

A

Paper on the Topic of

# **OPEN GOVERNMENT, PARTICIPATIVE DEMOCRACY AND ADMINISTRATIVE DISCRETION**

**(With respect to Right to Information)**

**For “National Seminar on RTI”**

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**R**ight to information in Indian Territory takes the form of the legal right firstly, after enacting and passing The Right to Information Act, 2005. It starts a new era of information flow toward all class of the general public. It fills the gap between Members of the legislature and a common man with respect to access and flow of information.

Any democracy essentially requires an informed citizenry to attain all the benefits of the democracy within the state and it is not possible without transparency of information and of government functioning. So it is also said that, An Informed citizens are the basic demand of the democracy.

Now the question arises that how the citizens get converted into an informed citizen? It can be possible through:

1. Self awareness about the information by the citizens(such as movement of MKSS in **Devdungri** village of Rajasthan in 1987); and
2. State (Executive) willingness to get its citizens being informed.

We all know very well that, society is being created with a central object to satisfying the mutual needs and interest of the member of the society. To satisfy their interest, they must have information, which leads to self awareness; their demand of information may or may not be supported by the state (Executives), which shows the willingness and unwilling of the state (Executives) to supply the appropriate information to its citizens or not.

If state (executives) supports the demand of the appropriate information of their citizens then the citizen get converted into informed citizens and promote **participative** as well as **healthy democracy** having **rule of law** or in other case the citizens remains uninformed citizens, where **rule of men** supersedes to **rule of law**.

Now the question arises, whether citizens can be leaved on the mercy of the state (executives) to be informed? The answer is definitely NO, now considering broad definition of the state, which includes “The Legislature, The Executives, The Judiciary and People (living within the

territory)” then it is the legitimate expectation of the citizen to be informed, which must be satisfied either by The Legislature, through making laws to convert public interests into right, or by The Judiciary through judicial activism.

Since a state gets all its power from the trust of the general people, thus a fiduciary relation exists among the state and the people of the state so this relation must not be breached. Under democracy every state tries to protect this relationship by making laws on social interests of their citizens and converting interests into Legal rights against which remedies are made available to them.

Right to information is one of the most basic and fundamental form of human right without which the concepts of equality, freedom and dignified life is worthless. In India it also exist before the year of 2005, implicitly through the articles under the fundamental rights of the constitutions of India and through Judicial Activism by the Indian Judiciary in it various decisions on the leading cases like, *Bennett Coleman & Co. Vs. Union Of India*<sup>1</sup>, *State of U.P. Vs. Raj Narain*<sup>2</sup>, and *S.P. Gupta Vs. Union of India*<sup>3</sup> etc.

It is the basic rule that, an informed person can take decision better than an uninformed person, which enables him in making a better self growth, which ultimately leads to a better social growth & development. Thus free flow of information is the demand of democratic setup of any state. Wholesome public welfare is not possible without free flow of the information, because it promotes the Check & Balance Theory in the government functioning which minimize the scope of the corruption with the help of public participation and promotion of Open Government. My present topic of the paper “Open government, Participative democracy, and Administrative discretion” (with respect to RTI) is a very interesting, complex and interlinked one.

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1. AIR 1973 SC 783
  2. AIR 1975 SC 865
  3. AIR 1982 SC 149

**Open Government** is an opposite concept of the state secrecy. It refers to the crystal clear functioning or proceeding of the government, based on the transparency, accountability and responsibility of the executives with view to proactive flow of the information towards the public.

It is the governing doctrine which holds that citizens have the right to access the documents and proceedings of the government to allow for effective public participation. In its broadest interpretation it opposes reason of state and other considerations, which have tended to legitimize extensive state secrecy.

Open government is the concept of democracy in which the degree of public ability are judged,

- To hold the government accountable for its actions and
- To Access the validity of actions taken by the executives,

This helps in knowing the degree of active participation of the general public in the state affairs with the central object of knowing strength of the Participative Democracy within the state.

Thus open government is basically concerned with the freedom of information (not merely access to information), and its extent or limitations like third party information and the security of the state etc.

It allows the scope of administrative discretion over the flow of information only up to the extent of promoting “Healthy Democracy” with justified reason, not beyond that.

The concept of open government starts from the call of public for the “freedom of information.

Before the World War II, the public gives the trust on their government which enables them to use absolute power to run the country for the welfare of the people of the country but the government misuses the trust and starts fighting with each other on the matter of falls prestige, causes world wars. Thus after world war II the people wanted to take back their strength, in form of freedom of information which is reflected through various international conventions in the mid of 20<sup>th</sup> centuries. Such as, In 1946 constitution of an effective international body in the

name of **“UNITED NATIONS”** and declaration of **“FREEDOM OF INFORMATION”** as a fundamental human rights, under UN general assembly.

Further in 1948, world community passed the **“UNIVERSAL DECLARATION OF HUMAN RIGHTS”** in which emphasis was given to **“Seek, Response and Impart the informations”** under article 19, by the UN.

All the above mentioned efforts are made to make the government more transparent, Accountable and responsible towards their action by promoting openness in the government functioning.

This is the reason why open government is widely seen to be a key hallmark of contemporary democratic practice and is often linked to the passing of freedom of information legislation. Thus considering this aspect India also satisfies these criteria of democratic practice by passing the right to information act 2005 to promote participative democracy.

**Participative Democracy** is a concept of the democracy in which the special focus is given towards board and active public participation in the functioning of the government and the political system of the state. The term democracy has been well defined by *Abraham lincon as “the government of the people, for the people and by the people” this definition is the crux of the participative democracy which allows the public to participate directly or indirectly in each and every decisions of the state. This broad public participation is possible only when the people are informed people, which is not possible without RTI, thus it is said that right to information if the basic component of the Participative government.*

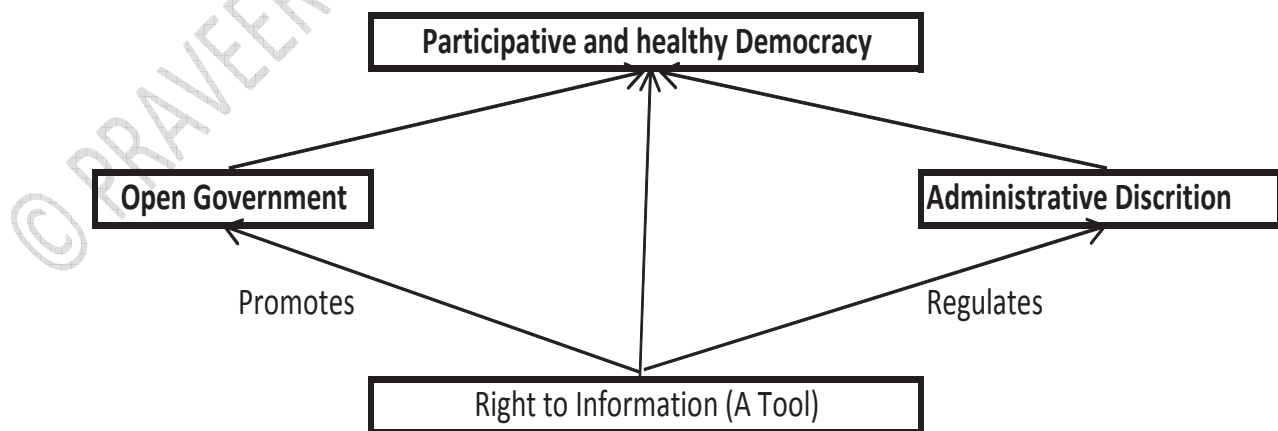
However the right to information should not be given in absolute sense, freedom of information must be reasonably restricted to establish a **“Healthy Democracy”**, because absolute right to information became dangerous for the security and integrity of any State. In this context, Right to Information may be compared with the **“Sun Light”**. **Sun Light is one**

of the best disinfectant of the world but it may be harmful when it comes in excessive quantity thus purification by Ozone layer is must.

Here the role of Ozone Layer is being played by the executive by use of the discretionary power, well known as Administrative Discretion, but caution is required to be given over the discretionary power of the executive so that it doesn't prevent the essential information like sun lights.

So it may be concluded that, Open Government is the governing doctrine which holds that citizens have the right to access the documents and proceedings of the government to allow for effective public oversight and regulate the administrative discretion of the executives with the object of promoting Participative Democracy and Right to Information helps in achieving this object by regulating the Administrative Discretion of the executive and providing useful information to the general public for active participation by following the policy of **“Disclosure is the principle and secrecy is an exception”**.

Thus it may also be said that *Right to information is a tool, which is used to promote the open government by regulating the administrative discretions, to attain the central object of implementing Participative Democracy and correlating it with Healthy Democracy (by establishing a balance among them)*. It can better be represented through following figure.



(Figure 1)