

LAW AND GOVERNANCE IN INDIAN DEMOCRACY

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Abstract

The true test of a democratic government lies in how well it governs its subjects. India being the world's largest democracy has to pass the test by ensuring good governance. Transparency is the foundation on which the concept of good governance rests and right to information is the greatest weapon in the armory of public to check abuse of power by the state. Indian democracy is facing tumultuous times in the wake of heavy corruption charges in every department. Right to Information Act is one means of checking the vice of corruption as it empowers the public with the power of receiving information about governance. The implementation of the Act however, has been a problematic area of concern. The role of an independent judiciary becomes highly relevant in such a scenario. The paper seeks to throw light on the law and governance in Indian democracy in the light of the Right to Information Act.

Keywords : Law and governance, Fundamentals Rights, Democracy

1.0 Introduction

What Abraham Lincoln famously defined as “*Government of the people, by the people, for the people,*” **democracy**, describes a scheme of life for various eminent Indian thinkers. For Dr. Ambedkar, democracy meant much more than democratic government. It was a way of life: “*Democracy is not merely a form of government. It is primarily a mode of associated living, of conjoint communicated experience. It is essentially an attitude of respect and reverence towards fellowmen.*” The Constitution of India came into force on 26 January, 1950 and ushered the age of democracy. India became a democratic republic charged with the spirit of justice, liberty, equality and fraternity. The Preamble is reflective of the high constitutional ideals which the constitutional makers aspired to achieve.

Although we have been guaranteed fundamental rights in theory but we seldom enjoy them in practice. Real democracy comes into existence only when there is awakening of the masses who take part in the economic and political life of the country. There is inequality in every sphere- social, economic and political. Illiteracy is the main cause of inequality. Illiterate masses get easily lured by money during elections and the persons contesting elections also sometimes have criminal records against them. As Gandhiji pointed out in a post written in Young India on May 7, 1931 “*There is no human institution but has its dangers. The greater the institution the greater the chances of abuse. Democracy is a great institution and therefore it is liable to be greatly abused. The remedy, therefore, is not avoidance of democracy but reduction of possibility of abuse to a minimum.*” India today is facing a great challenge to prevent the abuse of democratic institutions in the realm of law and governance.

2.0 Law And Governance

“*When men are pure, laws are useless; when men are corrupt, laws are broken.*”

Benjamin Disraeli (1804 - 1881)

Law is a tool of social change. It has been a tool for churning the wheels of India's growth, and evolution. The essence of our commitment to the nation stands encapsulated in the Preamble to which one reverts again and again and Governance is about the institutions and procedures through which political and administrative decisions are taken and implemented. The anti-rape and anti-corruption protests have shown that the government responds to popular opinion only when public patience has been stretched to the limit. In their different ways both show the rule of law is not working properly. So questions about accountable governance ariseⁱ. India is the world's largest democracy. We, as a nation, achieved freedom after struggle, after lot of blood-shed and sacrifices. The leaders of that time wanted to ensure that such hard earned freedom is not misused. India is considered a well-established democracy. Looking back, it has been a momentous journey since India gained Independence at the stroke of midnight hour on 15th August, 1947 and adoption of the Constitution on January 26, 1950. Yet, the Indian democracy has not fructified. Its constitutional goals and democratic aspirations remain unrealized.

Some of us may argue that life does not treat everyone equally and even in the same family each member has a different course of life. However, the State and its systems are the creation of man and not of fate and the state has the responsibility to treat all its citizens equally. According to the constitutional law expert **John P. Frank**, "*Under no circumstances should the State impose additional inequalities; it should be required to deal evenly and equally with all of its people.*" In a democratic state, no one is above the law. To reiterate Lincoln, democracy is *for* the people, *by* the people and *of* the people. Laws in a democratic state are created in the name of the people by the elected representatives of the people for the people. They are not supposed to be imposed upon them. There is a sound presumption that citizens of a democracy submit to the laws because they know that they are submitting to themselves, however indirectly, as makers of laws. Once the laws have been made and the people obey them, both law and democracy prevails.

It is not that India has not achieved anything in its 60 years or that it has been a failure on the face of it. India is a democracy and not an authoritarian state running at the whims of political elite, history has proved it time and again. The voting out of congress from power post emergency highlighted the power vested in the hands of the public. The real test of democracy is not only to prevent atrocities but also in handling the aftermath of atrocities.

Atrocities in India are not forgotten, they always come back to bite their perpetrators. There is no public misinformation campaign. No changing of textbooks. The Anti-Sikh riot protests in 1984 still return to plague the Congress. Advani is still tainted with the demolition of the Babri Masjid and Narendra Modi will never be able to free himself from the shadow of the 2002 Gujarat riots.

3.0 Right to Information Act

The Right to Information Act 2005ⁱⁱ provides effective access to information for citizens of India, which is under the control of the public authorities. It promotes transparency and accountability in the working of every public authority. It extends to the whole of India except the state of Jammu and Kashmir. In order to ensure greater and more effective access to information, it was decided to repeal the Freedom of Information Act, 2002 and enact another law for providing an effective framework. To achieve this object, the Right to Information Bill was introduced in the Parliament and was passed by the Lok Sabha on 11th May, 2005 and by the Rajya Sabha on 12th May, 2005 and it received the assent on 15th June, 2005.

Right to information Act has intensified the process of paradigm shift from state centric to citizen centric model of development in India. It recognizes seeking information as a fundamental right to promote transparent, accountable, responsible, participatory and decentralized democracy. With the introduction of the Right to Information Act – 2005 the Colonial Acts such as the official Secrets Act, Indian Evidence Act and the Civil Service Code of Conduct Rules, which contain provisions that restrict the Fundamental Right to Information as ensured to the citizens in the Constitution have become irrelevant.

For more than two decades, the Supreme Court of India has recognized the right to information as a constitutionally protected fundamental right, established under the Article 19 (right to freedom of speech and expression) and article 21 (right to life) of the Constitution. The court has recognized the right to access information from government departments is fundamental to democracy.ⁱⁱⁱ Therefore, Justice K. K. Mathew of Supreme Court of India said that ‘*in a government.... where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people.... have a right to know every public act, everything that is done in a public way, by their public functionaries.... The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.*’^{iv}

The Supreme Court of India in *Secretary, Ministry of Information and Broadcasting, Government of India & Ors. v. Cricket Association of Bengal & Anr.*^v - held as under

“The democracy cannot exist unless all citizens have a right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all sides of the issues, in respect of which they are called upon to express their views. One-sided information, disinformation, misinformation and noninformation, all equally create an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchy organizations. This is particularly so in a country like ours where about 65 per cent of the population is illiterate and hardly 1 ½ per cent of the population has an access to the print media which is not subject to pre-censorship.”

The RTI Act has worked its way in empowering the public in India by giving them the weapon of information. There are innumerable inspiring stories about the RTI Act, reinforcing the belief that power in a democracy is concentrated in the hands of the people. For instance, in 2006 a 70-year old [rickshawpuller from Bihar](#) filed an RTI application with the help of a local NGO. He wanted information connected to his application under the Indira Awas Yojana (a national housing scheme). The block development officer, on receiving his application, handed him a cheque of Rs. 15000, his first instalment under the Indira Awas Yojana. In 2007, an [under trial in Gujarat](#) had filed an application under the RTI Act to be allowed to inspect files relating to vigilance enquiries against him in a financial misappropriation case. The said files were not presented by the bank where he was an employee to the Gujarat CID Crime Branch.

There are many such instances, where the RTI has been used by the citizens especially when the authorities try to withhold information. In times where the law and order situation in the country has been delicate, the citizens have used the RTI to make sure that the authorities are not overstepping their mandate hiding behind the shield of the situation. For instance, the power of people was at display when they demanded information about the public prosecutors (who had amassed assets disproportionate to their income) in the Gujarat Godhra riots case. Similarly, the Act has also been used during the conflict in the north-east and also Maoist affected areas. The RTI Act has removed the need for a common man to approach an NGO or any other group to represent him by empowering him to approach the concerned authorities in his individual capacity.

As much as the Act has empowered the citizen and given them a “weapon” to keep the public officers in check, not everything about it is foolproof. The Act has flaws – some of them in its implementation, and some in its interpretations. One of the latest blows to the Act has come in the form of a Supreme Court judgment in the case *Namita Sharma v. Union of India*.^{vi} In this case, the constitutional validity of provisions dealing with the eligibility criteria for Information Commissioners at both the Central and State level, was challenged. The Act provides that members of the State and Central Information Commission should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. It was the contention of the petitioner that the Information Commission performs duties of judicial and quasi-judicial nature; however, the qualifications prescribed for the same are vague, general and *ultra vires* the Constitution.

The Supreme Court upheld the validity of the sections but ruled that the Information Commissions are “quasi-judicial authorities” or “tribunals” performing judicial functions and that they will have to work in a bench of two members, one judicial member and the other a qualified person from a specific field. The judicial members will be appointed in consultation with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be.

There are also some specific problems with the implementation of Acts in certain states. For instance, Chattisgarh has increased the fee for an RTI application to Rs. 500, placing it beyond the reach for a lot of people. This is despite the fact that the Act stipulates a nominal fee.

Yet another bone of contention with respect to the Act has been the (non) application of the Act to public-private-partnership (PPP) projects, which rule the roost as far as infrastructure projects in the country are concerned. As per section 2(h) of the RTI Act, in case of non-governmental organisations, only those that are “financed, directly or indirectly, by funds provided by the government” fall under the purview of the RTI Act. The Central Information Commission has made repeated pleas to the government to include PPP projects under the purview of RTI Act as public money and interest are involved in such projects. However, Prime Minister Manmohan Singh, at the annual convention of information commissioners, said that a blanket extension of the RTI Act to such PPP projects may discourage private enterprises to enter into partnerships with the public sector. On the other hand, a blanket exclusion may harm the cause of accountability of public officials, thus not taking a clear stand on the same. However, RTI activists have criticised this statement, arguing that since public interest is at stake in infrastructure projects, these projects should be under the purview of the RTI Act.

4.0 AN INDEPENDENT JUDICIARY AND PROTECTOR OF DEMOCRACY

“Judiciary today is viability of the system. Citizens approach the Court only when there is confidence in the system and faith in the wisdom of the Judges. This is where the Public Trust doctrine comes in. The Institution stands on public trust.”^{vii}

The third organ of the state namely Judiciary has been assigned the work of seeing that executives observe the rule of law while discharging their duties. The Supreme Court of India has proved to be the upholder of liberty and democracy with the active use of the concepts of PIL and the “Basic Structure” doctrine. Only in a democratic country like India, can a private NGO like NAZ file a case against the government challenging the constitutionality for the criminalization of homosexuality (section 377 Indian Penal Code).^{viii} It is a landmark judgment by the high court of Delhi and it needs to be realized that achieving such standards of liberal adjudication and interpretation of rights is a feat in itself. Sixty years is a very short time for a country of the size and diversity as India. America has been a democracy for around 200 years now, and it was only 30 years ago that discrimination against blacks was removed.

The honorable Supreme Court in the case of *KuldeepNayarv Union of India*^{ix} held that the edifice of democracy in our country rests on a system of free and fair elections. In a recent interview, former chief election commissioner, J.M Lyngdoh, has aptly said that what we presently have in India is universal adult franchise and not real democracy. *SC Advocates-on-Record Association v Union Of India*,^x it was held that it is a mandatory duty of the president of India, in whom the power to appoint judges is vested by article 216, to appoint the proper number of judges which is required to discharge the obligation to ensure speedy justice. This implies that even though the court itself cannot fix the number to be appointed, it may direct the president to make a periodical review of the judges in accordance with the recommendations of the chief justice of India. Hence, it is the burden duty of the court and the prosecution to prevent unreasonable delay in order to uphold the true spirit of democracy.

5.0 Criticism

A government is not democratic simply because it is voted into power by the majority. It is not democratic where it is required to vote only for one party. The test is whether it gives democratic rights to its subjects, if it allows freedom of thought, speech and association to its opponents. If a party has no rivals outside it and no dissensions within it, even if it is voted by the electorate, it is undemocratic. Passing more laws and establishing more institutions is causing what appears to be an organized confusion in the legal system of the country. Plethora of laws and increasing number of Tribunals, Rights Commissions and Forums are only increasing the role and size of the insensitive bureaucracy in the system of governance. They are creating and perpetuating an unjust society that the people now accept as a fact to live with. There is need for a fundamental re-examination of the approaches that have been adopted to enforce the rule of law and critically examine the effectiveness of Indian democracy.

The Indian judiciary enjoys good reputation both nationally and internationally for its progressive interpretation of various provisions of the Constitution that has helped promote the cause of social justice. Judicial interpretations have expanded the scope of our fundamental rights as enshrined in the Constitution. Higher judiciary has also helped overcome restrictions on rules relating to *locus standi* and created new avenues for seeking remedies for violation of human rights. It has allowed public interest litigation petitions and genuinely intervened in the areas of child labour, bonded labour, clean and healthy environment, and women's rights, to cite a few instances of judicial intervention. Such judicial interventions on behalf of human rights have been successful in upholding the rule of law. Six decades of governance should have been long enough for a country like India with a very long tradition of *Satyamev Jayate* to develop institutions whose working would reflect both inherited and acquired values of enlightenment and rational social and political conduct. All that our institutions have done is to arise high social expectations with little chances of their fulfillment. The abuse of power has, in fact, become a universal phenomenon

But, in view of the vast and unmitigated violations of justice, these judicial achievements simply pale into insignificance. The scale of prevailing inequalities and violations of human and fundamental rights have made the Indian democratic State look like a despotic dispensation. Enforcing the rule of law itself remains a fundamental challenge; leave aside other innumerable crises of the Indian legal system. We do have the laws, but no effective implementation of these laws; we have a vast body of rules that are followed more in their violation than in their observation.

The behavior of those who govern is highly reprehensible. They have no respect for the laws of the land. Citizens too have ceased to care for the laws and be law-abiding. This lack of respect for laws by the government and the people at large is becoming a most serious threat to Indian democracy. The Indian people are fast losing trust and faith in the democratic institutions.

A report of the National Commission to Review the Working of the Constitution in India noted: "The paradox of India, however, is that in spite of a vigilant press and public opinion, the level of corruption is exceptionally high. This may be attributed to the utter insensitivity, lack of shame and the absence of any sense of public morality among the bribe-takers. Indeed, they wear their badge of corruption and shamelessness with equal élan and brazenness." Democracy and the rule of law are inextricably connected. Urgent steps are needed to establish a rule of law society in India or else our credibility as a democracy will get destroyed.

Mahatma Gandhi in his newspaper **Harijan** wrote on democracy that: "*Evolution of democracy is not possible if we are not prepared to hear the other side. We shut the door of reason when we refuse to listen to our opponents or, having listened, make fun of them. If tolerance becomes a habit, we do not run the risk of missing the truth.*"

Dr. B.R Ambedkar, the architect of our constitution delivered a speech at the constituent assembly on **25 November 1949**: "*On 26 January 1950, India will be independent country. What will happen to her independence? Will she maintain her independence or will she lose it again? This is first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost the independence which she had. Will she lose it the second time? It is this thought that makes me most anxious for the future. What perturbs me greatly is the fact that not only India has once before lost her independence, but lost it by the infidelity and treachery of some of her own people. It was jaichand who invited Mohammad Ghori to invade India. When shivaji was fighting for the liberation of Hindus, the other Maratha nobleman and the Rajput kings were fighting battles on the side of Mughal Emperors*"

This speech was delivered soon after India became independent, that is to say, more than sixty years ago. But its essence is still as fresh as a newly bloomed flower. Dr. Ambedkar foresaw in his sagacity that lack of discipline and restraint would lead the country to chaos and disorder. So, will history repeat itself in the form of political leaders massacring the concept of democracy in India-only time can answer this question because in real democracy, people learn not from books, nor from government who are in name and in reality their servants. Hard experience is the most efficient teacher in democracy. The Indian public wants anti-rape laws and far-reaching economic reform to be implemented. And corruption - which is a serious dysfunction of the rule of law - has to be checked.

6.0 CONCLUSION

“Power corrupts and absolute power corrupts absolutely” goes the old adage. In a democracy, those who administer the criminal justice system hold great power and the potential for its abuse is immense. The State power is exercised to imprison, seize property, torture, exile and execute individuals without legal justification—and even without any formal charges being brought. A democratic society that tolerates such abuses faces the peril of curtailing its democracy and even losing it. No State can exist without having the power to maintain order and punish criminal acts. Democratic States too must have the power to punish the wrong-doers but the rules and procedures by which the State enforces its laws must be explicit, transparent and open to the public view. Yet, no democratic State is free from secret, arbitrary and manipulative power and political trickery. Ideally speaking, India being one of the biggest countries has to show a path to the world about the true form of democracy in actual practice. The persons visiting India from other countries may find much diversity and get the impression that India instead of being a single nation seems an aggregate of nations, each one of which is different from the other in terms of climate, food habits, languages etc. Now time has come for the younger generation, to come forward to safeguard the spirit of democracy in our country. It is not necessary that one should enter politics in order to fulfill his obligation. What is really needed to make democracy function is information about law and governance. Be aware of your rights and endeavor to enlighten others also about theirs. This is the means of achieving liberty with growth and development.

To reiterate Justice Swatanter Kumar, J. in *Namita Sharma*

“...Ours is a constitutional democracy and it is axiomatic that citizens have the right to know about the affairs of the Government which, having been elected by them, seeks to formulate some policies of governance aimed at their welfare... The Right to Information has been stated to be one of the important facets of proper governance... public interest is better served by effective application of the right to information...”

7.0 References

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ⁱⁱ The Right to Information Act, 2005 (22 of 2005).

ⁱⁱⁱ Slough P and Rodrigues, C (2005) Indian's Right To Information Movement Makes A Breakthrough, Open Government: A Journal on Freedom of Information. Volume 1, Issue 1 published on 21st March, P. 1

^{iv} *State of UP v Rajnarain*, AIR 1975 SC 865

^v (1995) 2 SCC 161

^{vi} Writ Petition (Civil) No. 210 Of 2012.

^{vii} Speech delivered by former CJI S.H Kapadia available at <http://indialawyers.wordpress.com/category/cji-speeches/>

^{viii} See *Naz Foundation v. Government of NCT of Delhi and Others* WP(C) No.7455/2001, Date of decision : 2nd July, 2009

^{ix} (2006) 7 SCC 1.

^x (1993) 4 SCC 441.