

Right to Information and Good Governance

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Lecture No. 15

Legislating the Right to Information: Background and Challenges – VI

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Time: 00:14)

Challenges to Implementing the RTI Act 2005



- Impediments to disclosure of Information in India
- Section 123 of the Indian Evidence Act, 1872
- Official Secrets Act, 1923
- The Central Civil Services (Conduct) Rules 1964
- The All India Services (Conduct) Rules 1968
- National Information Policy 1985
- Atomic Energy Act, 1962



Although the courts were quick to reinforce the right to information by way of its decisions implementing a legislation on the right to information or something that was farfetched. It had several impediments in the course of legislating the right to information. It is known that secrecy is one of the major reasons that bureaucracy works and functions.

It has been held that power can be in use at its best when it is kept secret. When information is kept confined to a very few those who govern. This was what Weber believed in his theory of bureaucracy. But however, in a democratic setup there is rationale for a requirement of an open and fair transparent government, which has been held across the international shores.

In Indian legislative scenario there were several impediments to implementing the RTI. One such major impediment that was there was the section 123 of the Indian Evidence Act of 1872 wherein it was provided that no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs in the state excepted the permission of the officer at the head of department concern who shall give or withhold such permission as he thinks were.

Section 123 of the Indian Evidence Act although did not directly repeal the implementation of the RTI it gave the power to the head of a department or an officer of concerned government to withhold the permission for grant of copies of such records. Now, the right to information involves getting access to data. With section 123 of the Indian Evidence Act giving the power and the discretion to the officer of the concerned government department created a major hurdle as to the dissemination of the information in its very first instance.

Secondly, we move on to the official secrets act of 1923. The Official Secrets Act of 1923, in attempt in 1977, the Morarji Desai government had constituted working committee to look into the requirements or the necessity for the act. It was concluded by the working committee as discussed earlier that the official secrets act required for the government to function in a peaceful manner so as to punish the offenders related to espionage.

The ministry of home affairs finance and defense labeled for months to recommend that the Act of 1923 should be retained without any change. The Official Secrets Act of 1923 was one of the most draconian laws which are still in force in India. It was the legacy of the British branch and had often resulted in great miscarriage of justice and had blotted record books of judiciary in its progress.

Several leading jurists and scholars have called for the repeal of the Official Secrets Act but till date it continues to be in its very existence in order to combat espionage as it is put forth by various authorities. However, it is pertinent to note that various commissions and civil body groups have recommended the ousting or repeat of the Official Secrets Act.

In fact, the second Administrative Reforms Commission headed by Mister Veerappa Moily had also recommended the repeal of the Official Secrets Act on ground that espionage and spying can be punished under various other enactments such as the Navy Act and others which have adequate provisions for the same. Despite several attempts, including in 1948 wherein the Press Law Enquiry Committee required that the application of the act must be confined only to matters of national

security. The same has been unheeded.

More than the advantages of the or the rationale for the continuance of official secret act it is pertinent to understand that there are two infamous cases that show across how the act has resulted. Acting as an impediment to disclosure of information. On one such instance wherein there was a strong moment against construction of the dam in Sardar Sarovar project was the Official Secrets Act had been utilized to prohibit the entry of journalists into the area where the massive displacement was taking place.

On account of the construction of the dam which was one of the largest dams and had left several thousands of persons displaced from their inhabitant locations. Severe public debate and dissent was looked across and the actions of the government were frowned upon for utilizing the Official Secrets Act of 1923 for suppression of information.