an enquiry into the Official Secrets Act, 1911. In 1972, the Franks Committee also made the similar recommendation. Hence, in 1988, the Act was amended to narrow the scope of official information falling within its ambit. Finally, the UK Freedom of Information Act came into force on January 1, 2005.

3.5 Position in India

The Constitution of India has no direct expressly conferring right to information to the citizens. However, the Supreme Court has been stating since 1975 that the right to information is an intrinsic part of the following **two fundamental rights guaranteed by the Constitution of India:**

- i. Right to freedom for speech and expression (Article 19).
- ii. Right to life and personal liberty (Article 21).

In India, however, various laws and rules restrict the disclosure of official information to the people and thus favors secrecy in administration:

- i. Official Secrets Act, 1923.
- ii. Indian Evidence Act, 1872.
- iii. Commission of Enquiry Act, 1952.
- iv. All-Indian Services (Conduct) Rules, 1954.
- v. Central Civil Services (Conduct) Rules, 1955.
- vi. Railway Services (Conduct) Rules, 1956.

The Fifth Pay Commission (1994-1997) recommended for the abolition of the Official Secrets Act and introduction of Right to Information Act.

3.6 Information Act of India

In 2005, the Parliament has enacted new legislation—the Right to Information Act (2005). This new Act replaces the old Freedom of Information Act, 2002, which was unnotified and hence, not operational.

The new legislation confers on all citizens the right of access to the information and, correspondingly, makes the dissemination of such information on all public authorities. It aims at promoting transparency and accountability in the working of every public authority. It has the widest possible reach covering Central government, state governments, panchayati raj institutions, local bodies and recipients of government grants.

The various Indian provisions are mentioned below:

1. It provides for the appointment of an information officer in each department to provide information to the public on request.
2. It fixes a 30- day deadline for providing information; deadline is 48 hours if information concerns life or liberty of a person.
3. Information will be free for people below poverty line. For others, fee will be reasonable.
4. The Act imposes obligation on public agencies to disclose the information suo-motu to reduce requests for information.
5. Government bodies have to publish details of staff payments and budgets.
6. It provides for the establishment of a Central Information Commission and State Information commissions to implement the provisions of the Act. They will be independent high-level bodies to act as appellate authorities and vested with the powers of a civil court.
7. The President will appoint a Chief Information Commissioner and governors of state will appoint state information commissioners. Their term will be five years.
8. The Chief Information Commissioner (on par with the status currently accorded to the chief election commissioner) will be selected by a panel comprising the prime minister, leader of the Opposition in the Lok Sabha and a minister nominated by the prime minister.
9. The Chief Information Commissioner and State Information Commissioner will publish an annual report on the implementation of the Act. These reports will be tabled before Parliament and state legislature.
10. The Act overrides the Official Secrets Act, 1923. The information commission can allow access to the information if public interest outweighs harm to protected persons.
11. It carries strict penalties for failing to provide information or affecting its flow. The erring officials will be subject to departmental proceedings.
12. The information commission shall fine an official Rs 250 per day (subject to a maximum of Rs 25,000) if information is delayed without reasonable cause beyond the stipulated 30 days.
13. The procedure of appeal in case the information is denied is like this- first appeal to superior of public information officer, second appeal to information commission, third appeal to a high court.
14. Its purview does not extend to intelligence and organization like Intelligence Bureau, RAW, BSF, CISF, NSG and so on. However, information pertaining to allegations of corruption or violation of human rights by these organizations will not be excluded.
15. All categories of exempted information to be disclosed after 20 years except cabinet deliberations information that affects **security, strategic, scientific or economic interests, relations with foreign states or leads to incitement of offence.**

3.7. Information Acts

Even before the central legislation was passed, some of the Indian states have introduced their own right to information legislation. The first amongst these was Tamil Nadu. The states and the respective years of the enactment of legislations are mentioned below in Table 1.2.

Table 1.2 Right to Information Acts in Indian States

	States	Year of Enactment
1.	Tamil Nadu	1997
2.	Goa	1997
3.	Rajasthan	2000
4.	Karnataka	2000
5.	Delhi	2001
6.	Maharashtra	2002
7.	Assam	2002
8.	Madhya Pradesh	2003
9.	Jammu & Kashmir	2004

Maharashtra repealed its earlier Right to Information Act of 2000 to bring out an improved one in 2002.

In Rajasthan the Right to Information movement was initiated by Aruna Roy in the early 1990s. The Mazdoor Kisan Shakti Sangathan (MKSS) succeeded through struggle and agitation, in accessing and using information to put an end to local corruption and exploitation.

3.8. Zimbabwe

Zimbabwe has in terms of section 62 of the Constitution of Zimbabwe Amendment [N0.20 of 2013] Act, 2013, has tremendously improved the situation relative to access to information to permanent citizens detailed as follows:

- a. every Zimbabwean citizen or permanent resident, including juristic persons and the Zimbabwean media, has the right of access to any information held by the State or by any institution or agency of government at every level, in so far as the information is required in the interest of public accountability.
- b. Every person, including the Zimbabwean media, has the right of access to any information held by any person, including the State, in so far as the information is required for the exercise or protection of a right.
- c. Every person has a right to the correction of information, or the deletion of untrue, erroneous or misleading information, which is held by the State or any institution or agency of the government at any level, and which relates to that person.
- d. Legislation must be enacted to give effect to this right, but may restrict access to information in the interests of defense, public security or professional confidentiality, to the extent that the restriction is fair, reasonable, necessary and justifiable in a democratic society based on openness, justice, human dignity equality and freedom.

3.9. Observations

According to literature review on right to information, it is gratifying to note that USA, Great Britain, France, Netherlands, Canada, Australia and New Zealand have led 'world in' the promotion of right to information. However, India, South Africa and Zimbabwe from amongst the developing Asian and African countries are taking significant steps to promote the constitutional right to information. But India is far ahead of most the developing countries in observing and implementing the principle of right to information.

Conclusion

In concluding the discussion on the constitutional right to information, current research studies indicate that in modern public administration mostly in democratic societies, the concepts of public accountability and control do in fact include the element of the right to information and two apparently contradictory principles of openness and transparency, on the one hand, and, on the other hand, secrecy as a componental part of executive privilege. It became significant to note that in 1992 the World Bank released an important document on the universal concepts of good governance and development enunciating seven elements which have become a testament for good governance and development most particularly for developing nations. However, India has become a leading nation in the development and democratic promotion of the principle of right to information and African countries should have reasons to emulate the Indian experiences although South Africa and Zimbabwe from the African continent are making significant improvements in the advancement of the constitutional freedom of permanent citizens and non-governmental organisations to have a reasonably free access to information relative to governmental decisions, operations and performance .

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