

PROMOTING OPEN GOVERNMENT THROUGH THE RTI

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INTRODUCTION

Right to information is commonly recognized as an integral part of peoples' right to freedom of speech and expression. In a democracy, information not only promotes one's knowledge and insight, but also aids in holding the government accountable to the governed by way of increasing transparency and openness. Simply put, right to information is not merely meant for gaining knowledge or disseminating information, but to make the system of governance more transparent and accountable.

Transparency and openness in public affairs is sine quo non for making the government and its instrumentalities accountable and responsible to the people. To promote transparency in government affairs and thereby to hold the governmental instrumentalities more accountable to the common man is the larger objective of information laws passed by many democratic countries. The Right to Information intends to redefine the relationship of the common man with the government, the former more informed, knowledgeable and powerful and the latter more accountable and responsible. Thus, the right to information and good governance are so intricately connected that one supplements and complements the other.

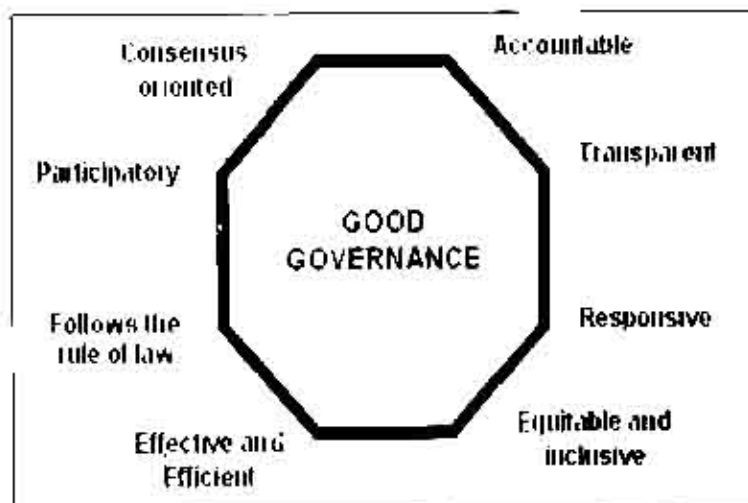
COMPONENTS OF GOOD GOVERNANCE

Governance is more encompassing phenomenon than government. It is predicated on full accountability of the government to the people in the exercise of mandated functions and activities. Characteristically, good governance requires the administration to be consensus oriented, participatory, accountable, responsive, equitable and inclusive, effective and efficient, and the one which follows the rule of law.

A World Bank document available on www.wds.worldbank.org sums up: 'Governance is a continuum, and not necessarily unidirectional, it does not automatically improve over time. It is a plan that needs constant tending. Citizens need to demand good governance. Their ability to do so is enhanced by literacy, education, and employment opportunities. Governments need to prove responsive to those demands. Neither of these can be taken for granted'.

Prevalence of rules and regulations on their own are not enough to promote the standards of governance. It is not enough that administration is run on sound managerial lines; the principles of equity and legitimacy are as important or perhaps, more important than good management. Government should provide opportunities to the people to participate in decision making and implementation. The citizenry can no more be passive recipients of government aids but should be active participants in government schemes and policies. It should also be ensured that the fruits of development should be universally shared. Shortly, the aim of good governance is not mere growth but development. While growth is a singular concept measured as per capita GDP, development is a multivariate concept and refers to the achievement of a quality of life for the average citizen, such as freedom from poverty, illiteracy, malnutrition, and the freedom to participate in political processes. The United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) argue that the term good governance is composed of the following eight components.

- Rule of Law
- Participatory
- Transparent and corruption-free
- Responsiveness
- Consensus-oriented
- Equity and Inclusiveness
- Effectiveness and Efficiency
- Accountability



Right to information and the Rule of Law

The principle rule of law is crucial in that howsoever high one may be, the law is above her and it must be obeyed. The rule of law is the law of reason unaffected by

desire, when the passion distorts the minds of rulers. It is a safeguard against arbitrary and injudicious government actions. As pointed out by Jason Giral and Andrew Irvine in 'Public Accountability and the Rule of Law',

The rule of law and public accountability are, in a sense, concepts that are inseparable in a democracy. Seen as an aspect of democracy, the rule of law may be understood not only as a limit or proscription on the activities of governing forces, but also as the ongoing activity of justifying state actions and institutions through public discourse and reason. It is the participation of citizens in a discourse of legality that bestows upon these institutions the honor of legitimately establishing the law. The flow of information is thus integral to the rule of law.

New wisdom about the rule of law and development seems to have taken root in development circles. It is asserted that formalist rule of law, which stresses institutionalized legal mechanisms and absolute autonomy from politics will certainly curtail the area of political and governmental discretion, arbitrariness in decision making, and thereby pave the way for more rational and scientific decision making. In this way, entrenching an effective flow of information can enable people to be part of decision making processes thus reducing any public perception of exclusion of opportunity or unfair advantage to one group over the other.

Participatory Government

Most of the developing countries like ours inherited the colonial form of administration, which was largely authoritarian, rule oriented and alienated from the people. Now, developmental studies have demonstrated that peoples' direct participation in the formulation and implementation of government policies and programmes are sine quo nun for development. Referring to the observations of the Supreme Court of India in the case of Narendra versus Manikrao (1977), the Bombay High Court was quoted as:

Real democracy can not be worked by men sitting at the top. It has to be worked from below by the people of every village and town. That sovereignty resides in and flows from the people. So said the Father of the Nation in whose name we swear. Therefore, 'Who will watch the watchman?' is the vexed question before our democracy. For this peoples' participation at all levels is a must.

Mere participation of the citizen may be purposeless unless they are so informed as to make it an effective process. Article 13 of the 'UN Convention against Corruption', available at www.unodc.org/unodc/en/crime_convention_corruption.html, adopted by the United Nations General Assembly on 31 October 2003, identifies: '(i) effective access to information for public; (ii) undertaking public information activities contributing to non-tolerance of corruption including conducting public education programmes and (iii) respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption ...' as important measures to be taken by governments for ensuring the participation of society in governance

The right to information is an effective means to strengthening the grassroots democracy and to ensuring peoples' participation in local governance and development activities. It would also bring local governments under public scrutiny and thereby enable social audit of governmental activities. Social audit or public audit is a process by which the people can examine the administration and accounts of the government, disclose the failures and ensure accountability.

Transparent and Corruption Free Government

What causes corruption is non-implementation of the rule of law and consequently little chance of getting caught by the law enforcement agencies. This lack of accountability comes primarily from the lack of transparency, for example, when public officials do not inform or explain what they are doing, including a declaration of their wealth; and weak enforcement, when law enforcement agencies do not impose sanctions on power holders who have violated their public duties.

Corruption thrives in secret places and evades public places. Article 10 of the 'UN Convention against Corruption' states: '... to combat corruption, each (member State) shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes and take measures for:

- (a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;
- (b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision making authorities; and
- (c) Publishing information, (including) periodic reports on the risks of corruption in its public administration'.

The system of secrecy is less for safeguarding public or national interest and more for safeguarding government's reputation, burying its mistakes, maximizing its power, shielding corrupt practices and manipulating the citizens.

Right to Information has facilitated both 'transparency in administration' and has 'made the law enforcing agencies to perform their duties more sincerely than before. Pertinently, organizations excluded from the purview of the Right to Information Act, 2005 have been mandated to furnish such information that relates to allegation of corruption.

Responsiveness

Good governance requires that institutions and processes try to serve all stakeholders within a reasonable time frame. Many a layman, after having applied for a ration card or old age pension, would have waited years together for a single line of reply from the government and mostly their applications are hardly replied. Lack of fixing a time limit for service delivery is one of the main drawbacks of the system. But, the Right to Information Act mandates that the required information should be furnished to the applicant within 30 days of receipt of the application. The Act has also mandated that the records of all government organizations should be computerized and an efficient Management Information System be established. All these steps, coupled with increased accountability of the public servants to the people will make them more responsive to the needs of the citizens.

Consensus Oriented Government

Unlike a totalitarian government, a democratic government needs to be based on the trust of the governed. It should, therefore, function in an open manner as far as possible so that the citizens know its aims, policies and programmes and help the government to accomplish them. Maximal secrecy in government functioning, on the contrary, would tend to promote corruption, oppression, nepotism and misuse or abuse of authority, and thereby, alienate the government from the governed. The net result is that consensus building on major issues has often proved so intractable that convenience, opaqueness, exclusivity and expediency have become the norm along with the skewed distribution of benefits and burdens.

There are several actors and as many view points in a given society. Good governance requires mediation of the different interests in society to reach a broad consensus on what is in the best interest of the whole community and how this can be achieved. It also requires a broad and long term perspective on what is needed for sustainable human development and how to achieve the goals of such development. This can only result from an understanding of the historical, cultural and social contexts of a given society or community. Free flow of information will facilitate such understanding. Full disclosure of information is a sine qua non for confident interactions between individuals and groups as pointed out in 'A Perspective on Good Governance' by N. Lam.

Equity and Inclusiveness

A society's well being depends on ensuring that all its members feel that they have a stake in it and do not feel excluded from the mainstream of society. On the other hand, the perceived inequality in development, participation and accountability reflected in the skewed patterns of development and distribution may result in surfacing of advocacy groups, civil societies or even perhaps terrorists groups which, in the final analysis, may emerge as a stumbling block to the process of good governance. This requires all groups, particularly the most vulnerable, have opportunities to improve or maintain their well being. Citizens should have access in their own language to information about

matters of public concern. The right to information provides such opportunities to the people. This is particularly important in the case of minorities, disabled citizens and other groups that might systematically be excluded from participation in the government activities. On the positive side, free flow of information can truncate the ethnic, cultural, geographical and political divides, which in turn will promote good governance. Free flow of information can open up channels of communications between individuals, civil societies and the government, which is very essential for nation building and socio-economic change. Openness and information sharing can entrench national stability by establishing a two way dialogue between citizens and the state, helping to promote public trust in the political system. Such a dialogue can combat feelings of alienation and reduce the risk of disillusioned sections of the public resorting to violence to promote their political ends.

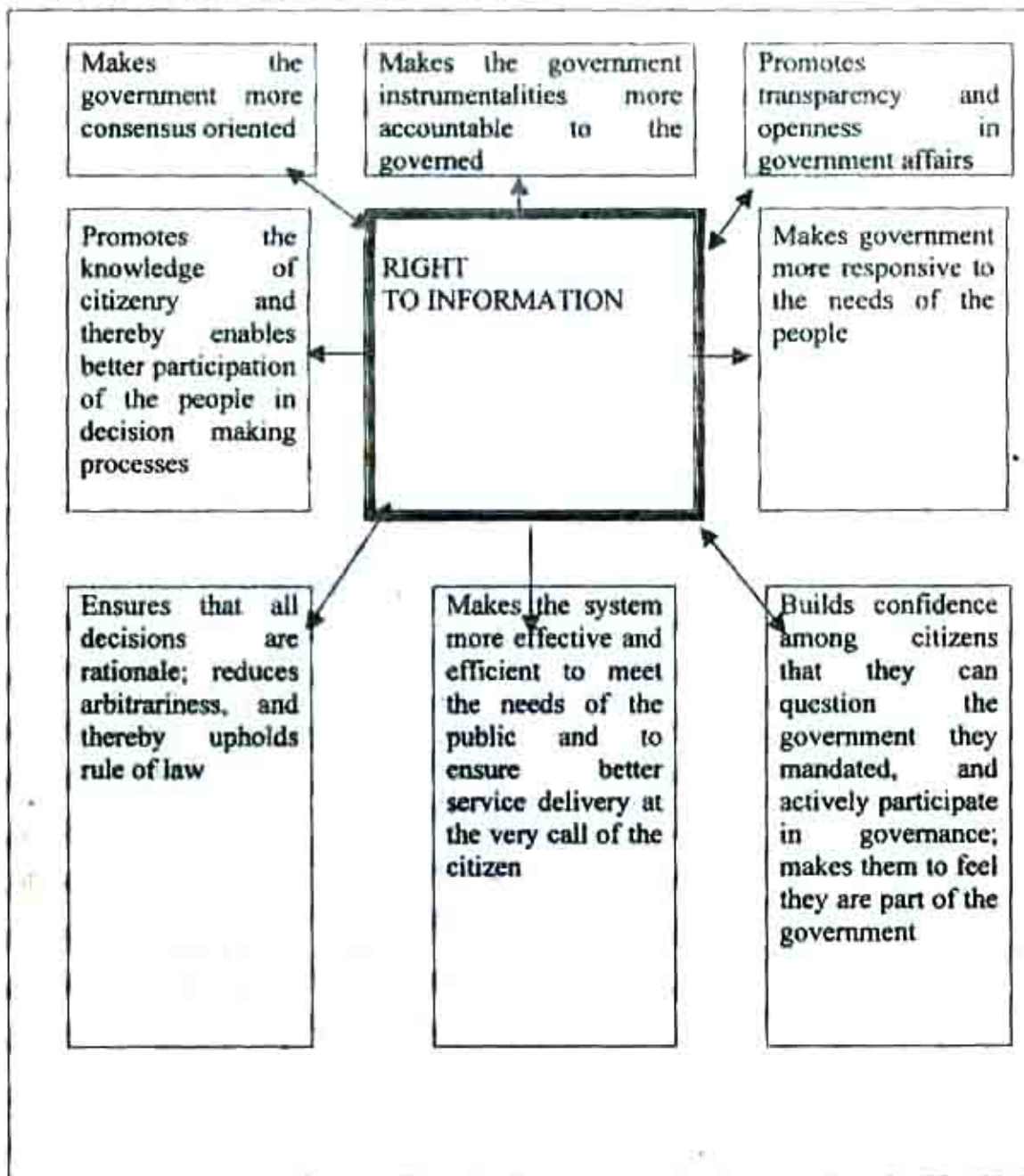
Effectiveness and Efficiency

Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The right to information tends to remove unnecessary secrecy surrounding the decision making processes in government, and thereby helps to improve the quality of decision making in public policy and administration. It enables the citizens to know about government decisions and the basis on which they are made so that they can exercise sound judgment on the merits of public policies and respond appropriately to influence the process of policy formulation and decision making in public governance. 'Too many cooks spoil the broth' argument will not apply in so far as peoples' participation in governmental policy making is concerned. After all, it is the people who are at the receiving end of the outcomes of policies and programmes. No one else can be a better judge of the local conditions, needs, aspirations and understanding than the common man on the ground. Empirical studies in many developed and developing countries have conveyed one result, participation of the people in government policy framing and implementation will increase the efficiency and effectiveness.

Accountability

Accountability is the key requirement of good governance. Accountability can not be enforced without transparency and the rule of law. Both transparency and accountability are based on the right to information provisions. Although the democratic system provides for accountability of government to those they govern, it is indirect through the elections. But, the right to information makes government accountable to the people directly. Without information the public can not understand, let alone ask how and why decisions were made by the government they mandated into power. Now, due to the right to information, people seeking information do not have to persuade an elected representative to ask questions for them, search for a lawyer willing to waive his fees or hope that their situation involves the peculiar characteristics that the media deem worthy of publishing and broadcasting. It is a free standing right, which the ordinary citizens can use at any time (see Fig. 1 for an overview).

Fig 1 An Overview of Good Governance



CONCLUSIONS

Free flow of information promotes accountability and transparency, prevents corruption, and strengthens the capacity of community groups and civil society organizations to participate in decision making. The right to freedom of information is crucial not only in determining policy also in checking the government in respect of implementation of policy. Freedom of information is a necessary part of our democratic polity. All power in a democracy belongs to the people who are the masters. If the people are to perform their sovereign role and instruct their government, they must

have access to all information, ideas, and points of views. Thus, democracy must extend beyond passive exercise of franchise and be deepened through citizens' governance.

Freedom of information is vital to the process of peaceful social change. It allows ideas to be tested in advance before action is taken; it legitimizes the decision reached; and it permits adaptation to new conditions without the use of force or violence. As the people understand and perhaps satisfy themselves with the rationale behind a decision, they will hardly resist its implementation. Furthermore, the right to information can ensure that small stakeholders also have a voice in economic policies, which can help economic growth and development to take place in a more equitable, balanced and therefore stable manner.

A fundamental value underpinning the right to know is 'the principle of maximum disclosure, which establishes a presumption that all information held by public bodies should be subject to disclosure unless there is an overriding public interest justification for non-disclosure'. The National Commission for the Reviews of Working of the Constitution (NCRWC), in its report on 'Executive and Public Administration', which is available at www.lawmin.nic.in/ncrwc/finalreport/v2b3-6.htm reports:

Much of the common man's distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision making processes. He remains ignorant and unaware of the processes which vitally affect his interest. Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases because of the latter's snobbish attitude and bow-wow style. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent and participatory. Right to Information can usher in many benefits, such as speedy disposal of cases, minimizing manipulative and dilatory tactics of babudom, and last but most importantly, putting considerable checks on graft and corruption.

Certainly, the observations of the NCRWC depict how the Right to Information can help good governance. Therefore, it is time that bureaucrats came out of the concrete barriers they have built around themselves over the years and realize the basic fact that Right to Information will only aid improvement in governance and will never be a stumbling block to administration in any way.