

Right to Information and Good Governance

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Lecture No. 10

Legislating the Right to Information: Background and Challenges – I

(Refer Slide Time: 0:14)

Ideals of Democracy and Sharing of Information

- Principles of Democracy
 - By the people
 - Of the people
 - For the people
- Sovereign in India:
 - Legislature
 - Executive
 - Judiciary
- Government to be held as Caesar's Wife: Above all suspicion
- Who is sovereign?
- Paradigm Shift from Government Servant to Public Servant
"WE THE PEOPLE"
- 1992 World Bank document on Governance and Development

The slide also features the logos of NPTEL and National Law School of India University, Bengaluru in the top right corner, and a small video inset of the speaker, Rohith Kamath, in the bottom right corner.

Greetings for the day. So, we will be discussing on Legislating the Right to Information: Background and Challenges for the same. I am Rohith Kamath, let us commence with the class. And the outset before going into the intricacies, we would discuss about what are the ideals of democracy and sharing of information have a contour towards government.

Principles of Democracy, as you are aware, democracy is one form of government wherein it is formed by the people, it is a form of government which is of the people, it is a form of government that is for the people. Now by, by the people, of the people and for the people; it connotes that democracy ensures that the people's choice or the people's will is what governs a society.

In contrast against the totalitarian system, democracy allows for the will of the people to be expressed rather than the will of the governor. It shows that the people's will has a higher and a better say than that of the one who governs them. It is the choice of the people that is given the foremost criteria in a given democracy. India, being one of the largest democracies is a

classic example.

It is further required to understand that in any form of government with sovereignty lies the power. Sovereignty connotes that particular power which allows for making decisions. It is the supreme authority in any government. In India, the sovereign power has been divided into 3 major functions with regard to legislation, executive and judiciary.

Now, one may ask who among these 3 performers is the sovereign? It is pertinent that the Parliament is the one that makes the laws and therefore it connotes the legislative function or the legislative wing of the government. The executive that is headed by the President along with the other administrative officials in the state, takes care of the administrative activities and as such forms the executive wing of the state.

And lastly the judiciary, the judiciary acts as a balancer of the rights and duties of persons as against the rights and privileges of those who govern them and acts as a crusader for the protection of these rights. They are none other than the Supreme Court and the other various High Courts and subordinate Courts who act as a crusader for justice forming the judiciary wing of the state.

It is pertained here to know that sovereignty in India although has its glimpses in these 3 major organs. The Sovereign power does not lie in them within themselves. Then, does the sovereign power lies with the Government which is elected on a periodic basis? Well on the mention of the Government, it is to be noted that any form of governance that is there; the Government must be someone that has the immense trust of the people.

It is something that you should hold above Ceaser's wife. It should be held as Ceaser's wife, above all suspicion, that brings us back to the question, as to who is sovereign in India. Please note at this point, I would like you to go to what the Preamble of the Constitution says. The first line of the Preamble to the Constitution states that, "We the people of India". So it is pertinent here that it is the people of India who are the real sovereign.

It can be understood by the paradigm shift that we have had from the pre-Independence to the commencement of the independence era. That person's who were employed with the state, were erstwhile known as Government servants but with the adoption of the Constitution and with the time and trial of democracy this connotation now is referred to as Public

Servants.

Now, that quite clearly represents that there is a shift that has taken place and it is the people of India who are the real true sovereign. At this juncture from the perspective of democracy, it is necessary to understand that the form of democratic government is differentiated from that of a totalitarian government. In a totalitarian government, it so happens that the will of the aggressor or the governor is given prime most importance but whereas in case of democracy as discussed earlier it is the will of the people against the greater sharing of access.

Now, it is pertinent that in 1982 The World Bank document on governance and development had suggested that transparency is one of the major requirements for a democratic government. In India, transparency has been held to be a crusader with the adoption of Right to Information Act which allows for greater access to information for each citizen and the general person. Now, if you look at the concept of bureaucracy is what that holds something from sharing of information.

While going further we will be discussing certain legislations that keep hold or require for this amount of secrecy. Max Webber, who is a theorist of the bureaucracy had first pointed out that secrecy is an invention which helps the bureaucracy foster its interest of power. But however the same secrecy has been criticised to be one of the greatest reasons why there is an immense amount of corruption that goes about in any governing society.

To curb the same, transparency is something that is very essential that has to be developed. Openness or transparency in governmental function is therefore a very essential ingredient in any human democracy.

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Political Landscape for Right to Information

- National Emergency u/A 352: 1975
 - Imposed not for INDIA, but for INDIRA
- Lok Sabha Elections 1977 Janata Government:
 - Cradle to Grave
 - Election Manifesto
 - Reforms Suggested
 - Collapse of Janata Party
- 1989 Lok Sabha Election: Prime Minister V. P. Singh on legislating the RTI: National Front Government
- 1997, Conference Of Chief Ministers



The development of any particular law requires a detail understanding as to various factors including political, legal, legislative and the requisite objectives as to why the particular law has come into force. As such, even the Right to Information has a particular background and approach that is to be obtained. And the outset, we would first look into what the political landscape was with regard to Right to Information.

Now at this stage it takes us back to about approximately 45 years ago, to the era of Emergency that was imposed in June, 1975 which lasted for about a 21 month period until March, 1977. Please note, like as it is pointed out, this was a state of Emergency which was not done for India but for Indira. It is to be noted that it was an outcome of a decision of the Allahabad High Court wherein the entire aspect as to certain information which lead to the campaigning and certain financial aspects of the then government was put to be disclosed by the Allahabad High Court.

More details on this case would be discussed later on in the case studies which I would urge all the viewers to read and access. Going forward on this National Emergency that was imposed in 1975, it was not just a mere situation of Emergency that existed erstwhile like for example in 1962 as well, India had imposed Emergency on the grounds of an external aggression with China.

Wherein the impact of that emergency was that people be unified. But however the impact of the Emergency that was imposed in 1975 created a haphazard impact on the people. People were left shattered of their trust and belongingness in a democratic setup in India. People's

rights were abused not for the want of the nation but for the personal gain of an individual. Now that particular Emergency also had a lot of impact on the freedom of the movement of persons.

Major leaders of various political parties were all arrested and the plight of the leaders being such that, the plight of the normal commoner is quite ascertainable. One of the major excuses that occur during the emergency was the excessive use of the power of preventive detention. It was identified by the Shah Commission that was appointed in this regard, which then came to the emergency conditions that almost over a lakh people were arrested under the Prevention Detention Laws, under the Preventive Detention Laws, and were forced to undergo torture in Police custody and several custodial deaths were also reported on this duration. Newspapers were subject to censorship and as such the Right to Express was highly condemned at this particular time by the then government.