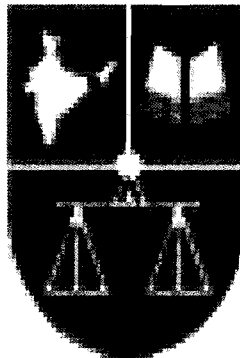


**RIGHT TO INFORMATION IN INDIA:  
An overview**

DISSERTATION SUBMITTED FOR THE PARTIAL FULFILLMENT  
OF LL.M. DEGREE

**ACADEMIC SUPERVISOR**  
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**SUBMITTED BY**  
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2008-2010  
LL.M(Human Rights)  
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2008-2010

# CERTIFICATE

This is to certify that the dissertation entitled "**RIGHT TO INFORMATION IN INDIA :An overview**" submitted by **Vivek Khatkar**, Id. No.349, in partial fulfilment of the requirement for the award of the degree of LL.M of this University is his original work and may be placed before the examiners for evaluation.

Place: Bangalore

Date: 15/06/2010



**Dr. O. V. Nandimath**

Supervisor

# DECLARATION

I hereby declare that the work in the project is outcome of the research conducted by me under the academic supervision of **Dr. O. V. Nandimath** at National Law School of India University, Bangalore as part of the academic program. The complete report of this study is being produced in this document.

I hereby declare that this work is original except for such help taken from such authorities as has been referred to at the appropriate places for which necessary acknowledgments have been made. The contents of this project are not plagiarized.

I further declare that this work has not been published or submitted earlier in any organisation for any purpose

Place: Bangalore

Date: 15/06/2010

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## **RESEARCH METHODOLOGY**

### **Abstract**

In the present project, the researcher has tried to look into the origin and aspect of implementation of this Act. Firstly the researcher has tried to look into the development of this Act from a concept to legislations. What is the international position on Right To Information, what are the provisions in various conventions, what where the factors involved which played their role in development of this Act from an Idea. As since independence of the Country, Article 19(1)(a) is considered to be the genesis of right to information in India.

Thereafter the researcher has tried to look at the origin of Act in India, with the interpretation of the same as inferred by various judgments. This includes the interpretations of various provisions as laid down by Supreme Court.

Thereafter nature and scope of the Act are discussed. Next, the researcher has tried make out a relationship between the Right To information Act,2005and the other legislations such as Officials Secret Act, 1923 and Evidence Act, 1872 , Freedom of Information Act 2002 and The Constitution Of India. Then the researcher has tried to simplify the Act and provided the various dimensions of the implementation of the Act including the procedures provided in the Act.

Lastly, on the basis of the above research, the researchers have tried to conclude the whole in the light of the various hypotheses taken by the researchers.

### **Sources of Data**

Secondary data was collected from various sources including statutes, case law on Right to Information, books, UN publications, articles, text books and other publications and internet databases.

## **Footnoting style**

In whole of the Project Uniform Footnoting Style is adopted

## **Significance of the study**

Right to information is derived from our fundamental right i.e. right to expression under article 19 of the Constitution of India. Information is very much necessary for running successful democracy. For proper functioning of government and public institutions function without information we cannot expressed any informed opinion. Transparency is very much necessary for any institutions. Basically right to information comes from freedom of information act. In the present assignment, we have tried to look the Right to information Act, 2005 from the applicability point of view.

## **Research Hypothesis**

- i. Right to Information Act is yet not completely implemented.
- ii. The awareness about the Act and its provisions are very low.
- iii. The functionaries are not performing their work in spirit with the Act.

## Table Of Abbreviations

1.	Administrative Reforms Commission	ARC
2.	Bhaba Atomic Research Centre	BARC
3.	Block Development Officer	BDO
4.	Border Security Force	BSF
5.	Central Information Commission	CIC
6.	Central public Information Officer	CPIO
7.	Chief Election Commissioner	CEC
8.	European Convention	EC
9.	Freedom Of Information	FOI
10.	Freedom Of Information Act	FOIA
11.	Indo-Tibetan Border Police	ITBP
12.	Information Commission	IC
13.	International Covenant of Civil and Political Rights	ICCPR
14.	National Security Guards	NSG
15.	Non Governmental Organisation	NGO
16.	Official Secrets Act	OS Act
17.	Prevention of Terror Act, 2002	POTA
18.	Public Information Officer	PIO
19.	Right To Information	RTI
20.	State Public Information Officer.	SPIO
21.	Supreme Court	SC
22.	Unit Trust Of India	UTI
23.	United Nations Educational, Scientific and Cultural Organization	UNESCO
24.	Universal Declaration of Human Rights	UDHR

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4. Dhakeswari Cotton Mills v. C.I. T. AIR 1955 SC 65.
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6. Francis Coralie v. Union Territory of Delhi AIR 1981 SC 746.
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12. L.K.Koolwal AIR 1988 Raj. 118.
13. LIC v. Manubhai D. Shah 1992 3 SCC 641.
14. M. Nagaraj v. Union of India 2006 8 SCC 212.
15. Maneka Gandhi V. Union of India AIR1978 SC 597.
16. Mohini Jam v. State of Karnataka AIR 1992 SC 1858.
17. Mr. X v. Hospital Z 2004 9 SCC 580.
18. People's Union for Civil Liberties v. Union of India AIR 1982 SC 1473.
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20. Reliance Petrochemicals Ltd. V Indian Express Newspapers 1988 4 SCC 592.
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26. State of U P. v Mohd. Sharif AIR 1982 SC 937.
27. State of U.P. vs. Raj Narain AIR 1975 SC.
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# Chapter-1

## Introduction

*“If you do not ask You do not Get”- Mahatma Gandhi*

Our capacity as human beings to acquire, use and store information is essential for our survival. At a practical level disasters are avoided, accidents prevented and sustenance provided by our use of information. Hamlet’s tragedy was that he was accurately informed; Othello’s that he was not. While information itself is important, our ability to discern the degree of the reliability of the information provided is essential in the exploitation of resources or relationships, or in the exposure of sham. Information in the form of facts constitutes the basis of the order in our lives, of community, regularity and knowledge.

Information as a term has been derived from the Latin words ‘formation’ and ‘forma’ which means giving shape to something, and forming a pattern respectively. It adds something new to awareness. Information is needed by human beings to realize their full social, political and economic potential. It entails a spectrum of knowledge about various issues and involves different stakeholders from market to government. It is the key which helps make decisions. It is also a public resource collected and stored by government in trust for people.

The above-mentioned lines said by The Father Of Nation gain their importance in the light of the “Right to Information Act” enacted in the year 2005 with a objective of free flow of information and to remove the bottlenecks of the bureaucratic structure of the country, which has exploited the common man of the country at various junctures of his life. Be it an application for any governmental facility like water or electricity connection, be it an application to know the various patent application filed for a particular research

topic, or to know the expenditure of public funds by government, or the accountability of state to its citizen, the individuals were made to run from pillar to post in the arena of red-tapism and bureaucracy. At this stage, the initiatives were taken at various levels and the right enshrined in Article 19(1) (a) was developed in a complete legislation providing access to every individual of the information required by them. This freedom still works in the light of restrictions imposed under Article 19(2).

At this time the right of freedom of information as a cornerstone is more than an accepted notion; it is an obvious fact of life, which has been articulated as a fundamental right in numerous international conventions such as the Universal Declaration of Human rights and the International Covenant on Civil and Political Rights. However, the right to access to information has not been realized by the majority of India's people. Rather than protecting citizen's right to information, India and other developing countries have created a "poverty of information" through sanctioning an official culture of secrecy.

In this Age of Information, its value as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is important because every developmental process depends on the availability of information.

As Justice Krishna Iyer in the *Maneka Gandhi* case<sup>1</sup> said "*a government which functions in secrecy not only acts against democratic decency, but also buries itself with its own burial*".

The importance of the right to information lies in its role in enforcing democratic accountability. This right is important not only for the exercise of political and civil rights

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<sup>1</sup> A.I.R. 1978 SC 597

but also social and economic rights. Independent information is also important for the people to make informed choices. Amartya Sen, Nobel Prize winner for economics has remarked, “*You don't have famines in a country that has a free press.*”<sup>2</sup>

The right, it is argued, is directly related to survival rights and basic needs such as food, water and health. For instance, it is the lack of access to information on AIDS and government's reluctance to impart sex education that has worsened a public health crisis. People must have access to information regarding the environment and the impact of certain things and activities on the environment. In the context of one of the most pressing problems of modern day governance, the right to information is a potent tool for countering corruption. If government is to be clean and accountable there must be access to information.

According to United Nations Report released on June 12, 2008, The Right to Information Act, 2005 is “one of the most progressive legislations” in the developing world for tackling corruptions<sup>3</sup>.

The United Nations Development Report on “Tackling Corruption, Transforming Lives- Accelerating Human Development in Asia and the Pacific” said India is one of the eight countries in Asia and Pacific to enact such legislation<sup>4</sup>.

In light of the above the Right to Information Act has become a legislation with much of hopes for everyone. Its applicability runs from an activated citizen who is taking up the cause of public health, to a advocate digging information for their client, to a corporate house who require data for planning their course of action, to a individual who

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<sup>2</sup> <http://lo.karloba.at/submitpost-cid-2605-tid-2829.htm>

<sup>3</sup> <http://www.hindu.com/2008/06/13/stories/2008061351401300.htm>

<sup>4</sup> *Ibid*

wants to know that progress of his application he has filed for taking a electricity connection as his children's examinations are coming close. The Act also allowed individuals and organization investigation corruption to ask for precise information.



## Chapter-2

### International Position On Right To Information

#### 2.1 Evolution

The right of access to information to make government accountable is not a new concept. The Underlying principle on the freedom of access to information held by a government can be traced to the then emperor T'ai-Tsund (627-649) of the Tang Dynasty (618-907) in China. The emperor established a institution based philosophy of Confucius, called the "Imperial Censurate"- a group of highly educated "scholar officials". This group prepared a record from the government decisions and correspondence and made scrutiny thereof, thus exposing "mis-governance, bureaucratic inefficiencies and official corruption". They criticized the government including the emperor.<sup>5</sup> Chinese emperors were expected to:

"Admit their own imperfection as a proof for their love of the truth and in fear of ignorance and darkness."

The origins of openness are not in the West, but in the East. Thus it can be said that the present concept of Right To Information can be said to have originated in the east.

James Madison observed that "*A popular government without popular information to the means of acquiring it is but prologue to a farce or tragedy or perhaps both. Knowledge will forever govern ignorance and a person who meant to be their own governors must arm themselves with the power knowledge gives*"<sup>6</sup>

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<sup>5</sup> C.M Bindal, "A Guide To The RTI act,2005",2009 Edition , Page 1

<sup>6</sup> James Madison ,US President (1809-17), "Letter to W.T. Bary on August 1822" Global Corruption Report, <http://wist.info/madison-james/2640/>

Madison made this observation two hundred years ago but this observation is valid till today. According to Madison knowledge is power and those who possess it have the power to rule.<sup>7</sup>

Although Freedom Of Information(FOI) has been around for over 200 years, it is still evolving. Over half of the FOI laws have been adopted in just the last ten years. The growth in transparency is in response to demands by civil society organizations, the media and international lenders. Many of these new laws adopted innovative processes to improve access.

#### Chronology of Right To Information And related laws World Over-

<b>Serial No.</b>	<b>Country</b>	<b>Year Of Passing</b>
1	Sweden	1766
2	Colombia	1888
3	Finland	1951
4	U.S.A	1966
5	Denmark, Norway	1970
6	France	1978
7	Australia, New Zealand	1982
8	Canada	1983

Sweden passed the first freedom of information law in the world, principally sponsored by a Finnish clergyman Anders Chydenius, who had been inspired by the humanist Confucian philosophy.

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<sup>7</sup> *Ibid*

Confucius' political philosophy is rooted in his belief that a ruler should learn self-discipline, should govern his subjects by his own example, and should treat them with love and concern. "If the people be led by laws, and uniformity among them be sought by punishments, they will try to escape punishment and have no sense of shame. If they are led by virtue, and uniformity sought among them through the practice of ritual propriety, they will possess a sense of shame and come to you of their own accord."<sup>8</sup>

The origins of the American Freedom Of Information Act (FOIA) come from the activism of Democratic Congressman John Moss, who chaired the special sub committee of public information. U.S.A. passed the FOIA in 1966.

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<sup>8</sup> <http://plato.stanford.edu/entries/confucius/>

## **2.2 The Universal Declaration of Human Rights, 1948**

The United Nation in 1948 made a resolution concerning the right to information and such a right was given the status of a human right. Under Article 19 of Universal Declaration of Human Rights, (UDHR) states that:

‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers’<sup>9</sup>

## **2.3 The International Covenant on Civil and Political Rights, 1966**

Article 19 of the UDHR was given legal status by the binding provisions of The International Covenant of Civil and Political Rights. Article 19 (2) of the Covenant states that:

‘Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice’<sup>10</sup>.

Under the UN Declaration, the right to information is taken as Fundamental Human Right and it insists the need for every member country to enshrine the right to access information in their Constitution. It helps to create open government and offers the key to deepening democracy and quickening development that the Commonwealth is so

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<sup>9</sup> The Universal Declaration of Human Rights, 1948.

<sup>10</sup> The International Covenant of Civil and Political Rights, 1966.

desperately seeking. The right to information lays the foundation to build good governance, transparency, accountability, and participation, and to eliminate that scourge upon the corruption. As such, it should be embraced as much by the hard-headed economist as by the high-minded reformer.<sup>11</sup>

Lack of information denies people the opportunity to develop their potential to the fullest and realise the full range of their human rights. Individual personality, political and social identity, and economic capability are all shaped by the information that is available to each person and to society at large. The practice of routinely holding information away from the public creates 'subjects' rather than 'citizens' and is a violation of their rights. This was recognised by the United Nations at its very inception in 1946, when the General Assembly resolved:

“Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated.”<sup>12</sup>

This has placed the right to access information firmly within the body of universal human rights law.

In 1993, the UN Commission on Human Rights appointed a Special Reporter to monitor and report on the international implementation of the right to freedom of opinion and expression. In Resolution the UN Special Reporter, in a 1998 Report, clarified the meaning of freedom of information under Article 19 of the ICCPR in unequivocal terms as ‘imposing a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems.’ A

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<sup>11</sup> [www.humanrightsinitiative.org/programs/ai/rti/rti/what.html](http://www.humanrightsinitiative.org/programs/ai/rti/rti/what.html)

<sup>12</sup> <http://www.humanrightsinitiative.org/programs/ai/rti/rti/what.htm>

1998 Resolution welcoming this clarification was passed by the Commission. In 2000, the Special Reporter endorsed a set of Principles on Freedom of Information, which the Commission noted in a 2000 Resolution <sup>13</sup>

#### **2.4 Joint Declaration on International Mechanisms for Promoting Freedom of Expression, 2004.**

In 2004, the free expression reporters of the UN, Organization of American States and Organization for Security and Cooperation in Europe issued another Joint Declaration on International Mechanisms for Promoting Freedom of Expression, affirming the right to access information as 'fundamental human right' for all citizens, one which governments should respect by enacting laws based on the principle of 'maximum disclosure'. The Special Reporters emphasized the fundamental importance of access to information to ensure democratic participation, accountability in government and to prevent corruption.

#### **2.5 The UN Principles on Freedom of Information**

Following are the principles of United Nations Freedom of Information:

- a) Public bodies have an obligation to disclose information and every member of the public has a corresponding right to receive information;

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<sup>13</sup> [www.commonwealth/human right initiative](http://www.commonwealth/human%20right%20initiative)

- b) Freedom of information implies that public bodies publish and disseminate widely documents of significant public interest, for example, operational information about how the public body functions and the content of any decision or policy affecting the public;
- c) As a minimum, the law on freedom of information should make provision for public education and the dissemination of information regarding the right to have access to information. the law should also provide for a number of mechanisms to address the problem of a culture of secrecy within Government;
- d) A refusal to disclose information may not be based on the aim to protect Governments from embarrassment or the exposure of wrongdoing. a complete list of the legitimate aims which may justify non disclosure should be provided in the law and exceptions should be narrowly drawn so as to avoid including material which does not harm the legitimate interest;
- e) All public bodies should be required to establish open, accessible internal systems for ensuring the public's right to receive information. The law should provide for strict time limits for the processing of requests for information and require that any refusals be accompanied by substantive written reasons for the refusal(s);
- f) The cost of gaining access to information held by public bodies should not be so high as to deter potential applicants and negate the intent of the law itself;
- g) The law should establish a presumption that all meetings of governing bodies are open to the public;
- h) The law should require that other legislations be interpreted, as far as possible, in a manner consistent with its provisions. the regime for exceptions provided for in the

freedom of information law should be comprehensive and other laws should not be permitted to extend it;

i) Individuals should be protected from any legal, administrative or employment related sanctions for releasing information on wrongdoing, viz. the commission of a criminal offence or dishonesty, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty or serious failures in the administration of a public body.



## **2.6 Regional Conventions**

On the regional level such as America, European Union, Africa, etc. there are some documents which emphasize the need to have the right to information among the countries member of those regions. At this level also the right to access to information underpins all other human rights. For example, freedom of expression and thought inherently rely on the availability of adequate information to inform opinions.

### **2.6.1 The United States of America**

Article 13(1) of the American Convention on Human Rights, states that:

“Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”<sup>14</sup>

Paragraphs 2 and 3 of the Inter-American Declaration of Principles on Freedom of Expression adopted in 2000 specifically recognises that access to information held by the state is a fundamental right of every individual. States have obligations to guarantee the full exercise of this right. This principle allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies<sup>15</sup>. The Declaration was approved by the Inter-American Commission on Human Rights in October 2000.

### **2.6.2 The European Union**

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<sup>14</sup> The American Convention on Human Rights, 1969.

<sup>15</sup> Paragraphs 2 & 3 of the Inter-American Declaration of Principles on Freedom of Expression adopted in 2000.

Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 states that:

“Everyone has the right to freedom of expression.”

This right includes freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article does not prevent the States from requiring the licensing of broadcasting, television, or cinema enterprises. The exercise of these freedoms, as it carries with it the duties and responsibilities, is subjected to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 11(1) of the 2000 Charter of Fundamental Rights of the European Union explicitly guarantees the right to receive and impart information and ideas without interference by public authority and regardless of frontiers.<sup>16</sup>

The 1992 Treaty of Maastricht attached to it is a declaration (No. 17) on ‘the right of access to information’ which recommends that the European Commission should draft a report on “measures designed to improve public access to the information available to the institutions”.

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<sup>16</sup> [www.humanrightsinitiative.org/programs/ai/rti/international/intl\\_standards.htm](http://www.humanrightsinitiative.org/programs/ai/rti/international/intl_standards.htm)

On the basis of the declaration, a code of conduct was adopted by the Commission and the Council, detailing the conditions under which access could be requested to information held by these institutions. The code of conduct was then implemented by a Council decision of 1993 and a Commission decision of 1994, both of which remained in force until quite recently.

The 1997 Amsterdam Treaty moved a significant step further by granting, in the newly introduced Article 255 EC Treaty, a right of access to documents which was, however, subject to detailed rules set out in secondary EC legislation. According to Article 255, this secondary legislation was to be adopted within two years of the Treaty of Amsterdam entering into force. The Treaty came into force in 1999 and the Regulation on Freedom of Information was passed in 2001. It covers "all documents held by an institution, that is to say, drawn up, or received by it and in its possession, in all areas of activity of the European Union". The Regulation obligates both the European Union Commission and the European Parliament to create public registers of documents on the internet and to ensure that references are provided to all documents in the register as soon as they are created.

### **2.6.3 Africa**

Article 9 of the African Charter on Human and People's Rights, states that:

1. Every individual shall have the right to receive information.

2. Every individual shall have the right to express and disseminate his opinions within the law.<sup>17</sup>

In 2002, the African Union's African Commission on Human and Peoples' Rights adopted a Declaration of Principles in a Resolution which recognised that "public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information". Part IV of this Declaration of Principles on Freedom of Expression in Africa deals explicitly with the right to information, and while it is not binding, it has considerable persuasive force representing as it does the will of a sizeable section of the African population.

### **African Union Declaration of Principles**

The principles of the Declaration are:

- i. Everyone has the right to access information held by public bodies;
- ii. Everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right;
- iii. Any refusal to disclose information shall be subject to appeal to an independent body and/or the courts;
- iv. Public bodies shall be required, even in the absence of a request, to actively publish important information of significant public interest;
- v. No one shall be subject to any sanction for releasing in good faith information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment; and
- vi. Secrecy laws shall be amended as necessary to comply with freedom of information principles.

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<sup>17</sup> The African Charter on Human and People's Rights, 1981.

India is a signatory to the UDHR (1948) and the ICCPR (1966). As a party to these instruments it is under an international obligation to effectively guarantee the right to information. Further, under Article 51 (c) of the Indian Constitution the state is duty bound to foster respect for international laws and treaty obligations. This binds the Indian Government to create suitable conditions to implement international laws and obligations with respect to right to information. Further the Indian Constitution also has some provisions which indirectly promote the right to information.

## Chapter-3

### Evolution Of Right To Information: Indian Context

*“ I believe that the passage of this bill will see the dawn of a new era in our process of governance, an era of performance and efficiency, an era which will ensure that the benefits of growth flow to all sections of our people, an era which will eliminate the scourge of corruption , an era which will bring the common man’s concern to the heart of all processes of governance, an era which will truly fulfil the hopes of the founding fathers of our republic.”*

Prime Minister Of India speech in parliament on May11,2005

Information is Power, and as the Former Prime Minister Atal Bihari Vajpayee stated, *“the Government wants to share power with the humblest; it wants to empower the weakest. It is precisely because of this reason that the Right to Information has to be ensured for all”*<sup>18</sup>.

The development of concept of Right To Information is said to be the 8<sup>th</sup> wonder of the world. The constitution of India, under Article 19 (1) (a) provides for freedom of expression, which can be broadly considered as genesis of Legal regime for right to information in the country. The simple meaning and interpretation of the words used in the Article 19(1)(a) says that constitution provides the freedom of expression because the governmental functions must be transparent<sup>19</sup> and the three instrumentalities of the state should be prevented from deceiving people.<sup>20</sup> The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matters of public

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<sup>18</sup> <http://govnotice.com/>

<sup>19</sup> K. Ravikumar v. Bangalore University AIR 2005 Karn 21

<sup>20</sup> P.K. Das, “Handbook on the Right to Information Act”, Page 3

interest will only encourage wild rumours and speculations and avoidable allegations against individuals and institutions. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizens perform their fundamental duties as set out in Article 51A of the Constitution. A fully informed citizen will certainly be better equipped for the performance of these duties. Thus, access to information would assist citizens in fulfilling these obligations.

Official Secrets Act, 1923 was considered to be the most stringent opposition to the right to information since the independence in 1947. The Objections to the Official Secrets Act have been raised ever since 1948, when the Press Laws Enquiry Committee recommended certain amendments for right to information<sup>21</sup>. In 1977, a Working Group was formed by the government to look into the possibilities of amending the Official Secrets Act. Unfortunately, the Working Group did not recommend changes, as it felt the Act related to the protection of national safety and did not prevent the release of information in the public interest, despite overwhelming evidence to the contrary. In 1989, a Committee was set up which recommended limiting the areas where government information could be hidden and opening up of all other spheres of information. But no legislation followed from these recommendations.

In the last decade or so, citizens groups have started demanding the outright repeal of the Official Secrets Act and its replacement by legislation making the duty to disclose the norm and secrecy the exception.<sup>22</sup>

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<sup>21</sup> <http://infochangeindia.org/200306045946/Right-to-Information/Backgrounder/Right-To-Information-Background-Perspective.html>

<sup>22</sup> <http://infochangeindia.org/200306045946/Right-to-Information/Backgrounder/Right-To-Information-Background-Perspective.html>

It's taken India 77 years to transition from the repressive climate of the Official Secrets Act to one where citizens can demand the right to information. The enactment of the Freedom of Information Act 2002 marked a significant shift for Indian democracy, for the greater the access of citizens to information, the greater the responsiveness of government to community needs.

Before that, in 1997, two states passed right to information legislation (Tamil Nadu and Goa) and the Government of India appointed a working group, headed by former bureaucrat and consumer rights activist H.D. Shourie, to draft what was reworked into the Freedom of Information Bill, 2000. This Bill included some provisions that were not in the Shourie draft, such as the requirement that urgent requests in cases involving life and liberty should get a response within 48 hours.

The most significant milestone in the history of legislation of our country is the introduction of the Freedom of Information Bill 2000 in the Lok Sabha. The Government of India introduced the Freedom of Information Bill, 2000 (Bill No.98 of 2000) in the Lok Sabha on 25th July, 2000. The Bill, which cast an obligation upon public authorities to furnish such information wherever asked for, was passed by the Parliament as the Freedom of Information Act 2002.

However, the Act could not be brought into force because the date from which the Act could come into force, was not notified in the Official Gazette.

The defined objective was, it will enable the citizens to have an access to information on a statutory basis. With a view to further this objective, clause (3) of the proposed Bill specifies that subject to the provisions of this Act, every citizen shall have the right to freedom of information. Obligation is cast upon every public authority under clause (4) to provide information and to maintain all records consistent with its operational



requirements duly catalogued, indexed by the appropriate Government or the competent authority. As in our present democratic framework, free flow of information for the citizens and non-Government institutions suffers from several existing legal inadequacies, lack of infrastructure at the grass root levels and an attitude of secrecy within the Civil Service as a result of the old framework of rules. In the global context, it is important that the access to government-controlled information should also help to bridge the knowledge gap between the rulers and the ruled, the managers and the beneficiaries and between the producers, distributors and the consumers. The inequality in knowledge is also responsible for social superiority and inferiority complexes reinforcing and perpetuating social and economic divides. These in turn create a political clout and leverage in favor of the possessors of the exclusive information, quite disproportionate to the value of the information. A distinct class of secret operators of power, with a halo of unwarranted mystique and awe around them, emerges and behaves and operates as a superior race.

The need for Right to Information was widely felt in all sectors of the country and this had also received judicial recognition through some landmark judgments of Indian courts. A Supreme Court judgment delivered by Mr. Justice Mathew is considered a landmark. In his judgment in the *State of U.P. vs. Raj Narain*<sup>23</sup> case, Justice Mathew ruled- Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary when secrecy is claimed for transactions which can at any rate have no repercussion on public security.

Again, in the celebrated case of *S P Gupta vs. Union of India*<sup>24</sup>, widely known as the 'Judges' Case, the Court held that In a country like India which is committed to socialistic pattern of society, right to know becomes a necessity for the poor, ignorant and

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<sup>23</sup> AIR 1975 SC

<sup>24</sup> AIR 1982 SC 149

illiterate masses. The Court, in fact, went on to declare the right to information as a fundamental right, implicit in the freedom of speech and expression

A basic principle behind most freedom of information legislation is that the burden of proof falls on the body asked for information, not the person asking for it. The requester does not usually have to give an explanation for their request, but if the information is not disclosed a valid reason has to be given.

In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by countries, intergovernmental organisations, civil society and the people. The right to information has been recognised as a fundamental human right, which upholds the inherent dignity of all human beings. The right to information forms the crucial underpinning of participatory democracy - it is essential to ensure accountability and good governance.

Right to Information Act 2005 mandates timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs, Directory of Employees etc. amongst others, besides access to RTI related information published on the web by various Public Authorities under the government of India as well as the State Governments.

The greater the access of the citizen to information, the greater the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on access, the greater the feelings of 'powerlessness' and 'alienation'. Without

information, people cannot adequately exercise their rights as citizens or make informed choices.<sup>25</sup>

The Right to Information Act aims at setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority and providing for the constitution of a central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.<sup>26</sup>

The Act also facilitates right to information leading to an informed citizenry and transparency of information which are vital to the functioning of democracy as established by the Constitution of India and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed; which in turn harmonizes conflicting interest in practice involved in revelation of information and other public interests such as efficient operations of government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information while preserving the paramount of the democratic ideal.

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<sup>25</sup> <http://www.ckc.lk/History>

<sup>26</sup> <http://www.infochangeindia.org>

### **Chronology of RTI Laws in India:**

1) Tamil Nadu, Goa	1997
2) Rajasthan, Karnataka	2000
3) Delhi	2001
4) Maharashtra, Assam	2002
5) Madhya Pradesh	2003
6) Jammu and Kashmir	2004

### **List of Important Dates In The Process Of Enactment Of RTI Act:**

1) 06.01.2003	Parliament enacted FOIA 2002
2) 23.12.2004	The RTI Bill introduced in the Loksabha
3) 11.05.2005	Loksabha passed the RTI Bill
4) 12.05.2005	Rajyasabha passed the RTI Bill
5) 15.06.2005	The President gave assent to the Act; few provisions came into force
6) 21.06.2005	RTI Act published in the Gazette of India, Part II, Sec.1 Ext.No.25
7) 12.10.2005	RTI Act came fully into force

## Chapter-4

### RIGHT TO INFORMATION: NATURE AND SCOPE

#### 4.1 Nature and Scope

Access to information is often called, and rightly so, as the 'oxygen for a democratic society'. Democracy requires an informed citizen and transparency of information. In its very first session in 1946, the U N General Assembly adopted Resolution 59 (1) Stating, "Freedom of information is a fundamental human right and... the touch-stone of all the freedoms to which the United Nations is consecrated".<sup>27</sup> A recent report prepared for the government of India noted:

"It is now widely recognized that openness and accessibility of people to information about the government's functioning is a vital component of democracy."<sup>28</sup>

Today, there is an exciting global movement towards recognition of the right to information by states, inter-governmental organizations, civil society and the people. There is a growing body of authoritative statements supporting the right to information, made in the context of official human rights mechanisms, including at United Nations, the Commonwealth, the Organization of American States and Council of Europe. Many inter-governmental organizations now have in place information disclosure system which are reviewed and updated on a regular basis.

Information, moreover, nourishes in citizen's minds and empowers them. Consequently, they can be their own governors and not mere subjects. It is, therefore a sine qua non for effective citizenship. Similarly, it is vital for the realization of the

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<sup>27</sup> Sarbjit Sharma, Kishan Gopal, Right to Information Implementing Information Regime at 1(2006).

<sup>28</sup> Sonvanik Mullick, "The Right to Information and the Role of Media" Supreme Court Journal 2007 at 41.

character and potentialities as human being. It works as a fuel for thought and communication, which is the fountainhead of all expression of the individual personality. To cut the fuel is to stop the engine as to cut flow at the source is to dry up the whole stream. For, Thomas I. Emerson<sup>29</sup>, attainment of truth is possible only through information. Therefore, he opposes the suppression of information and discussion. Moreover, he favours clash of opinion so as to make the most rational judgement. Also, that suppression of information blocks the generation of new ideas and tends to perpetuate error. Moreover, information enables participation in decision-making. To support his argument Emerson takes help from the Declaration of American Independence that government derives the just powers from the consent of the governed. His logic for expression of information is to balance between stability and change.

The importance of information is increasing over the years. It is argued that in the past nations went to war to seize control of the raw materials they needed to feed their smokestack economies and in the near future the most basic of all the raw materials will be information (knowledge). Hence, competition to seize information among individuals, groups, states and international organization.

Mere information can not get transformed into wisdom unless certain intermediate processes are passed through. It is only a raw material or fuel<sup>30</sup> to feed the mind where knowledge generates. It is thus, a means and not an end in itself<sup>31</sup>. Information or knowledge is, therefore, a resource that empowers individuals and enriches the society. Such resource must be equitably accessible to all<sup>32</sup>. Equitable distribution is a matter of deep concern that has attracted the attention of the world community these days. Some

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<sup>29</sup> T,Emerson, The system of Freedom of Expression (1970) at 6-7

<sup>30</sup> S.P. Sathe, The right to know(1991) at 1

<sup>31</sup> V.R.K. Iyer, Freedom of information (1990) at 15

<sup>32</sup> S.P.Sathe, Supra note 30 at 3.

basic measures that rationalize the distribution are needed to cope with the race of information.

Informational justice demands both equal opportunity to have access to government information and liberty to use it. Curtailment of equal access is valid only if it is for public interest, which means, for the sake of national interest, personal privacy and other human dignity aspects. For this compelling need, modern democratic states have shown their interest to liberalize the information policies by shifting emphasis from secret state to open state. An open state entails the rule by clean government, which is possible only if the government works transparently.

#### **4.2 Need for Right to Information**

Freedom of Information is an indispensable element of good Government in modern world. As Aristotle considered that information is necessary if Government is to be held accountable. He dismissed the criticism that the public cannot understand information because they lack the necessary technical skills.<sup>33</sup> Freedom of information provides openness and accountability; it brings advantages not offered by freedom of expression. Freedom of information is seen as sustaining the characteristics of openness, transparency and accountability which are considered today as essential qualities of good representative Government. The expression "Freedom of Speech and Expression" in Art 19(1) (a) has been held to include the right to acquire information and disseminate the same. It includes the right to communicate it through any available media whether print or electronic or audio-visual, such as, advertisement, movie, article or speech, etc. This freedom includes the freedom to communicate or circulate one's opinion without

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<sup>33</sup> The politics, T.A. Sinclair penguin London, 1962 at 124-125.

interference to as large a population in the country, as well as abroad, as is possible to reach.”<sup>34</sup>

Harsh Mander<sup>35</sup> has described the importance of this right as follows:

Information is the currency that every citizen requires to participate in the life and governance of society. The greater the access of the citizen to information, the greater would be the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on access, the greater the feelings of ‘powerlessness and ‘alienation’ without information, people cannot adequately exercise their rights and responsibilities as citizens or make informed choices. Government information is a national resource. Neither the particular government of the day nor public officials create information for their own benefit. This information is generated for purposes related to the legitimate discharge of their duties of office, and for the service of the public for whose benefit the institutions of government exist, and who ultimately (through one kind of import or another) fund the institutions of government and the salaries of officials. It follows that government and officials are ‘trustees’ of this information for the people.<sup>36</sup>

The main thrust of the movement for the right to information in India has seen this right as being closely related to survival. Food security, shelter, environment and employment are all bound up with the right to information. In the absence of information on these issues, people remain marginalized and excluded from their rightful place in society. It is for this reason that in India, the movement for right to information has been

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<sup>34</sup> Prof. M.P. Jain, Indian Constitutional Law (2006) at 988

<sup>35</sup> Harsh Mander, is a social worker and writer. He has worked formerly in the Indian Administrative Service.

<sup>36</sup> Mander and Joshi, ‘The Right to Information movement in India-people’s power for the control of corruption’(CHRI, New Delhi, 1998)



as vibrant in the hearts of marginalized people as it is on the pages of academic journals and in media coverage.

The net result of secrecy has been disempowerment of common people and their exclusion from processes which vitally affect their existence. Information on matters such as employment schemes, obtaining certificates for various purposes, recommendations for various types of loans, access to different poverty alleviation programmes, irrigation, drinking water, sanitation and education is a must for ordinary people, whether provided proactively or on request, few other reasons are given below which necessitates right to information.

#### **4.2.1 Weapon to Check Corruption**

Almost every other person talks about corruption people attribute every failure or problem to the corruption in the machinery and leave at that. If the late prime Minister Rajiv Gandhi was to be believed when he said, only 10 paisa of every rupee actually reach the poor, imagine where the 90 percent of the 9,000 crores earmarked for anti poverty programmes in the 6,00,000 village was going.<sup>37</sup> Enforcing the accountability of authorities has its root in right to know, every person who casts his or her vote should also know how his or her mandate is working. Every political party interprets electoral verdict to their convenience and rule as they like saying that their acts had people's support. It is for the people to say whether they accept so and policy or raise questions.<sup>38</sup>

Right to information is a very potent tool for the purpose of combating corruption. Corruption is of two kinds. The first kind is economic corruption and a close examination

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<sup>37</sup> Bunker Roy, 'The politics of waste and corruption: The Fight for the Right to Information and Transparency Social Action ' Vol. 48 June 1998 at 203.

<sup>38</sup> Dr. Niraj Kumar, Treatise on Right to Information Act, 2005 (2009) at 95.

would show that we would have a respectful country that can rely on its own resources, if so much money was not being siphoned off. Then, we would not need to go begging with our bowls to the outside world. India has the dubious tag of being the 84th most corrupt nation together with Guatemala in a recently-compiled list of 180 countries around the world.<sup>39</sup> This is consistent with most people's everyday experiences; corruption in India is rampant, from the common clerk to the highest officials of the country. Big scams, for example regarding defence deals,<sup>40</sup> fodder procurement<sup>41</sup> and sugar prices<sup>42</sup> have frequently made the headlines. Coupled with the tardiness of the judicial system, these scams have done serious harm to the economy. Although media attention tends to focus on mega scams, small scale corruption is widespread and affects the everyday lives of ordinary people, for whom it has become a routine social and financial burden. People even have to pay bribes to access basic information, such as their own electricity bills. The right to information is thus a potent tool for countering corruption and for exposing corrupt officials.

Arbitrary and unaccountable exercise of power: The first step in any exercise of people's audit of public authorities would be to identify the specific problems faced by the people in their interface with the public authority in question. The problems would be specifically in relation to the corrupt, arbitrary or unaccountable exercise of power by a public authority. These may be of many kinds, which would include:<sup>43</sup>

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<sup>39</sup> Transparency International's corruption perception Index (CPI) for 2009, [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table)

<sup>40</sup> For example, the Bofors gun purchase deal, alleging huge kickbacks and involving an array of senior public persons.

<sup>41</sup> A chief minister was alleged to have 'eaten' fodder provided by world Bank and meant for poor farmers

<sup>42</sup> A central minister was alleged to have taken huge bribes for 'Fixing' sugar prices for the sugar lobby

<sup>43</sup> Niraj, Supra note 38 at 95-96

- a) Corruption, or the misuse of one's official position for private benefit, at the expense of public interest, for example in the context of rural development works, use of less materials in construction than shown in the estimates or in the bills and vouchers, payment to fictitious workers listed in muster rolls, etc.
- b) Wrongful or arbitrary exercise of patronage or power, for example, selection of beneficiaries for government programmes in contravention of established rules.
- c) Exploitation, or exercise of official in favour of the powerful in the contravention of law or established principles of justice, for example failure to implement social legislation such as those related to minimum wages, gender and protection of disadvantaged groups.
- d) Exercise of power in contravention of the rights and dignity of the individual, for example confinement of people in subhuman conditions in mental hospitals, jails or remand homes for children and women.
- e) Taking decisions that critically and adversely affect people without consulting them, for example establishment of large development projects without informing local populations about its impacts on displacement and on the environment; and
- f) Failure to perform duties effectively; for example public health authorities who fail to improve infant Mortality Rate and Maternal Mortality Rate, rural development authorities who fail to reduce poverty, and educational authorities who fail to increase enrolment and literacy.

Lack of transparency leads to suspicion of corruption, even when it is absent, involving the government in unnecessary controversy and slowing down reform. For example, every move to privatise the public sector leads to suspicion on the part of the public and there are frequent allegations of corruption and bribery. An interesting example

was the sale of 51 percent of the shares of Balco, an aluminium plant in Chhattisgarh, to Sterlite, a private company. Although the sale was dogged by allegations of bribery, they have not been substantiated. More openness would have helped deflect false allegations, reassured the public and bolstered support for the reform process.

The second kind of corruption is the arbitrary use of power. The arbitrary use of power has to be stopped, whether it is by the police, the administration, or other powers. Officials can abuse their discretion to suit various political or other vested interests, as well as to misappropriate funds. For instance, the power given to Collectors to allocate tribal land to non-indigenous people or to convert agricultural land to non-agricultural land has been seriously misused all over the county. Since these are administrative matters, they tend to hidden from disclosure, fostering abuse of power. While in theory it is possible to obtain an order of the High Court to compel disclosure of this information, in practice this is not possible for poor indigenous people or villagers, given the cost, distance and delays involved.

Another problem is the lack of transparency regarding selection for public posts. To counter this, in one district in Bihar an official advertised the posts in the local newspapers and then published the entire list of applicants along with their qualifications. This created a space for people to challenge both wrong information and inappropriate appointments. By being open, the appointing authority was also protected from pressures from managers and politically powerful people.<sup>44</sup> The right to information is therefore important to check abuse of administrative discretion and to ensure fair process. To stop corruption and achieve greater equity and social justice in our society, we have to have transparent governments, since they will be accountable. Without a accountable

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<sup>44</sup> Narrated by Manoj Srivastav of the Indian Administrative Service CHRI Workshop in Patna, Bihar, 1999.

government there is no future. For transparency and accountability we need to exercise the right to information law, and governments have to organize themselves to deliver information speedily.

#### **4.2.2. Protection of Civil Liberties**

The guarantee of civil liberty or personal liberty is not only a restraint on the government but also a part of the cultural and social consciousness of the community. Basic 'human values' and 'human dignity' were made part of 'personal liberty' even inside the prison walls. The Supreme Court of India has outlined many guidelines to protect civil liberties. In *Prabha Dutt V. Union of India*,<sup>45</sup> the court held that there excepting clear evidence that the prisoners had refused to be interviewed, there could be no reason for refusing permission to the media to interview prisoners in death row. In *Maneka Gandhi V. Union of India*,<sup>46</sup> the apex court observed that:

“The expression ‘personal liberty’ in Art 21 is of the widest amplitude and it covers a variety of right which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19”

In this way right to know and freedom of information are inalienable components of the freedom of expression and personal liberty, which constitution confers on every citizen of the contrary.

The most recent judgment enumerating in detail the procedural safeguards for arrest and custody were given in a case *D. K. Basu v. State of West Bengal*<sup>47</sup> and *Joginder*

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<sup>45</sup> AIR 1982 SC 6

<sup>46</sup> AIR1978 SC 597

<sup>47</sup> AIR1997 SC 610

*Kumar v. State of U. P.*<sup>48</sup> most of these directions translate into the right of the accused or his kin to have access to information regarding his arrest and detention such as preparation of a memo of arrestee to be counter-signed by the arrestee and relative or neighbour, preparation of a report of the physical condition of the arrestee, recording of the place of detention in appropriate registers at the police station, display of details of detained persons at prominent place at the police station and at the district headquarters, etc.

Custodial institutions are some of the most opaque places in the country. Violations in custody range from blinding prisoners, keeping convicts in jail long after they have served their sentences, and abuse of women and children. Effective community monitoring of these institutions, for example through unofficial visits, is dependent upon access to information. The Supreme Court of India has found it necessary to address the problem of torture and ill-treatment in custodial situations by enforcing transparency through specific guidelines.

In a case,<sup>49</sup> the Court stated, "Custodial violence, including deaths and torture in the lock ups, strikes a blow at the rule of law. Transparency of action and accountability perhaps are the two safeguards which this court must insist upon". Some governments are considering providing explicitly for the right to information in relation to prisons. This is the case, for example, with a new Prisons Bill presently under consideration in Rajasthan. Although abuse remains rampant despite these developments, there are a few examples of prisons where the record of abuse has diminished; in most cases this is direct result of transparency enforced by the officials in charge.<sup>50</sup>

#### **4.2.3 Matter of Life and Death**

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<sup>48</sup> (1994)4SCC260

<sup>49</sup> D.K. Basu V. Stae of West Bengal (1997)1 scc 216.

<sup>50</sup> This has happened, for example, in the jails of Bilaspur, Madhya Pradesh and Tihar, Delhi.

In *Kharak Singh v. State of Utter Pradesh*.<sup>51</sup> Supreme court held that the life means the life with human dignity and not an animate life. In *Francis Coralie v. Union Territory of Delhi*,<sup>52</sup> Supreme Court observed: "The right of life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing, and expressing one self in diverse forms , freely moving about and mixing with fellow human beings. In *Mohini Jam v. State of Karnataka*,<sup>53</sup> Supreme Court has implied the right to education as a fundamental right form Art 21. The word 'life' has been held to include 'education' because education promotes good and dignified life.

Therefore, food, shelter, livelihood and education, the most important aspects of a person's life, are provided in most rural areas through numerous 'schemes' run by the Central of State government. Food, for example, is distributed through the notoriously corrupt 'Public Distribution System' a network of 'ration shops' which distribute subsidised grains and other essentials. Stock registers are poorly maintained and are not available for inspection by the public. Corrupt practices include the replacement of grains with poor quality stocks or even non-distribution on the pretext of 'unavailability.' There are also schemes for providing housing,<sup>54</sup> employment<sup>55</sup> and education.<sup>56</sup> Funds for these schemes are routed through the network of bureaucrats from the Central or the state government down to the village.

Although meant for the poorest of the poor in the rural areas, these funds have been routinely misappropriated or misused on a scale which, even on a rough calculation, would amount to many times that of the better known large scale corruption scandals. In

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<sup>51</sup> AIR 1963 SC 1295

<sup>52</sup> AIR 1981 SC 746

<sup>53</sup> AIR 1992 SC 1858: (1992)3 SCC 666

<sup>54</sup> The "Indira Awaas Yojana"

<sup>55</sup> The ' Jawahar Rozgaar Yojana"

<sup>56</sup> Such as the "Padho Badho" scheme in Madhya Pradesh.

most cases, people do not know about the existence of these schemes, or at least salient details, such as their entitlements under the scheme, paving the way for them to be tricked into accepting less than their allocation through forgery. Furthermore, records are often tampered with, a relatively simple practice because no one outside the tight knit governmental circle has access to them. For example, many records list fictitious beneficiaries of the schemes.

Lack of information about land entitlements and records is a major problem, especially since nearly two thirds of the population is dependent on agriculture. A regular complaint with rural people is the inability to access their own land records. To get a copy of their patta<sup>57</sup> is difficult. Not only are there delays and repeated time consuming visits to various offices, but they also routinely have to pay bribes to the patwari, the tehsildar or the Block Development Officer (BDO).<sup>58</sup> Lack of access to land records and knowledge about land laws have led to frequent instances of land grabbing by powerful people. Here again, a common problem is the manipulation of records, especially where the beneficiary is a widow or an indigenous person. Health schemes are rarely advertised sufficiently to enable people to benefit from them. The anti- polio campaign is a case in point. The polio immunisation programme has received large amounts of government and international funding and yet many people are left out, due to ignorance about the scheme. This is compounded by an inability to monitor whether or not the vaccines have been administered properly, in part because information is not publicly available. In one incident in Uttar Pradesh, an epidemic of Japanese encephalitis broke out. Local health organisations were told that the preventive vaccine was not being manufactured at the

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<sup>57</sup> Title document showing lease of land from the government.

<sup>58</sup> Village- level revenue and administrative officers.



responsible institute whereas in fact the government had simply failed to requisition the medicine. This only came to light long after the epidemic had broken out.<sup>59</sup>

Environmental issues like contamination of groundwater have a direct effect on people's lives and yet very little information on these problems is available. This means that people continue to suffer the ill-effects until it is too late to take action, often with disastrous consequences. The government's own environmental policy states this.

The case of the Union Carbide Corporation.

The Union Carbide Corporation disaster occurred in Bhopal, Madhya Pradesh in 1984 and is famous worldwide. Methyl-iso-cynate, a lethal gas, spread out into a densely populated area of this large capital city, killing several hundred people and harming many more. The lack of information about this massive disaster continues to raise serious questions even today. People are still asking about the government's responsibility. Did they allow this factory to function without finding out about its real nature? If someone in government did know of the potentially harmful nature of its activities how was it allowed to carry on? Did the people have a right to know about the dangers of this chemical? What about the responsibility of Union Carbide, as a private business, towards the people in whose environs they operate? As one author has noted:<sup>60</sup>

The tragedy in Bhopal can be seen not merely as a failure of technology but as a failure of knowledge. The accident might not have happened at all if the right people had obtained the right information at a time when they were capable of appreciating it and taking appropriate preventive action. A central challenge for the future right to know

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<sup>59</sup> Case narrated by a health activist at a CHRI Workshop in Lucknow, Uttar Pradesh, 2000

<sup>60</sup> Jasooff, "The Bhopal Disaster and the right to know", 27 social science and Medicine 1113(1988), In Divan and Rosencranz, Environmental law and policy in India.

policies is to bridge the information gaps and the communication gaps that are likely to arise in the course of technology transfer.

The government's response even in the wake of the tragedy has been secretive. It has refused to release crucial information, for example to help people to get medical treatment and rehabilitation packages. It has also tried to stem the flow of information, in one case by arresting people under the Official Secrets Act for taking notes at a meeting where officials and non-governmental organisations were present. The public must be aware in order to be able to make informed choices. A high government priority will be to educate citizens about environmental risks, the economic and health dangers of resource degradation and the real cost of natural resources. Information about the environment will be published periodically. Access to information to enable public monitoring of environmental concerns will be provided for.<sup>61</sup>

An Indian scientist has commented on the need for the government to share information on nuclear radiation, " If the government claims that nuclear plants are necessary, then it has to inform the public about the sacrifices involved. The BARC<sup>62</sup> should disclose how much of the highly radioactive waste generated from the plutonium processing plant is stored there and in what forms. The use of the Official Secrets Act in preventing public access to data relating to their health is an artifact of British imperialism and should be abandoned. Moreover, there is no reason to keep health and environment data secret.<sup>63</sup>

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<sup>61</sup> Policy statement for abatement of Pollution, Ministry of Environment and Forests Government of India(1992).

<sup>62</sup> The Bhaba Atomic Research Centre, a leading Indian nuclear research institute.

<sup>63</sup> Interview with Arjun Makhijani, President of Institute for Energy and Environment Research, a US based independent organisation which monitors the working conditions in nuclear plants throughout America, in the Times of India, 22 february 2001.

Consumer information is another area where it is important to have proactive dissemination of information, and consumer groups are fighting for stricter labeling laws on domestic as well as foreign products, especially food and medicines. Mandatory labeling of non-vegetarian products has recently been approved by the government under the Prevention of Food Adulteration Act.<sup>64</sup>

#### **4.2.4 Principle of Participation**

Since Government works are carried out for the people they must be involved in the planning process and they must know how things are being done. To participate in the planning process and make judgment whether a plan or scheme is useful is not people should have sufficient knowledge about the nature of programme and project. This ensures acceptance of projects by the people and avoids wastages.<sup>65</sup> Participation in political and economic processes and the ability to make informed choices is restricted to small elite in India. Consultation on important policy matters, even when they directly concern the people, is rare. Even where 'consultation' is mandatory, for example under the Environment Protection Act, information sharing is limited, undermining the whole 'consultative process'. Furthermore, reports pertaining to these consultations are difficult to access.

The impact on local people of globalisation, and the 'economic reforms' it has brought, is often made far more severe because of the non-participatory way in which these reforms were developed and the lack of information about them. For example, small dairy farmers were not informed about the opening up of the Indian market to imports of

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<sup>64</sup> Consumer voice, vol. 2, Issue No. 2 (March-April 2001).

<sup>65</sup> Shukla Ramesh Partap, "Right to know as material aspect of speech and expression and emerging trends" AIR 2008 at 135

milk products under World Trade Organisation rules. As a result, they failed to prepare for this change and many of them have been forced out of the market.

#### **4.2.5 Principle of Accountability**

Ours being democratic country governance from village to central level is accountable to the people have right to know that the Government is doing just s their elected representatives have right to information on their behalf.<sup>66</sup> In a democracy, those who manage the affair of the society are supposed to be the trustees of the people and have to be accountable for their acts and omissions.<sup>67</sup> The basic postulate of accountability is that the people should have information about the functions of Government. It cannot be over emphasized that even from a conceptual stand point, the public's right to information is an indispensable prerequisite of democracy. To ensure such accountability, the people must have right to know about the policies, programmers, doing or misdoings of their representatives in the legislative and executive branches of administrations."<sup>68</sup>

#### **4.2.6 Principle of Transparency and Good Governance**

There is a presumption that all that the Government does is for the well being of the people which means it is done honestly optimizing benefits of the funds being used. This presumption has however eroded to a great extent in the recent times due to the misuse, misappropriation and careless use of public funds. Only making all public

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<sup>66</sup> Dr. A. Subrahmanyam, "Transparency in Administration is vital safeguard against infringement of Human Right" (2001)3 SCJ at6

<sup>67</sup> Romana Shafaq, "Right to information : Transparency and Accountability" KULR(2001) at 248.

<sup>68</sup>Justice R.S. Sarkaria, "Right to information" Press council of India Review 1993 vol .14 at 4.

dealings transparent can check such things. Transparency helps in holding people accountable for any mishandling and mismanagement of public money and time.<sup>69</sup>

#### **4.2.7 Knowledge of laws and policies**

It is said that ignorance of law is no excuse. Therefore, legal knowledge essential for everyone. Law includes legislations, ordinances, precedents etc. India has some very progressive legislation,<sup>70</sup> backed up by progressive court judgements, but these laws are often largely confined to the books and fail to be fully implemented because they have not been effectively disseminated. For example, for years after the new forest laws were put into place, few people understood the conditions they placed on cutting down trees, leading to harassment and threats by local forest officials against villagers for cutting on their own land. In Madhya Pradesh, It was reported that any 'pink coloured paper' could be used to exploit indigenous people as they identify it as a penalty slip for violating forest laws.

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<sup>69</sup> Shukla Ramesh Partap, Supra note 65

<sup>70</sup> For example, in the area of employment rights such as equal wages for women, accident compensation, and abolition of bonded and child labour.

### **4.3 Classification of right to information**

Right to information may be broadly classified into two broad heads: right to information against government and right to information against private persons. Generally it is found that it is in the hands of governmental agencies the information which individuals seek. Many such documents may be of importance to the general public. Sometimes information possessed by private persons may also be found to be of importance to the general public.

#### **4.3.1 Right to information against Government**

Where individuals seek information from the government, the very purpose involved may vary from one situation to another. One may seek as a public citizen or as private person or even as a surrogate. Public may seek information for different purposes. Sometimes it may be with a purpose of exercising his political rights. In *L.K.Koolwal*,<sup>71</sup> the High Court of Rajasthan allowed a citizen's request for information relating to the sanitation conditions of his town. The access claim was, it may be noted, based on the principle of right to know founded on freedom of speech and expression. It was the political right of the inhabitants to know whether their local authority had performed its duties.. Importance of this case is that the claim was based on Article 19(1) (a) of the Constitution and not on the basis of any statutory right providing access to government held documents.

In certain cases people seek information from the governmental agencies in order to assert individual claims against government or to defend oneself in a governmental action. In such situations right to information may be justified for the purposes for

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<sup>71</sup> AIR 1988 Raj. at 118

individual self fulfillment or realization. In cases relating to executive privilege, the courts decide finally whether a document sought for disclosure may be divulged or not. It is being done after a careful evaluation and balancing of the two conflicting public interests necessitates secrecy in departmental affairs for its proper and efficient functioning, and in the administration of justice to an individual to the maximum extent possible.

The right to information of an individual, where executive privilege is claimed by the government, was recognized by the judiciary after an initial reluctance. Where a government document was required to establish a case, the attitude adopted by the judiciary was to leave it to the pleasure of the executive, However, such a submissive attitude of the court did not last long. Now, it is almost a matter fully within the control of the courts. Though the issues relating to executive privilege were treated as merely evidentiary in nature by the earlier courts, the picture has changed now. It is treated now more or less as a right to know.

Right to information against Government may be described as public sector information. Public sector information may be classified along different lines. A first possible distinction is the one between administrative and non-administrative information. The first category relates to the function of Government and the administration itself and the second category to information on the outside world that is gathered during the execution of public tasks.

Within administrative information a further distinction can be made between information that is fundamental for the functioning of democracy (like laws, court cases, parliamentary information) and information that does not have such a fundamental character. Another possible distinction draws a line between information that is relevant for a general public (like parliamentary information) or for a very limited set of persons

that have a direct interest. Where an administrative action results in civil consequences to an individual, the courts in general have emphasized the need to follow the principles of natural justice. The right to fair hearing requires the authorities to provide a right of being heard before the decision is being taken. The principle of hearing becomes meaningful only when it carries a right to know also. One must know the case made against him, he must know that evidence had been given and what statements have been made affecting him, and he must also know those documents which are relied on by the authorities for coming to the decision. A fair hearing requires to give him an opportunity to correct or contract such document.<sup>72</sup> Thus a right to know, though limited to the particular fact situation, is an essential element of fair hearing.

The courts have taken note of the importance of right to information in connection with the principle of hearing. Where a decision maker relies on a document, it may be placed before the individual for his comments and rebuttal. The right to know such documents is a part of the right to defend himself. In *Dhakeshwari Cotton Mills* case,<sup>73</sup> the Supreme Court questioned the decision of income Tax Appellate Tribunal which took the decision as to tax collection without disclosing to the mills the information supplied by the Income Tax Department. In *Mohd. Sharif's* case<sup>74</sup> an enquiry against a police constable was conducted in which statements from witnesses were taken. The constable was neither shown the statements nor the report of the preliminary enquiry. The proceedings were questioned on the ground of violation of the principles of hearing.<sup>75</sup>

Non disclosure of documents makes a hearing process a farce. The right to hearing embraces not only the right to present evidence but also an opportunity to know the

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<sup>72</sup> *Morgam v. United States*, 82 L.Ed. (1938) at 1129.

<sup>73</sup> *Dhakeswari Cotton Mills v. C.I. T.*, AIR 1955 SC 65

<sup>74</sup> *State of U P. v Mohd. Sharif*, AIR 1982 sc 937

<sup>75</sup> See also *Brajlal Manila & Co. v Union of India*, AIR 1964 SC 1643.



opposite side. For a successful claim of disclosure, one may show that the authority has relied on the particular document. However, the right to information under the hearing principle may receive a set back where there is a more dominant public interest demanding secrecy to the document.

Where an administrative decision affecting an individual may also show the reasons for the decision. Where reasons are not given, it may be taken, as violation of the principles of natural justice. Thus right to know the reasons for a decision is also accepted against a government agency as a part of hearing requirement.

The right to information based on the fair hearing is not an independent one. It is intended to facilitate a fuller enjoyment of other right. The disclosures are, in such cases. In these situations the withholding of documents are taken as violations of principles of natural justice. They are treated as unreasonable under the principle of equality. However nondisclosures in these situations are yet to be taken as violation of one's right to know founded on free speech rights.

In a limited way the violations of right to know presently founded on the principle of fair hearing have got a bearing with free speech rights.

In the above mentioned situations it has been observed that right to information has been claimed by one who is benefited by the disclosure. The benefit may be limited to him solely as seen in cases where right to information has a bearing with the principle of natural justice. Sometimes the person who claims a right to information may be one of the beneficiaries of disclosure. It happens when he makes it a political right. A third situation may arise where one may seek information for and on behalf of a section of public. Benefit of disclosure goes to this section of the public and not to the information seeker. It is not connected to his political rights. A third situation may arise where one may seek

information for and on behalf of a section of public. Benefit of disclosure goes to this section of the public and not to the information seeker. It is not connected to his political right nor for vindication of his personal rights.

The Indian Supreme court has given a broad dimension to Art 19 (1) (a) by laying down the proposition the freedom of speech involves not only communication, but also receipt, of information, communication and receipt of information are the two sides of the same coin. Right to know is basic right of the citizens of a free county and Art 19 (1) (a) protects this right. The right to receive information springs from the right to freedom of speech and expression enshrined in Art. 19 (1) (a). The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression. Without adequate information, a person cannot form an informed opinion.

In *State of Uttar Pradesh v. Raj Narain*,<sup>76</sup> the Supreme Court has held that Art. 19 (1) (a) not only guarantees freedom of speech and expression, it also ensures and comprehends the right of the citizens to know, the right to receive information regarding matters of public concern. The Supreme Court has under lined the significance of the right to know in a democracy in these words:

“In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearings. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one conscious of

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<sup>76</sup> AIR 1975 SC 865, 884

danger when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest of bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.”

An individual sometimes seeks information solely with an objective of protecting other's interests. In *Sheela Barse v. Union of India*<sup>77</sup> the petitioner, a well known journalist, sought information on children kept in jails and borstal schools. The petitioner highlighted the sad plight of children under governmental custody and sought for speedy trial. Finding in her the right person, petitioner being a genuine social worker, the Supreme Court ordered for release of information sought for. It may be noted that the petitioner did not place her claim on any statute. Nor the Supreme Court founded it on the free speech doctrine. The Supreme Court further required the petitioner to use the information solely for the case and not to be divulged to others.

*S.P. Gupta v. Union of India*<sup>78</sup> in fact tells a different story. A case sprung up from public interest, where the petitioners were interested in efficient administration of judiciary especially in appointment of judges. On petitioner's request, the Supreme Court opened up many of the sensitive documents but only in public interest.

In *Secretary, Ministry of Information and Broadcasting, Govt. of India V. Cricket Association of Bengal*,<sup>79</sup> the supreme court reiterated the proposition that the freedom of

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<sup>77</sup> AIR 1986 Sc 1773

<sup>78</sup> AIR1982SC149

<sup>79</sup> AIR 1995SC 1236

speech and expression guaranteed by Art 19 (1) (a) includes the right to acquire information and to disseminate the same.

In *Dinesh Trivedi, M.P. and others v. Union of India*,<sup>80</sup> the supreme court dealt with the right to freedom of information and observed "In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seek to formulate sound policies of governance aimed of their welfare" The court further observed:

"Democracy expects openness and openness is concomitant of a free society and the sunlight is a best disinfectant."

The Delhi High court in *Association for Democratic Reforms v. Union of India*,<sup>81</sup> has emphasized that the right to receive information acquires great significance in the context of elections.

It is now common knowledge that there is criminalisation of politics in India. It is a matter of great concern that anti-social and criminals are seeking to enter the political arena through the mechanism of elections to state legislatures and even to parliament. Parliament has not yet been able to enact a law to uproot the evil. In this scenario the Delhi high court has sought to cleanse the electoral process through the mechanism of the right to know of the people. The Delhi High Court has ruled that from every candidate for election, the election commission shall secure for the voters the following information:

- i) Whether the candidate is accused of any offence punishable with imprisonment.
- ii) A such possessed by the candidate, his or her spouse and dependent children.

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<sup>80</sup> . (1997) 4 SCC 306 : (1997) 1 SCJ 697

<sup>81</sup> AIR 2001 Del. 126, 137

iii) Facts denoting the candidate's competence and suitability for being a parliamentarian.

This should include the candidate's educational qualification.

iv) Any other relevant information regarding candidates, competent to be member of parliament or state legislature.

In this way the essence is that where individuals seek information with an eye to help others or with a public interest in mind, they are also doing it enjoying their free speech rights. They become surrogates of other poor people or the community at large. They are acting, and by that process bringing others too, the secure participation in the decision-making process at political and social levels. Many informations so disclosed would act as a checking on abuse of governmental authority and further paving the way for a good administration.

#### **4.3.2 Right to Information against private individuals**

Right to know being a broad concept, sometimes takes into account information held by private persons too. In sheer public interest, private sources may not be allowed a freehand as to information they possess. A trade secret is commercially valuable information that is legally protected as long as it remains secret, by laws that prevent the acquisition of the secret by commercially unfair means or through unauthorized disclosure. In the context of government activities, a public entity must protect a private secrecy trade secret that is disclosed to the government in confidence. Also, in many jurisdictions, a trade secret can be protected by a publicly funded organization such as a state owned company. In *Lion Laboratories Ltd. v. Evans*,<sup>82</sup> the company manufactured and marketed an electronic equipment which has been used for measuring intoxication of alcohol by testing the breath of drivers of motor vehicles. The equipment had been

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<sup>82</sup> (1984)3WLR539

authorized by the government for the use of police for the same purpose. The defendants who were the technicians of the company took the confidential internal memoranda which doubted the accuracy of the functioning of the instrument. These documents were later offered to a newspaper which wanted to publish them. The two conflicting public interest thus involved were the plaintiffs right to protect the internal confidential documents and copyright, in them, and the public's entitlement to information which raised serious doubts on the reliability of the equipment which was the sole evidence on which many people had been or were being prosecuted. The court found the second interest more dominant. Thus even an internal confidential document of a private company loses its confidentiality and protection on account of the public interest attributed to it.

A right to information against a private individuals has its dimensions towards consumer. In case a vegetarian consumer does not know the ingredients of cosmetics, drugs or food products which he/she wants to buy, it will be difficult for him or her to practice vegetarianism. Therefore court instructed that the instructions on the container of the goods should enable the consumer to make a right judgement according to his need. It is felt that 'A user must know how he is to use it and when he is to use it'.<sup>83</sup>

It seems that the parliament realizing that the consumers have a fundamental right to be appraised of the fact whether or not a food article contains whole or part of any animal including birds, fresh water or marine animals or eggs or products of animal origin, brought about necessary changes in the prevention of Food Adulteration Act, 1954.

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<sup>83</sup> QzairHusain v. Union of India AIR 2003 Del. 106

In international Human rights treaties, as well as in most national laws, the individual has a right to privacy. Access to information is one of the ways to ensure that individual privacy is being respected.<sup>84</sup>

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<sup>84</sup> K.K.Khandelwal "A Commentry And Digest On Right To Information 2005" part 1 at page no.5

#### 4.4 Reasons for Governmental Secrecy

The normal rule in the Government of India is secrecy, and openness is an exception. The reasons for government secrecy are manifold. Sometimes it is a result of a deliberate act where a ruling government is reluctant to open its deficiencies, failure and excesses.<sup>85</sup> A part from such a policy of secrecy, the culture so far developed in the executive is also one of secrecy. The structure of the executive also contributes to secrecy. When a request for a document is placed before an official, he is likely to place it further before his senior official though he is empowered to take a decision. Institutional decisions and the rule of anonymity further contribute to secrecy. There are certain psychological reasons too which contributes to secrecy in the government functioning. Civil servants do have a feeling that to involve the public is court's trouble. Being experienced hands, having necessary expertise, civil servants do also have a conscious desire to be free from outside control and are reluctant to receive opinions from outside. There is also a general feeling that secrecy contributes to efficiency.

There are certain genuine grounds for secrecy. Information relating to defence matters, diplomatic affairs, crime investigation, etc., require protection from disclosure. The Official Secrets Act provides wide powers to the administration to classify documents as secret and to keep them away from the public perusal. Further certain statutes require the administration to keep certain kind of information away from the public.<sup>86</sup> Finally the executive privilege successfully claimed on many occasions boosts the culture of secrecy in the governmental functioning. A citizen's right to information may be seen on the above mentioned background.

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<sup>85</sup> Itzhak Galnoor, 'Government Secretary in Democracies', (New York University Press, New York 1977), at 276

<sup>86</sup> See for example section 19, Atomic Energy Act, 1962 . section 20, income Tax Act 1961 and Section 123 of Indian Evidence Act.



In India, Secrecy is the rule rather than the exception. It is generally argued by the government that secrecy must be maintained in matters related to national security and foreign affairs. No one denies that national security is of paramount importance and dealing with foreign affairs are sensitive matters. But this should not legitimize an excuse for a wholesale cover up. The parliament and people have a close interest in questions of defence as a substantial portion of the country's resources amounting to Rs.147,344 crore for the fiscal year of 2010-2011.<sup>87</sup> In order to participate in the defence versus development debate, they should have information about defence expenditure, purchase, etc. Moreover, some matters related to defence factories and foreign purchases should not be kept secret in order to expose corruption and mismanagement. The foreign purchase of Bofors gun and Howitzer pistols substantiates these arguments.<sup>88</sup>

Another argument given in favour of secrecy is related to public safety and individual protection. It is argued that the strategies and plans worked out by the police and intelligence authorities should be disclosed to the persons against whom they are directed. Otherwise, it can harm public safety and work of police. But the police cannot be completely secluded from the public eyes.<sup>89</sup>

The excesses and misdeeds of the police authorities require disclosure of information, There have been a number of instances like the Bhagalpur blinding, the Malayana cases where police has unleashed a terror and went beyond the law. In the Bhagalpur case, the report of the Bihar CID on the blinding of under trails was treated as secret and all kinds of pressures were used by the state Government to withhold its production to the Supreme Court where the proceedings were taking place.<sup>90</sup>

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<sup>87</sup> <http://ceoworld.biz/ceo/2010/02/26/an-in-depth-review-on-indias-defence-budget-2010-11>

<sup>88</sup> Kavaljit Singh, Right to information : Issues and suggestions, Mainstream April 21, 1990 at 16

<sup>89</sup> Ibid

<sup>90</sup> Ibid

The other argument favouring secrecy maintains the secrecy must be necessary in controlling and regulating the economy. One totally agrees that the budget proposals should be kept in secrecy so that the person may not through premature disclosure take economic advantages. But it should be confined to certain specified cases where disclosure of information cannot lead to undue gains and harm interests.<sup>91</sup>

Therefore, there is a need to define and the nature of documents and information which require secrecy instead of declaring every document as secret. The non disclosure of certain document and information warrant efforts to justify why and how this information should be kept secret. Thus, a balance is needed to be maintained between the interest of the government in the non-disclosure and the interest of the people in the disclosure of secret information.

In our country the government document and information are divided in to two types- classified and non-classified. Greater secrecy is maintained in the case of classified into 'top secret', 'secret', 'confidential' and 'personal' not for publication. There are many administrative procedures and laws under which the government documents and information can be kept secret.

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<sup>91</sup> *Ibid*

#### 4.5 Dangers of Secrecy

Any government, democratic or otherwise, may abuse the power entrusted to it if it is allowed to function in secrecy. It may not be out of place to mention here that secrecy breeds white collar crimes and corruption. India has a dubious tag of being 84th in most corrupted nation in the list of 180 countries around the globe. The scams, scandals ranging from bofors, havala, fodder, sugar, tehalka, UTI, Urea, Stamp papers, Taj corridor, war room leak were caused in system which is based on secrecy. Secrecy, being an instrument of conspiracy ought not to be a system of regular government.<sup>92</sup> Corruption thrives in secret places and avoids public places. Secrecy is an evil per se.

Secrecy, in fact, contributes to disempowerment of ordinary citizens. It means their exclusion from processes which vitally affect their existence. Making availability of information on issues such as food, security, drinking water, shelter, environment, displacement, employment schemes, wages, education and health, is the most fundamental function of any democratic government. Secrecy deprives a citizens from information on these basic issues.

Governmental secrecy invites inequality between government and citizens. Claims against government may sometimes have to be abandoned due to lack of information. Secrecy further creates disequilibrium among individuals. So on many occasions it is found that people who are close to the governmental circles take advantage over others who do not have closer access to officials.

Withholding of information, unless justified on a greater public interest, undermines public debate over public issues. This may ultimately reach the electoral process also. Similarly by releasing selected information or by twisting information,

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<sup>92</sup> See, "On Publicity", W. Taft, works of Jeremy Bentham 1843, at 310-317.

governments may be able to manipulate public opinion and falsify the consent of the community at large.

Information sometimes confers power on the government. Certain kinds of information, on withholding or releasing as the situation requires, are powerful weapons. It sometimes helps to acquire control over political parties, high officials and private persons. Reports of inquiries and investigations conducted by government are examples to such power conferring information.<sup>93</sup> Further, such information may also be used to acquire more information.

#### **4.6 Enforceability**

Ultimately Right to Information Act, 2005 has been passed by our parliament. From the foregoing discussion it becomes clear that the information which is sought may be in the public or private domain. Whereas the information within the public domain may be under the control of Government, the other kind of information may not be under the Government control at all. In such case, the legitimate expectation of the citizens is that the Government would facilitate the availability of such information under a relevant statute. However a look at the objectives of the Right to Information Act, 2005 shows that the basic objective is to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration. Therefore this law does not address the concerns of the citizen's right to information not under the control of Government. This appears to be the biggest lacuna in the Right to Information Act, 2005.

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<sup>93</sup> MC. Pramoan, "Right to know: the jurisprudence and practice", C.U.L.R. vol. XX No 1-21996, at 79-80

#### **4.7 Importance of Right to Information**

Different aspects of the importance of the right to information are discussed as under:

a) It ensures openness: The Right to Information ensures openness in administration by enabling the public to demand information about issues as varied as deteriorating civic amenities, assets of elected representatives, utilization of public funds, quality and standard of goods and services and basic human rights.

b) It promotes transparency: The Right to Information promotes transparency; empowers the citizen; reduces corruption; increases efficiency; make officials accountable, and puts an end to their indifference, arrogance and corruption. Unless the citizens are informed of their rights in the form of information, probably they cannot assert their rights and make the government accountable for its actions.

c) It improves quality decisions: The Right to Information is expected to improve the quality of decision making by public authorities, in both policy and administrative matters, by removing unnecessary secrecy surrounding the decision making process. The Right to Information would assume lot of importance in maintaining transparency in administration. This may also in a way help the prevention though not total eradication, at least checking up of several of the evils with which our public administration suffers.

d) It covers holding expressing and receiving information: Article 19 of Universal Declaration of Human Rights provide that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Therefore, Jagannath Mohanty observed that Article 19 of UDHR<sup>94</sup> articulates

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<sup>94</sup> Universal Declaration of Human Rights.

one of the most important aspect of democracy, the ability of individuals to engage in a free exchange of information and ideas. It covers the holding of opinions ,and both the expressing and receiving of information and ideas, through any media and across national boundaries.<sup>95</sup>

e) It serves as a brake on bad government practices: The Right to information has now emerged as an independent right coming out of the umbrella of the right to freedom of speech and expression and right to life, into which it was read earlier by the Supreme Court. Right to obtain information is essential to know the ways in which government functions. The right serves as a brake on bad government practices. The right to know the truth is paramount and it must outweigh the right to property and other personal rights.

f) It protects Human Rights: Since law serves life, informational law has therapeutic value for the Human Rights and people. Such a law is anathema for those in power. Power to the people implies their "Right to know", and denies to governments the right to hide. If "we the people" are final masters and performance auditors of bureaucracy, then need for free access to all public information, argues for itself. How can Stockholm resolutions for environment conservation or "Health for all" or any other social welfare project may be meaningful, if full disclosure and processing of facts is not made into a human right? No people's struggle or workers fight or fair employment terms or women organizations fighting for equality against gender discrimination or effort of the disabled to be a part of the mainstream, or the displaced seeking relief and rehabilitation can ever achieve success in the absence of this right.

Right to information has been recognized as a fundamental human right, which upholds the dignity of all human beings. Lack of information denies people the

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<sup>95</sup> Jagannath Mohanty, Teaching of Human Rights New Trends and Innovations (2005) at 151.

opportunity to develop their potential to the fullest and realize the full range of their rights. Access to information helps shape a person's views; assist to communicate his or her needs, preferences and judgment; in short, to participate in formulating the aims and achievements of the society and the state. It seeks to maintain the balance between stability and change in society.

Right to know underpins all other human rights. It is closely linked with other basic rights such as freedom of speech and expression and right to education. Freedom of expression and thought inherently rely on the availability of adequate information to inform opinions. The right to information is at the core of the human rights system because it enables citizens to more meaningfully exercise their rights, assess when their rights are at risk and determine who is responsible for any violations.

Hence, Right to Information has truly been declared as human right. A part from reactionary statutes like Prevention of Terror Act, 2002 (POTA), police terror, misinformation and disinformation are the methods the state adopts to conceal its crimes, official secrecy being a sanctuary for Government and ignorance of facts or their distortion becomes a tranquilizer for the public. Sometimes even parliament is kept in the dark. Freedom of Information is fundamental to freedoms. In the absence of citizen's right to know, state tyranny remains unchecked. The human essence fails to find expression under legalized repression. Society itself fails to protest or dissent if the right to know is gagged by secrecy. Humanity is unable to manifest itself when sources of information are frozen beyond common access and the voices of resistance are terrorized into muteness or corrupted into silence.<sup>96</sup>

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<sup>96</sup> Krishna Iyer (Justice) V.R., "The Diaectics & Dynamics of Human Rights in India (Yesterday, Today and Tomorrow)", Eastern law house, Calcutta, New Delhi, 1999, ati 5-16.

Right to information ensures openness in administration by enabling the public to demand information about issues varied as deteriorating civic amenities, assets of elected representatives , utilization of public funds, quality and standard of goods and services and basic human rights.<sup>97</sup>

The Right to Information promotes transparency, empowers the citizen, reduces corruption, increases efficiency, makes officials accountable, and puts an end to their indifference, arrogance and corruption, unless the citizens are informed of their rights in the form of information, probably they cannot assert their rights and make the government accountable for the action.<sup>98</sup>

Emphasizing the importance of the right to information for achieving good governance, the first report of the second ARC<sup>99</sup> has made the following observation:

Without good governance, no amount of developmental schemes can bring improvements in the quality of life of the citizens. Good governance has four elements transparency, accountability, predictability and participation. Transparency refers to availability of information to the general public and clarity about functioning of governmental institutions. Right to information opens up governments records to public scrutiny, thereby arming citizens with a vital tool to inform them about what the government does and how effectively, thus making the government more accountable. Transparency in government organisations makes them function more objectively thereby enhancing predictability. Information about functioning of government also enables

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<sup>97</sup> Sudhakar, P.J., "Right to information: constitutional perspectives and Judicial Respons", Andhra Law times 2008 Apr, 2 (7): J 24.

<sup>98</sup> Ibid.

<sup>99</sup> Administrative Reforms Commission.



citizens to participate in the governance process effectively. In a fundamental sense, right to information is a basic necessity of good governance.<sup>100</sup>

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<sup>100</sup> Government of India, Second Administrative Reforms Commission, First Report on Right to Information Master Key to Good Governance, June 2006, Para 1.1.1, at 1

## **Chapter-5**

### **Right To Information In Relation With**

#### **5.1 Constitutional Position**

Ignorance is the curse of the age we live in. Popular ignorance is the enemy of any intelligent decision and democracy. No Republic can last if the public is kept in dark about the processes, policies, and performance of the government and of the public bodies. Popular ignorance, which is the enemy of any intelligent decision, deadens democracy and so it is that no republic can last if the public is kept in the dark about the processes, policies and performances of government and of public bodies. No progress can be registered in politics and social change if the citizenry is left unfettered and the source of light sealed. Information is the source of knowledge and knowledge with intelligent judgment playing on it, the foundation of opinion on issues and policies in a democracy. The collective will of the community formed on facts disseminated by the media or secured otherwise shapes the course of state action.

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The collective will of the community formed on facts disseminated by the media or secured otherwise shapes the course of state action.

A modern democratic state being answerable to the people, the people are entitled to know what programme, policies, how and why they are being followed by the government. Information is imperative for exercise of free choice. It makes the governance accountable, transparent and participatory, which are vital components of successful democracy.

Citizens' right to know in a popular government is logically impeccable and politically principled. But law is less than logic and politics than principle. The right to information is such a broad concept and is in sheer public interest, private sources may not be allowed to have free hand information they possess. The justification of right to information is found in the interests of individual self- fulfillment.

Over past two decades, right to know laws have become one of the most innovative and effective means for protecting the environment and public health. These laws, also known as information disclosure statute serve number of board and important societal interests.<sup>101</sup> Right to know laws helps to improve the efficient functioning of the market. Armed with better information, consumer can make informed decision, and press for safer products. Better informed worker can negotiate for less toxic working conditions, or demand wages premiums for hazardous jobs. Investor in securities market can act more knowledgeably; indeed, studies shows that stock prices significantly to the release of environmental information; upward when information reveals a firm's superior performance; downward when poor performance is revealed. Right to know laws also serve fundamental liberty and autonomy interest. They provide individuals with

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<sup>101</sup> Krishna Iyer V.R, Freedom of Information, 1st Ed., Eastern Book Company, Lucknow, 1990 at 26.

knowledge of the risk involved in their choice and allow them to decide whether or not encounter these risks.

Democracy pre-supposes an informed body of citizens. The question is whether illiterate people can exercise control over their representatives. The basic postulate of democracy is that the elected representatives, from whom ultimately the government is formed, are responsible to people. The words 'We the people of India' in the Preamble of the Constitution clearly vest ultimate power in the people. Such power of the people becomes a reality only when they are aware of what their representatives are doing<sup>102</sup>.

Right to know laws also promote a democratic decision making and the power of ordinary citizens. Equipped with better information, citizens can participate on a more equal footing it regulated entities permitting, land use and other political decisions. Local resident and member of the public can exert pressure on firm to reduce risky activities or eliminate unnecessary toxic exposures. Right to know laws also can improve health and safety, by facilitating emergency planning, avoiding accidents, and helping the government determine area in need of additional regulation. They also provide strong incentive for firm to undertake self-regulation and reduce risky activities; when companies face a choice between, say , disclosing harmful substances in their product and reformulating the product to eliminating the harmful substances, often they chose to eliminate the substances.

India is implicitly committed to freedom of information right since the independence of the country. Article 19(1) of the Constitution guarantees the fundamental right to speech and expression which cannot be exercised until one get information on matters of public interest. Freedom of Information has many benefits. It facilitates public

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<sup>102</sup> *Ibid.*

participation on public affairs by providing access to relevant information to the people who are empowered to make informal choices and better exercise their democratic rights. Article 21 enshrine 'right to life and a person liberty' are compendious term which include within themselves variety of right and attributes. Article 19(1) (a) of the constitution guarantees the fundamental right to free speech and expression. The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matter of public interest will only encourage wild rumors and speculation and avoidable allegation against individuals and institutions. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizen perform their fundamental duties as set out in Article 51A of the Indian constitution. Article 21 confer on all person a right to know which include right to receive information. The ambit and scope of Article 21 is much wider as compared to Article 19(1) (a).

The Indian constitution has an array of basic and inalienable rights termed as Fundamental rights contained in Chapter III. These include the right to equal protection of the laws and the right to equality before the law, the right to freedom of speech and expression and the right to life and personal liberty. These are backed by the right to Constitutional Remedies under Article 32.

The legal position with regard to the right to information has developed through several Supreme Court decisions given in the context of fundamental rights. The legal discourse on the right to information started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right of freedom of speech and expression such as challenging governmental orders for control of newsprint.

### Article 19 (1) (a)

This provision guarantees the fundamental right to free speech and expression, which includes within it the right to access information. The pre-requisite for enjoying this right is knowledge and information. Thus the right to information becomes a constitutional right as the right to free speech also guarantees right to receive and collect and information. Article 19(2) permits the State to make such laws as to impose reasonable restrictions on the exercise of the freedoms guaranteed under this provision on grounds such as security of the state, sovereignty and integrity of India and other grounds as enumerated in the provision.

### Article 21

This article talks about right to life and personal liberty, which includes the right to know about things that affect our lives. The expression “life and personal liberty” is a broad term, which includes within itself variety of rights and attributes. The Supreme Court read into this article as a broad right to include right to know within its purview. The apex court held that “right to know is a necessary ingredient of participatory democracy..... It is wide enough to expand to a full range of rights including the right to hold a particular opinion and the right to sustain and nurture that opinion. It confers on all persons a right to know which includes right to information”.<sup>103</sup>

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<sup>103</sup> Reliance Petrochemicals ltd. V Indian express newspapers [1988(4) SCC 592]

Article 32

This article guarantees a right to constitutional remedies on the situation of a violation of the fundamental right of any citizen. The constitution also imposes certain duties upon the citizens under Article 51 A. A fully informed citizen is better equipped for the performance of these duties.

## 5.2 The Official Secrets Act, 1923

In liberal democracies as in dictatorships, people are routinely denied access to basic information that ought to be in the public domain. All human rights depend on the basic right to know, to demand accountability. In India, the feudal social fabric has exploited the formal democratic system to its advantage because the literate are too busy building careers and empires to bother about social inadequacies. Hence, the Right to Information movement has a widespread appeal for everyone.

The laws designed to protect the executive in India can be traced to the colonial period. The initial British strategy was to deal with matters internally through a series of administrative circulars placing an absolute ban on the dissemination of official information and allowing only senior officials to explain government policy. However, as soon as official secrecy legislation was enacted in Britain in 1889, it was duplicated in India. In 1923, over the protest in Indian legislature, India was given its current Official Secrets Act. Not surprisingly, the culture of secrecy beginning from the colonial rule fuelled rampant corruption, in which large amount of public money was diverted from development projects and welfare schemes to private use through misuse of power by the authorities.

In this backdrop, the Right to Information Act 2005 was enacted by the national Parliament to dismantle the culture of secrecy and to change the mindset of the bureaucrats and political leaders and to create conditions for taking informed decisions. In a country where public information has always been guarded behind an iron veil of secrecy, the Act of 2005 is the most important legislation since independence, say activists, because it can lead to transparency and accountability in governance.



### **5.2.1 Provisions of the Official Secrets Act, 1923**

In India, official secrets legislation has a wide range. Section 3 of the Act prohibits approaching, inspecting, passing over, or entering in the vicinity of a prohibited place. Further, under the Act, it is also an offence to obtain, collect, record, publish or communicate to any other person these items or any "other document or information which is calculated to be or might be or is intended to be, directly, or indirectly, useful to an enemy or which is likely to affect the sovereignty and integrity of Indian, the security of the State or friendly relations with Foreign States." The basic premise of the Section is that even if the case against the accused is not proven, "his conduct or his known character as proved" could create a presumption that his action was prejudicial to the safety or interests of the state.

However, Section 5 is the catch-all provision. It relates to the willful communication, uses, retention or failure to take reasonable care of all information which has been entrusted in confidence to him by any person holding office, or which he has obtained or which he has had access to owing to his position. Further, the voluntary reception, possession, or control of any such information is also an offence, if there is knowledge or reasonable cause to believe that such information is communicated in contravention of the Act under Section 5(2) of the Act. Hence, this Section has been interpreted widely to cover, for example, budget leaks.

Under Section 8, duty is imposed on every person to give a demand to a superintendent of police, or other police officer not below the rank of inspector,

empowered by the Inspector General or the Commissioner of Police in that behalf, or to any person of the armed forces of the Union engaged in guard, sentry, patrol or other similar duty, any information in his possession relating to an offence or suspected offence of spying under Sec 3 or Sec 3 read with Sec 9. Failure on this part is punishable under Sec 3(2). Under Section 4 read with Section 14 of Prevention of Terrorism Act, 2002, any person can be compelled to give information about unauthorised possession of arms and other weapons. Failure of this is punishable. However the Act stands repealed.<sup>104</sup>

### **5.2.2 Meaning of 'Official Secret'**

There is no doubt that despite its several shortcomings the prevalence of a statute of the nature of the Official Secrets Act, 1923 is justified by the need to provide protection to the Sovereignty and Integrity of the State. The problem therefore of reconciling through law the nation's need in Government Secrecy and its need in disclosure is quite a complex and difficult one.

Two basic issues which need to be effectively tackled are:

1. The problem of classification of information;
2. Procedural safeguards to the individual against administrative abuse including the safeguard of Judicial Review.

With regard to the problem of proper classification of information the following categories of information may avail of the protection entitled to 'Official Secrets':

1. Information pertaining to National Security and Defence – National Security and Defence Affairs has always been universally regarded as justifying secrecy. Even this is a broad category and everything under it cannot be considered to be secret.

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<sup>104</sup> S. P. Sathe, 'Right to Information', Lexisnexis Butterworths, New Delhi, 2006, at page 35.

Information may have to be disclosed under this accepted category in Public Interest without violating national security or national interests.

2. Information affecting friendly relations with foreign States - Foreign policy has often been an accepted ground of Official Secrecy however it is also subject to the condition of Public Interest as unauthorized disclosure could severely jeopardize foreign relations.
3. Information relating to the maintenance of Law and Order - With a view to facilitating the effective work Law and Order Departments conditions of assured secrecy and confidentiality are necessary.
4. Information relating to the Economic Policy - Secrecy may be necessary in controlling and regulating the Economy - Budget Proposals for example have to be kept in utmost secrecy so that persons through premature disclosure do not gain undue economic advantages. Premature disclosure of economic plans and policies may frustrate their very purpose, and precipitate activities, which they intended to avoid. However, secrecy on economic grounds is to be confined only to cases where disclosure would enable persons to make unjust gains or harm national interests.

### **5.2.3 Effect of the Right to Information Act, 2005 on the Official Secrets Act, 1923**

#### **a) Overriding Effect of the Act.**

Section 22 of the Official Secrets Act, 1923 provides that, the Official Secret Act, 1923 and every other Act shall remain in force in the statute book, but shall cease to operate to the extent to which they are inconsistent with the provisions of this Act.

This will protect a civil servant acting as a CPIO or SPIO who gives information under the Act, but it may not protect any other civil servant or a citizen who wants to share his experience of working in government with the people. It may not protect a whistle blower who gives information regarding a scandal or fraud in government. If a civil servant after retirement from government service desires to share his/her experience, he/she may still be prosecuted under Official Secrets Act. The Official Secrets Act will continue to sustain the secrecy regime to the detriment of transparency. While the Act empowers the citizen to obtain information, it does not facilitate the giving of information by citizens or ex civil servants which the government considers to be secret.

#### **b) Right to Information Act to Prevail**

When there is a direct conflict between the Official Secrets Act and the Act, it is the Right to Information Act which prevails. The Official Secrets Act cannot be used in a manner in which it is inconsistent with provisions of the Act. Even on the question of supplying information or documents marked as secret the competent authority or information officer could use discretionary powers to disclose details. This is relevant, for instance, to Section 8(j) of the RTI Act where a Central Public Information Officer can disclose personal information that has been sought provided, public interest in disclosure outweighs the harm to the protected interests.

As per provisions of Section 8(d) and (e) of the Act, in case the request pertains to commercial information or information to a person in his fiduciary relationship, the competent authority, if convinced that larger public interest is served, may part with it.

With such RTI provisions, the relevance of Official Secrets Act has become very limited.

The Official Secrets Act, 1923 is a statute, which was enacted with the purpose of protecting the sovereignty and integrity of the State. It is but unfortunate that the wide discretionary powers conferred upon the administrative authorities in confidence with a view to facilitating the task of protection of national security were being exercised to shroud the undesirable activities of the Government or ruling party in power and to restrain the media from performing its duty.<sup>105</sup>

It is indisputable that a statute of the nature of the Official Secrets Act, 1923 is an indispensable requirement of a nation in order to facilitate protection of matters of national security. It is however equally indisputable that the Fundamental Rights of citizens of a democratic republic cannot be comprised and that a statute doing so must necessarily constitute a mere 'reasonable restriction' keeping in mind the judicial dictum that nothing which is arbitrary can be reasonable.

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<sup>105</sup> B. Raman, "Why Official Secrets Act needs a review", <http://www.rediff.com/news/2007/oct/01raman.html>

## **5.3 The Indian Evidence Act, 1872**

The evidence is an essential component of the justice. In order to render justice in a fair and impartial manner, the evidence has to be adduced. The opposing party has a right to know the information regarding the evidence produced against it. Even the principles of natural justice demand such a right to be given to every party as a part of the rule of fair hearing. However, the litigant, public, and also the public authorities cannot seek to know certain information which includes official communications and also the privileged communications. The Indian Evidence Act, 1872 contains a number of relevant provisions in relation to the same.

### **5.3.1 Provisions of the Indian Evidence Act Regarding The Right to Information**

1. The Indian Evidence Act, 1872 in its Section 74 provides a sweeping definition of public documents, which consist of documents forming the acts or records of the acts of the Sovereign Authority.
2. Further the Act of 1872 in Section 76 says that every public officer having the custody of a public document which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies.

3. The Act of 1872 in its Sections 123 and 124 makes the citizens' right to information absolutely discretionary on the part of the Government servants.

4. However, the clear and bold acknowledgement of peoples right to information, copy and inspection of public documents vis-à-vis all the agencies of a sovereign authority, as mentioned under the Sections 74- 76 of The Indian Evidence Act, is as a matter of fact, unparalleled elsewhere in the legal literature of India.<sup>106</sup>

### **Section 123**

Section 123 of the Indian Evidence Act, 1872 reads as follows:

Evidence as to affairs of State : No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer as the head of the department concerned, who shall give or withhold such permission as he thinks fit.

Here the unpublished records may include:

a) Documents that are passed between two states.

b) Documents between its own subjects.

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<sup>106</sup> Orissa Review, November 2006, p. 82.

- c) Documents between states and a subject and a subject of another state.
- d) Documents between subjects of more than one state; and
- e) Documents passed between head of department or ministries of state etc.

It's the public interest in fair administration of justice that comes into clash with public interest sought to be protected by non disclosure and thereupon the court is called upon to balance these two interests. It's the recognition of principle that interest of all subjects of state is superior to interests of any one of them. Bhagavati, J. in *Chamabrbaughwalla v. Parpua*<sup>107</sup> said:

“Every communication which proceeds from one official of state to another officer is not necessarily affairs of the state. It has therefore got to be determinate by reference on grounds on which privilege can be claimed in respect of a particular document.”

It would not be a good ground that, if the documents were produced, the consequences might involve the department or the government in parliamentary discussion or in public criticism, or might necessitate the attendance as witnesses or otherwise of officials who have pressing duties elsewhere. Neither would it be a good ground that production might tend to expose a want of efficiency in the administration or tend to lay the department open to claims for compensation.

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<sup>107</sup> A.I.R. 1950 Bom. 230.



In *State of Punjab v. Sodhi Sukhdev Singh*<sup>108</sup>, it was held that where an objection is raised regarding the document being a privileged one under sec.123 of The Indian Evidence Act, 1872 the proper course in such matters is to first hold an enquiry and then determine the nature of the document and if the court feels that the document belongs to the noxious class it may stay its hands and refer the document to the head of the department and leave it to its discretion to produce the document. If, however, the court finds that the document is not privileged, it can direct the document to be tendered in evidence and overrule the objection on that score<sup>109</sup>.

#### **Section 124**

Section 124 of the Act deals with the privileged official documents. It says:

Official communications: No public officer shall be compelled to disclose communications made before him in official confidence, when he considers that the interest would suffer by the disclosure.

The object of the section is to prevent knowledge of official papers, i.e., to say papers in official custody. The scope of the section covers all official communications in confidence. It confers a right on the public officer to claim privilege from disclosure of confidential communications. But before exercising this right, the officer must come to the

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<sup>108</sup> A.I.R. 1961 S.C. 493.

<sup>109</sup> State v M. A. Beg, A.I.R. 1963 J. & K. 20, 22.

conclusion that the disclosure would be injurious to public interest. It should not be resorted to as a cloak to shield truth from the court<sup>110</sup>.

Whether communication was made in official confidence or not is a question of fact. Before arriving at its decision, court should examine statements in question and the surrounding circumstances. There is a consensus of judicial opinion that the point as to whether a communication was made in official confidence is a matter solely left to judicial decision and if once the court comes to the conclusion that it has been made not in judicial confidence, then officer to whom communication has been made has no other option but to produce documents. If however court comes to the conclusion that communication was made in official confidence, then it is for the officer alone to whom communication has been made to decide as to whether document should be produced or not. If he elects not to produce it, court cannot compel him to produce it<sup>111</sup>.

## Section 125

Under Section 125<sup>112</sup> of the Act, no magistrate or police officer can be compelled to tell the source of his information about the commission of an offence<sup>113</sup>. This section

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<sup>110</sup> Excelsior Firm Exchange v. Union of India, A.I.R. 1968 Bom 322.

<sup>111</sup> In Re Mantubhai Mehta, A.I.R. 1945 Bom. 122.

<sup>112</sup> S. 125. Information as to commission of offences - No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no Revenue-Officer shall be compelled to say whence he The Orient Tavern any information as to the commission of any offence against the public revenue.

Explanation - "Revenue-Officer" in this section means any officer employed in or about the business of any branch of the public revenue.

<sup>113</sup> Raj Narain v. Smt. Indira Nehru Gandhi, A.I.R. 1974 All. 324, 327.

merely enacts that no magistrate or police officer shall be compelled to say, but it does not prohibit him, if he be willing, to say when he got his information. The protection afforded by section does not depend upon a claim of privilege being made but it is the duty of the court, apart from objection taken, to exclude such evidence<sup>114</sup>.

What the section contemplates is only the prohibition of the source from whom the magistrate or the police officer got information as to the commission of the offence and not as to the custody of any custody of any documents or other material objects, that might have been seized and that might be tendered in evidence in support of the commission of offence<sup>115</sup>.

### Sections 126 – 129

Sections 126<sup>116</sup> and 128<sup>117</sup> of the Indian Evidence Act, 1872 mention the circumstances under which the legal adviser can give evidence of the professional

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<sup>114</sup> Donald Weston v. Pearey Mohan Das, I.L.R 40 Cal. 898.

<sup>115</sup> Public Prosecutor v. M. N. Govindraja Mudaliar, A.I.R. 1954 Mad.1023, 1024.

<sup>116</sup> S. 126-No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client's express consent to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course and for the purpose of such employment.

Provided that nothing in this section shall protect from disclosure -

1. Any communication made in furtherance of any illegal purpose,
2. Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such showing that any crime or fraud has been committed since the commencement of his employment.

It is immaterial whether the attention of such barrister, pleader, attorney or vakil was or was not directed to such fact by or on behalf of his client.

communication. Section 127 provides that interpreters, clerks, or servants of legal adviser are restrained similarly. Section 129<sup>118</sup> says when a client can be compelled to disclose the confidential communication which has taken place between him and his professional adviser.

Section 126 states that no barrister, attorney, pleader or Vakil shall at any time be permitted to disclose any communication made to him by or on behalf of his client or any advice given by him to his client in the course and for the purpose of his employment and to state the contents or conditions of any document with which he has become acquainted in the course and for the purpose of his employment.

There are certain exceptions to this rule. This Section does not protect from disclosure:

- a) any communication made in furtherance of any illegal purpose;
- b) any fact observed in the course of employment showing that any crime or fraud

The protection afforded under this Section cannot be availed of against an order to produce documents under Section 91<sup>119</sup> of the Code of Criminal Procedure, 1973. The

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Explanation - The obligation stated in this section continues after the employment has ceased.

<sup>117</sup> S. 128- If any party to a suit gives evidence therein at his own instance or otherwise, he shall not be deemed to have consented thereby to such disclosure as is mentioned in Section 126, and if any party to a suit or proceeding calls any such barrister, pleader, attorney or vakil as a witness, he shall be deemed to have consented to such disclosure only if he questions such barrister, attorney or vakil on matters which, but for such question, he would not be at liberty to disclose.

<sup>118</sup> S. 129- No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness in which case he may be compelled to disclose any such communication as may appear to the Court necessary to be known in order to explain any evidence which he has give, but not others.

<sup>119</sup> S. 91- (1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, may issue a summons, or such officer a written order, to the person in whose possession or power such document

document must be produced, and then, under Section 162<sup>120</sup> of the Indian Evidence Act, it will be for the Court, after inspection of the documents, if it deems fit, to consider and decide any objection regarding their production or admissibility.

Under Section 126, it is not that every communication made by a person to his legal adviser is protected from disclosure but only those communications made confidentially with a view to obtain professional advice are privileged.

The scope of Sections 126, 127 and 128 is different from that of Section 129. Section 129 states that no person shall be compelled to disclose in the Court any communication between him and his legal adviser unless he offers himself as witness. This immunity may extend to third parties, such as consultant who are recruited to help with the preparation of the case for trial. Also, if a party becomes a witness of his own accord he shall, if the Court requires, be made to disclose everything necessary to true comprehension of his testimony.

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or thing is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed -

(a) To affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891(13 of 1891), or

(b) To apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

<sup>120</sup> S. 162- A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or its admissibility. The validity of any such objection shall be decided on by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

Keeping these provisions of The Indian Evidence Act, 1872 intact, the proposed enactment of Right to Information either at State level or at Central level would turn out to be an exercise in futility.

## 5.4 The Freedom Of Information Act,2002

Sec.	Freedom of Information Act 2000	Right to Information Act 2005	Remarks
	To provide access to information under control of public authorities	To provide access to information under control of public authorities	Both keep information of private bodies out of scope of statute
1.	"Freedom" comes into force only after notification. Not notified	"Right" comes into force from 120th day after its enactment.	Has come into operation at least.
2	Definition of "appropriate Government" include Center, States, Union Territories, bodies funded directly or indirectly by state	Definition of "appropriate Government" include Centre, States, Union Territories, bodies funded directly or indirectly by state	Same. There was an attempt to confine it to Centre only, but civil society's pressure worked.
	Information means any form relating to administration, operations or decisions of public authority.	Includes e-mails, memos, opinions, circulars, orders, logbooks, contracts, reports, models, data materials, etc.	Definition widened the scope of information. Did not include file notes as demanded.
	Public Authority: any authority body or	NGO substantially funded, directly or indirectly by	Scope widened.

	institution constituted by Parliament, Constitution, Legislature, government, including body owned controlled substantially funded.	State is also added.	
3	All citizens shall have freedom of information	All citizens shall have right to information	'Freedom' became 'Right'.
4	Obligation of public authorities to maintain records, disclose within reasonable times structural information about organization	To disclose within 120 days the structure, powers and duties of organization. Constant endeavour to suo moto disclosures	Total duty of disclosure or duty to publish was not assured by both the enactment.
5	Every public authority should appoint PIOs	Within 120 days every public authority should designate Central or state PIOs to provide info on request.	
6	Request for info in writing or in electronic form, PIO should provide assistance	Request in official language plus fee prescribed, PIO should provide reasonable	2005 Act specifies that no reason is required to seek any information. Elaborate provisions, and transfer of



	for requestor	assistance, and applicant need not give any reason.	request is also added.
7	Shall be disposed as expeditiously as possible within 30 days, if info asked is about life and liberty, within 48 hours. If fee is required, PIO should intimate it to info seeker. If request is rejected, reasons should be given.	<ul style="list-style-type: none"> <li>— Within 30 days, Information about Life &amp; Liberty within 48 hours</li> <li>— Rejection with reasons</li> <li>— Fees and cost has to be intimated</li> <li>— If information's not given within prescribed period, deemed to have been rejected.</li> <li>— No fee from people below poverty line.</li> <li>— If PA fails to comply with time limit, in for should be given free of cost.</li> <li>— Communicate rejection, period of appeal and particulars of appellate authority.</li> </ul>	The process of disposal is explained further in 2005 law. No basic difference. 2005 adds cost also to be fee aspect, which is serious factor that may take away the purpose of right to information.
8	Regime of exemptions: No obligation to provide	Exclusion classes expanded to include 11	Regime of secrecy increased through

<p>information in seven classes. Information about events happened 25 years ago can be given.</p>	<p>classes in addition no disclosure if invades privacy, personal information not related to public activity. Info that impedes the investigation, endanger source of information, need not be given. Important Addition: Notwithstanding OS Act, any info can be given if public interest outweighs harm to protected interest. Information available to him in his fiduciary relationship cannot be disclosed. Furnishing Information older than 20 years will be subjected to only three restrictions. Draft proposed such information could be 10 year old. However the decisions, reasons for decisions and material,</p>	<p>increased exemptions. Scope of information access is reduced to that extent. Government increased the range of information available to 20 year old and retained the restrictions over that also as it was. Even twenty-year-old information sought by citizen is subject to test of sovereignty, security, breach of privilege and cabinet secret. It will definitely hamper the free flow of old information, which may be very useful for analysis of mistakes, committed by past governments. In that manner, the new law is less open than the first.</p>
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		which formed the basis, can be given after the decision is made.	
	---	---	Cabinet information is still under the veils only. Govt. still hesitates to share decision-making processes. Providing for information on cabinet decisions is a good step. But this is also subject to exemptions specified.
9	Rejection is valid if request is too general, retrieval of which involve unreasonable diversion of resources or adversely interfere with functioning of authority.	Can be Rejected if asked for info infringes the copyright of another.	General nature and diversion of resources removed. It is good to remove two ambiguous and general provisions.
10	Serviceability, if part of info can be given, should be given.	Same	

11	<p>If info asked relates to third party notice shall be given to third party within five days. Cannot be given if third party treats it as confidential. Trade secret and commercial. Trade secret and commercial secrets are protected by law. Disclosure of other info may be allowed in public interest. Def of Third party includes public authority.</p>	<p>Almost the same section is repeated. Definition of third party says it includes public authority also.</p>	<p>One public authority may stop the information through another public authority. Dangerous definition. Public Authority is not removed from definition in spite of demands by civil society.</p>
12 to 17	<p>Deals with appeals.</p>	<p>S.12-14: Create Central Information Commissioner and information commissioners. Persons of eminence are appointed as CIC or IC by President on recommendation of committee of PM, Opposition Leader, Union Cabinet Minister</p>	<p>It is new regulatory regime at central and state level supervising information officers with powers prescribed under section 18.</p>

		<p>nominated by PM. CIC is paid on par with CEC. IC with EC. Can be removed by President on recommendation of SC on proved misbehavior. President may suspend him.</p> <p>S.15-17 State Information Commissioner, (almost similar).</p>	
18	---	<p>Powers of CIC etc. to receive and inquire into a complaint.</p> <p>While inquiring the complaint, the IC will be a civil court under CPC, summon, inspect documents, receive evidence on affidavit, call for a public record, summon witnesses or documents, or any other matter as may be prescribed. Records cannot</p>	<p>A complaint receiving mechanism is created, on various problems like IC not in a position to take request, refused unreasonably, not responded, or given incomplete misleading or false information or regarding any other matter.</p> <p>A new quasi-judicial body is created with an estimated expenditure of</p>

		be withheld by any authority from inquiry conducted by IC.	Rs.1.8 crores per annum as per financial memorandum. It is the major development over FOI Act, 2000.
19	Under section 12; aggrieved can prefer appeal to authority prescribed. Within 30 days. Second appeal within 30 days to the Central Government or State Government.	Appeals: If PIO rejected, the Aggrieved can appeal to Senior in rank to CPIO or SPIO. Appeal shall be made within 30 days. Second appeal within 90 days to CIC or SIC, whose decision shall be binding. CIC or SIC can order public authority to comply with Access Act, make necessary changes, enhance provision of training for giving information. Compensate complainant, or reject application.	2000 law virtually provided no machinery or mechanism to receive complaints and appeal is provided to an Authority which was not specified. From Authority second appeal was provided to Government. Comparatively, the 2005 Act is better as it provided complaint redressal mechanism, appeal to senior officer and then second appeal to Information Commissioners who are as independent as Election Commissioners.

20 & 21	No penalty clause at all. Section 13 offers protection for actions taken in good faith.	Section 20 If CIC or SIC are of opinion that either CPIO or SPIO without reasonable cause did not receive request for info, not furnished within period prescribed, malafidely denied, knowingly given incorrect, incomplete or misleading or false info or destroyed information it shall impose a penalty of Rs.250 each day till application is received or information furnished, the amount shall not exceed Rs.25,000. Can also recommend disciplinary action under service rules.	Penalty clause is essential if not the officers would be lethargic and reject for unsound reasons. Imprisonment provisions, which were available in Bill, were removed. Section 21 offers protection for actions taken in good faith. This provision along with Section 20 of penalties provide a good balance.
22	Overriding effect over Official Secrets Act.	Similar provision under section 22	Catch all provision of OS Act is not removed. The overriding effect really not there as there are several more exemptions made

			available than listed under OS Act.
23	Imposes Bar on Jurisdiction on courts.	Section 23 imposes similar bar.	Judicial Review power cannot be removed. Higher Courts can review.
24	Act will not apply to organizations like intelligence & Security organizations under Schedule II. Center has power to expand the list under Schedule.	Information pertaining to the allegation of corruption and human rights violation shall not be excluded under this sub-section of section 24, however the such information shall be provided only after approval of CIC, within 45 days, (ether provisions are same).	There is an improvement in the law, as information pertaining to-corruption and human rights violation was made available with certain approvals.
25	---	Monitoring and reporting by CIC and SIC is provided in section 25. They have to give reports to Center & States with details of enforcement and recommendation for	This provision is absent in previous enactment. Enforcement mechanism, complaint receiving procedure, and monitoring and reporting are the additional qualities of the new



		reform. Such reports shall be tabled on Legislature.	law.
26	---	Central Government to prepare programmes to educate, to encourage public authorities to participate in programmes to advance under standing of public. Authority within 18 months shall make a guide furnishing information about information right. Appropriate Govt. shall publish guidelines at regular intervals the object of this Act etc.	
27 to 29	Section 17 power of center to make rules, section 18 power of State to make rules. Section 19 the competent authority has power to make rules. Section 20 says rules made	Section 27 Central Govt. may make rules prescribing the cost of medium or print cost price of materials to be disseminated, fee payable, salaries payable to staff,	Rule making power should not be exercised inconsistent with the objective of the Act. For example, prescribing exorbitant fee and application charges or cost

	shall be laid before parliament, etc.	procedure to be adopted by CIC or SIC in deciding appeals, etc. Section 28 Competent Authority may make rules. Section 29 Rules made shall be laid before Parliament when it is in session for 30 days. States making rules shall lay them before legislature.	of publication will defeat purpose of the law. Bureaucracy should not be allowed to defeat the purpose of law by creating strict rules.
30	Section 21 Power to remove difficulties.	Section 30 power to remove difficulties by center to give effect to provisions of Act not after expiry of 2 years. Every such order shall be laid before parliament.	---
31	---	Freedom of Information Act, 2000 repealed.	---

## 5.5 Judicial Pronouncements

For many decades, despite the establishment of parliamentary democracy in India, there was no legal right to information. It was through a creative interpretation of Article 19(1)(a) of the Constitution that the Supreme Court carved out a fundamental right to information as being implicit in the right to free speech and expression. This right is of special importance to the media whose lifeline is information and whose business it is to communicate information to the electorate so that the latter may make informed choices.

The Supreme Court of India has been interpreting the Right To Know or Right To Information as an integral part of Art. 19(1) (a) and 21, during the last few years. The opinions of the Apex Court in a few leading cases are reproduced hereunder:

One of the earliest cases where the Supreme Court laid emphasis on the people's right to know was *Romesh Thappar v. State of Madras*<sup>121</sup> There the petitioner had challenged an order issued by the then Government of Madras under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949 imposing a ban on the circulation of the petitioner's journal Cross Roads was struck down as violative of the right to freedom of speech and expression under Article 19(1)(a).

Again in *Indian Express Newspapers (Bombay) Ltd. v. Union of India*<sup>122</sup> the Court relied on the following decision *Attorney General v. Times Newspapers Ltd*<sup>123</sup> "The public interest in freedom of discussion (of which the freedom of the press is one aspect) stems from the requirement that members of a democratic society should be sufficiently

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<sup>121</sup> 1950 SCR 594.

<sup>122</sup> 1985 1 SCC 641

<sup>123</sup> 1973 3 All ER 54

informed that they may influence intelligently the decisions which may affect themselves.”

The Court concluded:

“Freedom of expression, as learned writers have observed, has four broad social purposes to serve:

- i. it helps an individual to attain self-fulfillment,
- ii. it assists in the discovery of truth,
- iii. it strengthens the capacity of an individual in participating in decision-making, and
- iv. it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration.”<sup>124</sup>

In *State of U.P. v. Raj Narain*<sup>125</sup> which involved the question of government privilege under Section 123 of the Evidence Act, the Supreme Court observed:

“In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute is a factor which should make one wary, when secrecy is claimed or transactions which can, at any rate, have no repercussion on public security. To cover with

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<sup>124</sup> 1992 3 SCC page 686 para 68

<sup>125</sup> 1958 1 SCC 686

veil of secrecy, the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.”<sup>126</sup>

*S. P. Gupta v. Union of India*<sup>127</sup> (AIR 1982 SC 149)

This case is popularly known as Judges Transfer case, Bhagwati, J. had advised in the landmark case that it is essential for the people to have as much information about governmental operations as possible. Participation in government by the people is regarded, as an important aspect of democracy and people cannot participate unless they have information as to what is going on in the country.

In this case a seven judge bench of the supreme court observed :

“ Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall to be governed and they are entitled to call on those who govern on their behalf to account for their conduct. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if the people know how the government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy.

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<sup>126</sup> 1975 4 SCC para 74 at p. 453

<sup>127</sup> 1982 SC 149

In *Reliance Petrochemicals Ltd. v. Indian Express Newspapers Bombay (P) Ltd.*<sup>128</sup>

Justice Mukharji recognized the right to know as emanating from the right to life. The question which arose was whether Reliance Petrochemicals Ltd. was entitled to an injunction against Indian Express which had published an article questioning the reliability of the former's debenture issue. The learned Judge observed:

“We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age on our land under Article 21 of our Constitution. That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves the responsibility to inform.”<sup>129</sup>

In a *Tata Press Ltd. v. MTNL*<sup>130</sup> the Supreme Court, while considering the scope of Article 19(1)(a) in the context of advertising or commercial speech, held that the public has a right to receive information. The question which arose in that case was whether advertisements being for commercial gain could avail of the protection guaranteed under Article 19(1)(a). The Supreme Court held:

“ Advertising as a ‘commercial speech’ has two facets. Advertising which is no more than a commercial transaction, is nonetheless dissemination of information regarding the product advertised. Public at large is benefited by the information made available through the advertisements. In a democratic economy free flow of commercial information is indispensable. There cannot be honest and economical marketing by the public at large without being educated by the information disseminated through advertisements. The

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<sup>128</sup> 1988 4 SCC 5

<sup>129</sup> *Ibid* para 34 at page 613

<sup>130</sup> 1995 5 SCC 139.

economic system in a democracy would be handicapped without their being freedom of 'commercial speech.'

Examined from another angle, the public at large has a right to receive the 'commercial speech'. Article 19(1)(a) not only guarantees freedom of speech and expression, it also protects the rights of an individual to listen, read and receive the said speech. So far as the economic needs of a citizen are concerned, their fulfillment has to be guided by the information disseminated through the advertisements. The protection of Article 19(1)(a) is available to the speaker as well as to the recipient of the speech. The recipient of 'commercial speech' may be having much deeper interest in the advertisement than the businessman who is behind the publication. An advertisement giving information regarding a life-saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration."<sup>131</sup>

In *Secretary, Ministry of Information and Broadcasting v Cricket Association of Bengal*<sup>132</sup> the Supreme Court, while considering the rights of a person to telecast a sports event on television through the use of air waves held that the right under Article 19(1)(a) includes the right to receive and acquire information and that viewers have the right to be informed adequately and truthfully. In support of this right, the Court quoted from Article 10 of the European Commission on Human Rights.<sup>133</sup> The Court held that although a person seeking to telecast a sports event when he himself is not participating in the game is not exercising his right to self-expression, he is seeking to educate and entertain the

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<sup>131</sup> *Ibid* paras 2, 3 and 24 at page 156

<sup>132</sup> 1955 2 8CC 161

<sup>133</sup> Everyone has a right to Freedom of Expression. This right shall include the freedom to hold opinion and to receive and import information and ideas without interference by public authority and regardless of frontiers.

public which is part of the freedom of expression. The Court held that the right of the viewer to be entertained and informed is also, likewise, integral to the freedom of expression. The Court observed:

“True 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 to 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, misinformation and non- information all equally create an uninformed citizenry which makes democracy a farce when medium of information publication. An advertisement giving information regarding a life-saving drug may be of much more importance to general public than to the advertiser who may be having purely a trade consideration.”

In *Dinesh Trivedi v. Union of India*<sup>134</sup> which concerned the questions of the disclosure of the Vohra Committee Report, the Supreme Court once again acknowledged the importance of open Government in a participative democracy. The Court observed that: “In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare.” It went on to observe that “democracy expects openness and openness is concomitant of a free society and the sunlight is a disinfectant”.

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<sup>134</sup> 1996 4 SCC 306, 314



In *Indira Jaising v. Registrar General, Supreme Court of India*<sup>135</sup> a senior Advocate practising in the Supreme Court filed a petition demanding the publication of the inquiry report. The Court declined disclosure with a reasoning that is difficult to reconcile with its own bold pronouncements in the past:

”A report made on such inquiry if given publicity will only lead to more harm than good to the institution as judges would prefer to face inquiry leading to impeachment. In such a case the only course open to the parties concerned if they have material is to invoke the provisions of Article 124 or Article 217 of the Constitution, as the case may be. The said report is only for the purpose of satisfaction of the Chief Justice of India that such a report has been made. It is purely preliminary in nature, ad hoc and not final ... the only source and authority by which the Chief Justice can exercise this power of inquiry is moral or ethical and not in exercise of powers under any law. Exercise of such power of the Chief Justice of India based on moral authority cannot be made the subject- matter of a writ petition to disclose a report made to him.”

In *Indian Express Newspapers (Bombay.) Pvt. Ltd. v. Union of India*<sup>136</sup>, a three Judges Bench of the Supreme Court explained the importance of freedom of press which implicitly includes the freedom of information of citizens. Speaking for the Bench Justice E.S. Venkataramiah made the following observations which are self-explanatory.

Our Constitution does not use the expression ‘freedom of press’ in Art. 19 but it is declared by this Court that it is included in Art. 19(1) (a) which guarantee freedom of speech and expression. The freedom of press, as one of the members of the Constituent Assembly said, is one of the terms around which the greatest and the bitterest of constitutional struggles have been waged in all countries where liberal constitutional

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<sup>135</sup> 2003 5 SCC 494

<sup>136</sup> ATR 1986 SC 515, (1985) 1 SCC 641, (1985) Tax LR m2451

prevail. The said freedom is attained at considerable sacrifices and suffering and ultimately it has come to be incorporated in the various written Constitutions.

Freedom of speech of the press, of information and of assembly are vital for the realization of human rights, Extension of these communication freedoms to a broader individual and collective right to communicate is an evolving principle in the democratization process. Among the human rights to be emphasized are those of equality for women and between races. Defence of all human rights is one of the media's most vital tasks. We recommend:

All those working in the mass media should contribute to the fulfillment of human rights, both individual and collective, in the spirit of UNESCO Declaration on the mass media and the Helsinki Final Act and the International Bill of Human Rights. The contribution of the media in this regard is not only to foster these principles, but also to expose all infringements, wherever they occur, and to support those whose rights have been neglected or violated. Professional associations and public opinion should support journalists subject to pressure or who suffer adverse consequences from their dedication to the defence of human rights.

The media should contribute to promoting the just cause of peoples struggling for freedom and independence and their right to live in the peace and equality without foreign interference. This is especially important for all oppressed peoples who, while struggling against colonialism, religious and racial discrimination, are deprived of opportunity to make their voices heard within their own countries. In today's free world freedom of press is the heart of social and political intercourse. The press has now assumed the role of the public educator making formal and non-formal education possible in a large scale particularly in the developing world, where television and other kinds of modern communication are not still available for all sections of society. The purpose of the press is

to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make responsible judgment. The affirmative obligation of the Government to permit the import of newsprint by expanding foreign exchange in that behalf is not only because press has a fundamental right to express itself, but also because the community has a right to be supplied with information and the Government a duty to educate the people within the limits of its resources.

In *LIC v. Manubhai D. Shah*<sup>137</sup> the Supreme Court explained the importance of freedom of speech and expression in India, and freedom of information Being an integral part of it, as under. Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feeling to others. Freedom of speech and expression is thus a natural rights which a human being acquires on birth. It is, therefore a basic right."Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and imparts information and ideas through any media and regardless of frontiers" proclaims as the Universal Declaration of Human Rights (1948). The people of India declared in the Preamble of the Constitution which they gave unto themselves their resolve to secure to all citizens liberty of thought and expression. This resolve is reflected in Article 1(19) (1) (a) which is one of the Articles found in Part III of the Constitution which enumerates the Fundamental Rights."

This Court emphasized that the freedom of expression means the right to express one's opinion by word of mouth, writing, printing, picture or in any other manner. It

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<sup>137</sup> . (1992) 3 SCC 641

would thus include the freedom of communication and the right to propagate or publish opinion.

In *People's Union for Civil Liberties v. Union of India*<sup>138</sup>, the voters right to know that antecedents of the candidate is based on interpretation of Article 19(1)(a) which provides that all citizen of this country would have fundamental right to freedom of speech and expression. The right to know is basic to democracy and to hide public facts by public functionaries is sinister secrecy contrary to public law.

The Delhi High Court in *Association for Democratic Reforms v Union of India*<sup>139</sup> has emphasised that the right to information acquires great significance in the context of elections. It is now common knowledge that there is criminalisation of politics in India. It is a matter of great concern that anti-social and criminals are seeking to enter the political arena through the mechanisms of elections to State Legislatures and even to Parliament. Parliament has not yet been able to enact a law to uproot this evil. In this scenario, the Delhi High Court has sought to cleanse the electoral process through the mechanism of the right to know of the people and laid down certain conditions which the apex court also agreed on appeal. The apex court went on to say that one-sided information, disinformation, mis-information and non-information will equally create an uninformed citizenry which makes democracy a farce. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions.

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<sup>138</sup> AIR 1982 SC 1473

<sup>139</sup> JT 2002 (4) SC 501

In *M. Nagaraj v. Union of India*<sup>140</sup> it was held that right to know and right to access information is implicit in the right of free speech and expression guaranteed under Article 19(1) (a).

The right to information has both intrinsic and instrumental value. Its intrinsic value comes from the fact that citizens have a right to know. It is a crucial step towards a deeper, more meaningful democracy. More tangibly, in a country like India it can promote action for development and therefore has considerable instrumental value. Information enables people to make enlightened choices, and keep tabs on elected representatives and officials who claim to act on their collective behalf. Thus, accountability and transparency are both enhanced radically.

*Kharak Singh v State of Uttar Pradesh*<sup>141</sup>. The question was whether Right to Privacy might be implied from existing Fundamental Rights in the Constitution of India, 1950, Articles 19(1) (d), 19(1) (e) and 21. Majority opinion was that our Constitution does not in express terms confer any such right on the citizens. Minority opinion (Subba Rao J.) was in favour of inferring right to privacy from right to personal liberty under the Constitution of India, 1950, Article 21. This right again came for examination before the Supreme Court of India in *Govind v State of Madhya Pradesh*<sup>142</sup>, and this time Supreme Court took a more elaborate view and accepted a limited right to privacy as an emanation from Articles 19 (1)(a), 19 (1)(d) and 21. It was also said that the right is not absolute. So, reasonable restriction may be imposed on this right. These restrictions must be the same as are provided under the Constitution of India, 1950, Article 19, clause 2.

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<sup>140</sup> (2006) 8 SCC 212.

<sup>141</sup> AIR 1963 SC 1295

<sup>142</sup> AIR 1975 SC 1378

The Hon'ble Supreme Court of India has enlarged this way the scope of right to privacy to a great extent. But in doing so a word of caution has also been added and it has been declared that this right is not an absolute right. Thus reasonable restrictions may be imposed upon it in interest of general public and for maintaining law and order as it was rightly declared by the apex court in *Mr. X v. Hospital Z*<sup>143</sup>, wherein the scope of right to privacy was re-examined and it was declared that the right to privacy is an essential component of right to life but it is not absolute and may be restricted for prevention of crime, disorder or protection of health or morals or for the purpose of protection of rights and freedoms of others, i.e. before blood transfusion, on sample blood test, the doctors found the individual a HIV infected person. The matter was informed to his fiancée, who called off the marriage for having disclosed this information. The petitioner sought damages from the respondent. It was rejected by the court and also it was held that he cannot enforce any other legal right for enforcing the promise to marry.

In *PUCL v. Union of India*<sup>144</sup> 'section 14 of POTA the obligation to furnish information was held to be intra-vires Articles 14, 19, 20(3) and 21. Neither a lawyer can claim professional communication beyond what is permitted under section 126 of Indian Evidence Act, nor is there any law permitting a newspaper or a journalist to withhold relevant information from courts, nor can withholding of such information be traced to the right to privacy, which itself is not an absolute right.

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<sup>143</sup> AIR 1999 SC 495.

<sup>144</sup> (2004) 9 SCC 580

## **Chapter-6**

### **Right To Information Act: Procedure**

The following section deals with the provisions of the Right to Information Act, 2005 under which the applicant desiring information may proceed. It also discusses the procedure of disposing the application, provision for appeal and the penalty that may be imposed on the officer for failure to disclose the information.

#### **6.1 REQUEST FOR INFORMATION [Section 6(1) & (2)]**

Section 6 of the Right to Information Act, 2005 gives the procedure of getting information from the Public Information Officer. The various steps involved for this provided under the Act are:

##### **To whom the Application be made**

The Act specifies the Authority to which the application must be made to. Section 5(2) of the Act authorizes the following officers to receive the application for information or appeals under the Act:

1. The Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority; or
2. The Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be.

## **Mode & Formalities of Application**

The application which is made for seeking information must conform to certain formalities, failing which the application would be treated as incomplete. The various requirements for a complete application are:

- a) The application must be in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made.
- b) If the person cannot submit a written application then the oral request must be reduced to writing with assistance from Public Information Officer.
- c) The application should specify the particulars of the information being sought by the applicant.
- d) It must be accompanied by fee as prescribed under the rules of the Act.
- e) Applicant is not required to give any reason for requesting the information or any other personal details except those that may be necessary for the purpose of contacting.



## **Assistance for Access to Information**

India is a democratic welfare country and thus should take into account the needs of all sections of society, rich and poor, differently abled, etc. The Right to Information Act, 2005 takes into account needs of such special people.

There is a provision in the Act which provides that where access to the record is required by sensorily disabled person, the Public Information Officer shall provide assistance to enable him have access to the information, including the such assistance for the inspection.

Another provision which can be said to for the welfare of general public is that no fee is charged from the persons who are below the poverty line.

## **6.2 DISPOSAL OF REQUEST [Section 7 & (8)]**

After an application is made to the Public Information Officer for information, the Act makes it mandatory for the Officer to expeditiously dispose off the application. If he fails to do so, a penalty can be imposed on him under Section 20.

### **Time limit for getting the Information [Section 7]**

One of the principles on access to information requires that there should be a strict time limit on the time that is taken to respond to requests. The time limit should be reasonable and should not jeopardize a person's rights.

The Right to Information Act provides for the time within which the application seeking information must be disposed off by the Public Information Officer. The time

limit, however, is different for various types of application depending on the nature of application.

- i. Generally, the request for information shall be disposed by the Public Information Officer within 30 days of receipt.
- ii. It must be noted that whenever a third party is involved, information would be available to the applicant within 40 days.
- iii. For human rights violation information, the application would be disposed off within 45 days.
- iv. A period of 5 days shall be added in computing the response time where an application for information is given by an Assistant Information Officer.
- v. However, where the information sought for concerns the life or liberty of a person the application would be disposed off in 48 hours of receipt in cases.
- vi. Time taken for calculation and intimation of fees is excluded from the time frame.

The above provisions are strictly followed by the public authorities because the person-making request for information shall be provided the information free of charge if the public authority fails to comply with the stipulated time limits.

### **Form of Access to Information [Section 7(9)]**

Information is ordinarily provided in the form in which it is sought. This however is subject to a few exceptions. The exceptions being:

- If the form of the information would disproportionately divert the resources of the public authority; or
- If it would be detrimental to the safety or preservation of the record in question.

### **Grounds for Rejection of Application**

Information is not available in every situation. The application may also be rejected by the Public Information Officer. An application seeking information may be rejected on the following two grounds:

1. If it is covered by exemption from disclosure [Section 8]
2. When a request for providing access would involve an infringement of copyright subsisting in a person other than the State [Section 9]

### **Exemptions from Disclosure [Section 8 (1)]**

Section 8 mentions certain grounds under which the application for information would be rejected.

- a) Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.
- b) Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute Contempt of Court.
- c) Information the disclosure of which would cause a breach of privilege of Parliament or the State Legislature.
- d) Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
- e) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.
- f) Information received in confidence from foreign Government.
- g) Information, the disclosure of which would endanger the life or physical safety of any person or identity the source of information or assistance given in confidence for law enforcement or security purposes.
- h) Information which would impede the process of investigation or apprehension or prosecution of offenders.
- i) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers provided that

- i. The decision of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over;
  - ii. Those matters which come under the exemptions specified in this section shall not be disclosed.
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- j) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

However, the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

**Exceptions to Section 8(1)**

There are two statutory exceptions to the exemptions under Section 8(1), which are enumerated below:

**1. Primacy of Public Interest [Section 8 (2)]**

Though section 8(1) makes exemptions under the Act, that is, if the case falls under any of the sub-clause then the officer is to reject the application; however, a public authority may allow access to information, if the public interest in disclosure outweighs the harm to the protected interests.

**2. Information upto 20 years [Section 8 (3)]**

Section 8(3) of the Right to Information Act, 2005 makes another exception to Section 8 (1). It says that any information relating to any occurrence, event or matter which has taken place, occurred or happened 20 years before the date on which any request is made, then such information shall be provided to the person making such a request under the Act.

The proviso to the Section 8(3) provides that the decision of the Central Government shall be final as to the date from which the period of 20 years has to be computed. This is subject to exemptions relating to information linked to sovereignty, integrity and security matters and breach of privilege of Parliament or the State Legislature.

**Communication of Rejection [Section 7(8)]**

When a request has been rejected, the public information officer shall communicate to the person making the request:

- i. The reasons for such rejection,
- ii. The period within which an appeal against such rejection may be preferred, and
- iii. The particulars of the appellate authority.

#### **Deemed Refusal [Section 7(2)]**

Request is deemed to have been refused by the Public Information Officer if decision on the request for information is not given within the period specified as above.

#### **Access to a Part of the Record [Section 10]**

Assuming that the applicant's request for information is refused on the ground that the information is exempted u/s 8 (1), then what is the alternative remedy that is available to him?

The solution to this is that he can have partial access to the records, i.e., access may be provided to that part of the record which does not contain any information which is exempted from disclosure. This is subject to one condition: that the part should be capable of being severed from the part that contains the exempt information.

If partial access is provided then the Public Information Officer in his duty shall give a notice to the applicant, informing:

- a) which parts of record will be provided after severing the exempt portions.

- b) The reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based.
- c) The name and designation of the person giving the decision.
- d) The details and the amount of fee which the applicant is required to deposit; and
- e) Applicant's rights to seek review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the appellate officer or the Information Commission, and the time limit for filing the appeal, process and any other form of access.

### **Third Party Information [Section 11]**

If the information that a public information officer intends to disclose is related to a third party and which has been treated as confidential by that third party, then the Public Information Officer is required within 5 days from the receipt of the request, to give a written notice to such third party. The third party would then be allowed to make a submission in writing or orally, regarding whether the information should be disclosed. Such submission of the third party is to be kept in view while taking a decision about disclosure of information.

The Public Information Officer would give such an information if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. This is subject to the case of trade or commercial secrets protected by law.



The third party is required to make representation against the proposed disclosure within 10 days from the date of receipt of such notice.

The Public Information Officer, on the other hand, is expected to give the information to the applicant within 40 days after receipt of the request.

#### **Further Fee: Intimation by Public Information Officer**

There may be situations where a further fee is required for providing the information. The public information officer is then required to send intimation to the person making the request giving the following details:

- i. the details of further fees
- ii. calculations made to arrive at the amount
- iii. requesting the applicant to deposit that fees, and
- iv. Information with respect to reviewing of the decision as to the amount of fees charged or the form of access provided. This would include the particulars of the appellate authority, time limit, process and any other forms.

It must be noted that the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of 30 days.

### **6.3 APPEAL [Section 19]**

The Right to Information Act, 2005 gives the right to appeal as a statutory right. The mechanism for appeal provides for two appeals. According to Section 19 clause 6 of the Act an appeal shall be disposed of within 30 days of the receipt of the appeal or within such extended period not exceeding a total of 45 days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

The decision of Central Information Commission or the State Information Commission is binding. [Section 19 (7)]

#### **Internal or First Appeal [Section 19(1) & (2)]**

Any person who does not receive a decision on request for information within the stipulated time or is aggrieved by a decision of the Public Information Officer may within 30 days from the expiry of such period or from the receipt of such a decision prefer an appeal to the designated appellate officer, senior in rank to the Public Information Officer.

However, the officer may admit the appeal even after the expiry of the period of 30 days if he or she is satisfied that the appellant was prevented by sufficient cause from filling the appeal in time.

Where an appeal is preferred against an order made by a Public Information Officer to disclose third party information, the appeal by the concerned third party shall be made within 30 days from the date of the order.

**External or Second Appeal [Section 19(3)]**

A second appeal against the decision of the appellate officer shall lie within 90 days from the date, on which the decision should have been made or was actually received, with the Information Commission. The Information Commission may admit the appeal after the expiry of the period of 90 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

If the decision of the Public Information Officer against which an appeal is preferred relates to information of a third party, the information commission shall give a reasonable opportunity of being heard to that third party.

**Onus of Proof [Section 19(5)]**

In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Public Information Officer who denied the request.

**Bar of Jurisdiction of Courts [Section 23]**

Jurisdiction of any court is barred to entertain any suit, application or proceeding in respect of any order made under the Right to Information Act. The person aggrieved can however make an appeal under Section 18 of the Act.

#### **6.4 IMPOSITION OF PENALTY [Section 20 (1)]**

It is not that the Right to Information Act, 2005 is a toothless Act. It provides for penalties on the officers who fail to discharge their duties effectively. If the Public Information Officer, in the opinion of the Central Information Commission or the State Information Commission, the officer had:

- a) without any reasonable cause, refused to receive an application for information; or
- b) not furnished information within the time specified; or
- c) malafidely denied the request for information; or
- d) knowingly given incorrect, incomplete or misleading information; or
- e) destroyed information which was the subject of the request; or
- f) obstructed in any manner in furnishing the information

Then the Central Information Commission or the State Information Commission shall impose a penalty of Rs. 250/- each day till application is received or information is furnished. This penalty is however subject to the total amount not exceeding Rs 25,000.

Another action that can be taken against the erring officer on the same grounds elucidated above is disciplinary action under the service rules applicable to him or her.

[Section 20(2)]

The principles of natural justice are complied with and the Public Information Officer is to be given a reasonable opportunity of being heard by the Commission before any penalty is imposed.

It must be observed that the burden of proving the charge is not on the Central Information Commission or the State Information Commission. The Public Information Officer has to prove his or her innocence, that is, he or she acted reasonable and diligently.

However, it must be noted that the penalty imposed is only civil in nature. There is no criminal liability on the officers. Section 21 of the Act provides immunity for any action that is done in Good Faith. It says:

“No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under the Right to Information Act or any rule made there under.”

#### **Non-applicability of Act to certain organizations [Section 24]**

The Right to Information Act, 2005 does not apply to the following: Central Intelligence and Security Agencies specified in the Second Schedule like IB, LAW, Directors of Revenue Intelligence, Central Economic Intelligence Bureau, Directors of Enforcement, Narcotics, Council Bureau, Aviation Research Centre, Special Frontier Force, BSF, ITBP, CIFS, NSG, Assam Rifles, Special Service Bureau, Special Branch

(CID) Andaman and Nicobar, The Crime Branch CID CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep police.

Agency specified by the state government through a notification will also be excluded.

The exclusion, however, is not absolute and these organizations are under an obligation to provide information pertaining to allegation of corruption and human rights violations. Further information relating to allegation of human rights violation could be given but only with the approval of the Central or State Information Commission as the case may be.

## 6.2 Shortcomings Of The Act

There is no law on earth, which is free from flaw on one count or the other and the Right to Information Act is no exception. The Right to Information Act 2005 has the potential of solving the service delivery needs such as poor health, education, water, infrastructure, etc. But it is stuck in the web of bureaucracy, because of which the citizens are not able to get benefits of RTI Act. Public Information Officers (PIOs) who are supposed to provide information to the citizens and the Information Commissions (ICs), which have the responsibility of dealing with the appeals in case of denial of information, are the biggest bottleneck in the implementation of RTI Act. Citizens are aggrieved by the lethargic, poor and inefficient functioning of ICs in most of the States. Moreover, the ICs have sent wrong signals by being sympathetic to the PIOs who get away easily by not providing information to the citizens.<sup>145</sup>

National conference of RTI Activists held at Gandhi Peace Foundation, New Delhi on July-28-29, 2008 in which it was concluded that ICs, by delaying the disposal of appeals were proving to be the main stumbling block in the implementation of RTI Act<sup>146</sup>.

Justice is not delivered according to the procedure by the ICs. Appeals in several States are not resolved in one hearing. Even after many hearings, the decision of the IC to provide the citizen with the necessary information within a specified time is not followed. The case is closed without even ensuring whether the information has been provided or not. PIOs, in a majority of cases, even after orders from the ICs do not provide information or provide incomplete information.

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<sup>145</sup> <http://www.righttoinformation.info>

<sup>146</sup> <http://www.pria.org/Accessing%20Information%20under%20RTI%20%20Citizens'%20Experiences%20in%2010%20states.pdf>

The self-disclosures of the ICs are poorly maintained or not frequently updated. In some states the ICs do not have the necessary infrastructure to maintain the data.

The Act being based on computerized records of data, it may a long time in computerization of such vast data and therefore doubts hang over whether the act would be implemented in time bound manner.

The Act also lacks necessary teeth for defaulters. In cases where information has been denied without sufficient cause, the penalty is not so harsh enough so as to have a deterrent effect on those who do not want to share information

Illiteracy is also main factor due to which this Act is not implemented properly. 35% of the population is illiterate, then how any could expect that people will demand information. So there should be serious effort towards improving the literacy level.<sup>147</sup>

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<sup>147</sup>An article from "The Hindu", Sunday, September 7, 2008



## Chapter-7

### Conclusion And Suggestions

India is the largest democracy in the world. Despite a bewildering variety of religions, cultures, languages, food habits, customs and traditions, the ballot box keeps the country together.

Immense problems such as extremes of wealth and poverty still prevail because of the caste system in rural India, but there is respect and fear for the power of the vote. However, there are still millions today in the nearly 600,000 villages who are not yet on the voter's list and have no rights. The economic planners, policy makers and the so-called experts sitting in Delhi and the State capitals are ignorant of ground realities and hopelessly out of touch with the situation in the villages.

There is no transparency and no accountability at the local level where it counts the most. Poor citizens cannot go up to the lowest government functionary and ask how much and for what purpose money is being spent in their village. They have no right to ask for detailed information on expenditure because that is where the corruption begins, making false receipts and vouchers running into millions of dollars.

The general conviction among the over 300 million living below the poverty line is that the public exchequer is being looted, and that the money earmarked for development is going into the pockets of the rich and the powerful. From the highest echelons of Government to the lowest village functionary, the lawmakers and law enforcers are often also the law breakers, and no one in the Government can touch them. Rajiv Gandhi, as Prime Minister of India, once lamented helplessly that out of every rupee spent for development only 10 paise actually reached the poor.

Various sections of society, particularly media personnel, social activists and positive thinking people have always expressed that right to seek information should be a fundamental right, just as we have right to speech and expression. On the international plane also the citizen's right to information is described as freedom of information access of information of right to information.

Right to information (RTI) is implicit in the constitution of India, which establishes a representative democracy with inalienable right for the citizens of the country which have been reinforced time and again by judiciary. RTI in India has significantly sought to expand democratic space and empower the citizens to exercise more control on the corrupt practices.

The movement for RTI can be traced back to the grassroots struggle of the rural poor, who have sought to fight against corruption in their areas affecting their livelihood and justice around them. The RTI got the legal support for the first time in 1975 in Supreme Court case of *State of UP v. Raj Narain* in which Mr. Justice Mathew gave a landmark judgment, "In a government of responsibility like ours. Where all the agents of public must be responsible of their conduct there can be but few secrets. The people of this country have a right to know, every public act, every thing that is done in a public way by the public functionaries. They are entitled to know, the particulars of every public transaction in all its bearing. Their right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor, which should make one wary when secrecy is claimed for transaction which can at any rate have no repercussion on public security."

Despite the shortcomings the new law has a potential to usher in a new beginning for more inclusive socio-economic development by providing impetus to the development process.

## **Suggestions**

Access to information laws should provide clear guidance to public servants as to how to respond to requests when the information is not held by the public body, even if it relates to its functions and responsibilities. If information does not exist, public officials should be prepared to inform the requester. Such responses are a key part of open government and can form the basis of constructive dialogue between the administration and the public about the type of information needed in order to improve government efficiency and increase the quality of decision making and policy making.

- Public authorities should have the duty to inform the information commissioner or similar oversight body of instances when requests were refused for lack of information. Such requirements are particularly important in transitional and developing countries like ours where information management can be deficient.
- Establishing indexes of the information held by particular bodies, and making these indexes public can greatly assist information officers in rapid retrieval of information upon receipt of a request, or in quick identification of the nonexistence of information. Such indexes should also list the titles of documents subject to

classification under other laws, in order to facilitate requests for these documents and review of the necessity of the classification according to the standards established by the access to information law.

- Proactive transparency and the posting of materials on government websites facilitates access to information, but cannot in them self guarantee the right of access to information. At a minimum, where requesters do have Internet access, officials should provide exact URLs, a service which entails little effort and no expense. Where requesters do not have Internet access, the government body must print out the relevant pages and provide them to the requesters (charging any standard copying costs provided for bylaw). Such obligations should be clearly stated in relevant legislation and guidelines.
- A standard part of training in any access to information regime is to ensure that public officials understand the presumption of openness, and that exemptions can only be applied when information harms a protected interest and is not overridden by a public interest.
- Public officials must be aware that refusals can only be written never oral and must state the relevant exemptions that justify refusal.

- Information officers, or their equivalent, should have the authority to decide on information disclosure. Information should only be denied following a transparent internal review process that includes senior officials to ensure that exemptions have been properly applied.
- The national legislature, an information commission or commissioner, or other monitoring bodies or officials charged with overseeing implementation of access to information laws should, in a timely manner, review the issuance, by public bodies and bodies performing public functions, of written refusals for requests for information to ensure that exemptions are being applied appropriately and that denials of requests are not being based upon inappropriate fees, demands to clarify requests, inquiries as to why the information is being requested, etc.
- Access to information training at public bodies should include instruction in the partial release, or “severing” of documents, to ensure that non-harmful information in classified documents can enter into the public domain.

It takes years for donors and policy makers to wake up and realize what is happening. What is needed is not stronger laws, stricter punishment or more visits to the villages to supervise officials and look into accounts books.

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