

Freedom of Information

(A Critical Study with respect to Right to Information Act, 2005)

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(A Critical Study with respect to Right to Information Act, 2005)

By

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(Dr. Pradeep Kumar Jain)

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List of Abbreviations

AA	Appellate Authority
APIO	Assistant Public Information Officer
CIC	Central Information Commission
CPIO	Central Public Information Officer
DoPT	Department of Personnel and Training
FAA	First Appellate Authority
FoE	Freedom of Expression
FoI	Freedom of Information
GoI	Government of India
HC	High Court
IC	Information Commission
ICCPR	International Covenant on Civil and Political Rights'
IT	Information Technology
MIS	Management Information System
MKSS	Mazdoor Kisan Shakti Sangathan
NAC	National Advisory Council
NGO	Non Governmental Organization
Ors	Others
PA	Public Authority
PIO	Public Information Officer
PSU	Public Sector Undertaking
RTI	Right to Information
SC	Supreme Court
Sec	Section
SIC	State Information Commission
UN	United Nations
UNESCO	UN Educational, Scientific and Cultural Organisation
UNGA	United Nations General Assembly
UPA	United Progressive Alliance

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Introduction

Citizen's Access to Information (ATI) is an essential step in ensuring transparency and accountability in government systems and processes. When a government is transparent, there is less chance for corruption and more room for accountability. That's why Freedom of Information Acts (FOIAs) is becoming standard good practice in the international arena. The RTI generally understood as the right to access information held by public authorities is not just a necessity of the citizens; it is a precondition to good governance. To be specific, ATI makes democracy more vibrant and meaningful and allows citizens to participate in the governance process of the county. In particular, it empowers ordinary citizens, especially those in rural areas. When people have ATI they naturally tend to make more meaningful decisions, raise informed opinions, influence policies affecting their society and even help shape a more assured future for the next generation. RTI has been recognised in Sweden for over 200 years. Importantly, however, over the last few years it has gained widespread recognition in all regions of the world. While related legislations were adopted only by 13 countries in 1990, this number has now grown to 852 and more and similar such pieces of legislations are under active consideration in many other countries. In India, RTI Act was introduced in 2005 and since then this law has proved to be a strong weapon in the hands of people, for ensuring transparency in government departments and containing corruption.

(A) THEORITICAL BACKGROUND

The historical perspective, RTI-a worldwide occurrence, Freedom of Information in international covenant, RTI and good governance, constitutional provisions, role of judiciary and other key developments in the evolution of RTI in India have been discussed below.

1.1 Historical Perspective

At the International level, Right to Information and its aspects find articulations as a human right in most important basic human rights documents, namely, the Universal

Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. At regional levels, there are numerous other human rights documents, which include this fundamental right for example, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the African Charter on Human and People's Rights, etc. The Commonwealth has also formulated principles on freedom of information.

Disclosure of information held by public authorities in India was governed by the Official Secrets Act (1923) enacted during the British rule. The Supreme Court of India had in several judgments prior to enactment of the RTI Act, interpreted Constitution to read RTI as the fundamental right as embodied in right to freedom of speech and expression and right to life. The *raison d'être* for a gradual and strong evolution of RTI in India is primarily because of a group of villagers in central Rajasthan, mostly poor wage workers, asserted their RTI by responding against ghost entries in muster rolls, which was the sign of rampant corruption in the system and demanding official information recorded in government rolls related to drought relief work. The movement spread to various parts of Rajasthan, leading to a nationwide movement for the RTI and related state legislations. Thus, it was states that took the first step by enacting RTI laws viz. Tamil Nadu (1997) Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004). The demand for national law started under the leadership of National Campaign on People's Right to Information (NCPRI).

The Indian Parliament had enacted the Freedom of Information Act, 2002¹ in order to promote transparency and accountability in administration but was not notified, hence, never came into effect as the necessary notification was never issued by the then government (Section 31 of the Right to Information Act 2005 repealed the Freedom of Information Act 2002.). The coalition Government at the Centre led by United Progressive Alliance formulated an agenda called, Common Minimum Programme. One of the agenda of the CMP was the introduction of Right to Information Act. The CMP stated clearly, the Right to Information Act will be made more progressive, participatory and meaningful. In order to look after the implementation of the Common Minimum Programme the UPA constituted National Advisory Council. In the National Advisory Council some of the activists like Aruna Roy, Jean Drez who are associating with the National Campaign for Peoples' Right to Information Act consistently put the pressure on the UPA Government to pass the bill

¹ Freedom of Information Act, 2002

and to enact a law. The national campaign for RTI received a major boost when the UPA Government's Common Minimum Programme promised that the RTI Act will be made more progressive, participatory and meaningful. The National Advisory Council, which was set up to oversee implementation of the CMP since its inception, took a close interest in RTI. All this and many other factors, including pressure from the civil society groups led to the enactment of the RTI Act in India. The National Common Minimum Program of the Government envisaged that Freedom of Information Act will be made more progressive, participatory and meaningful, following which, decision was made to repeal the Freedom of Information Act, 2002 and enact a new legislation in its place. Accordingly, Right to Information Bill, 2004 (RTI) was passed by both the Houses of Parliament on May, 2005 which received the assent of the President on 15th June, 2005 and was notified in the Gazette of India on 21st June, 2005. The Right to Information Act became fully operational from 12th October, 2005. This new law empowers Indian citizens to seek any accessible information from a Public Authority and makes the Government and its functionaries more accountable and responsible.

During the period of the implementation of the RTI Act i.e. October 2005 onwards, it became evident that there are many anticipated and unanticipated consequences of the Act. These have manifested themselves in various forms, while some of the issues pertain to procedural aspects of the Government others pertain to capacity building and soon. The most important aspect to be recognized is that there are issues to be addressed at various ends for effective implementation of the Act. There have been many discussions and debates about the effectiveness and impact of the Act. The Civil Society Organizations and Government agencies have been engaging themselves in the debate over various aspects of the Act and its effectiveness and interpretations². There is a broad consensus that the implementation of the Act needs to be improved to achieve the objectives. At the same time there is evidence to suggest that the information seekers too have to learn how to use the Act more effectively. While there is significant information – both anecdotal and quantitative – on the level of implementation of the Act, there was limited systematic and comprehensive review available for action by the appropriate Governments. This in turn necessitated a review of all the aspects necessary to analyze the current situation and draw up a plan to bridge the gaps. In the above context, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India, had engaged Price

² Vyas A. K. (2013) Implementation of RTI Act 2005 in Armed Forces and Its Implication, Neha Publishers & Distributors

water house Coopers (PwC) for assessing and evaluating the Act with specific reference to the key issues and constraints faced by the Information Providers and Information Seekers. The scope of study included review of the experiences of the Central and State Governments in implementing the RTI Act, review of the experiences of various categories of information seekers, diagnosis of the situation, suggestion of the nature of interventions to be made and preparation of action plan/recommendations. The assessment of the current situation through various market research tools has resulted in identification of the current problem areas. These problems areas have been analysed/discussed in various workshops/meetings organized by governments/NGO from time to time to define time-bound actionable steps to make the Act an effective tool of good governance

Disclosure of Government Information in India was governed by a law enacted during the British rule over large parts of what is now India, the Official Secrets Act of 1889 which was amended in 1923. This law secures information related to security of the State, sovereignty of the country and friendly relations with foreign states and contains some provisions which prohibit disclosure of even non-classified information. Civil Service Conduct Rules and the Indian Evidence Act impose further restrictions on government officials' powers to disclose information to the public. The RTI Laws were first successfully enacted by the state governments of Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003) and Jammu and Kashmir (2004). The Maharashtra and Delhi State level enactments are considered to have been the most widely used. The Delhi's RTI Act is still in force in Jammu & Kashmir, has its own Right to Information Act of 2009, the successor to the repealed J&K Right to Information Act, 2004 and its 2008 amendment. Passage of a national level law, however, proved to be a difficult task. Given the experience of state governments in passing practicable legislation, the Central Government appointed a working group under Mr. H. D. Shourie former Director General at the Indian Institute of Foreign Trade and assigned it the task of drafting legislation. The Shourie draft, in an extremely diluted form, was the basis for the Freedom of Information Bill, 2000 which eventually became law under the Freedom of Information Act, 2002 (FoI). This Act was severely criticised for permitting too many exemptions, not only under the standard grounds of national security and sovereignty, but also for requests that would involve disproportionate diversion of the resources of a public authority. There was no upper limit on the charges that could be levied. There were no penalties for not complying with a request for information. The FoI Act, consequently, never came into effective force.

1.2 RTI – A Worldwide Occurrence

Legislations granting or facilitating Freedom of Information (FoI) or Right to Information (RTI) are a fairly worldwide phenomenon today. As on date, over 90 countries have enacted and are implementing such legislation(s) in some form or the other. Many countries provide constitutional guarantees for FoI / RTI. In some countries, specific legislations further enable the exercise of this right. Such laws also referred to as open-government laws/sunshine laws ensure that prospective requesters of information have access to it in a simple, cost-effective and time-bound manner. Such access is provided as a matter of right. Governments are made duty-bound to facilitate it. Information, thus, made accessible / available to people is believed to, legitimately, be known by them to make democratic functioning meaningful.

Many countries like the United States of America (USA), Canada and Australia, have laws governing access to public documents at regional (provincial) level in addition to having a law at national / federal level. In many countries, privacy or data protection laws are part of the FoI legislation / regime as these concepts are believed to be closely tied together. A basic principle behind most FoI / RTI laws is that the burden of proof falls on the body to which information is asked, not the person asking for it. Thus, requesters do not usually have to give an explanation for their request. Moreover, if the information is not disclosed, a valid reason has to be given. This is also the case under the Indian RTI Act, 2005. FoI / RTI are expected to lead to an informed citizen and transparency of information, which are vital to the functioning of a democracy. It is also expected to contain corruption and enable holding Governments and their instruments accountable to the governed.

Chronology of Some National Freedom of Information Legislations in the World

Sweden	1766
Colombia	1888
Finland	1951
United States of America	1966
Denmark, Norway	1970
France	1978
Australia, New Zealand	1982
Canada	1983

1.3 Freedom of Information in International Covenant

The United Nations General Assembly (UNGA), in its very first session in 1946, adopted Resolution 59 (I), which states: 'Freedom of information is a fundamental human right and... the touchstone of all the freedoms to which the United Nations (UN) is consecrated'. Article 19 of the 'Universal Declaration of Human Rights', a UNGA Resolution 217 (III) A of 1948 recognises Freedom of Expression (FoE) including FoI and Free Press as a Fundamental Human Right. FoE includes the right to seek, receive and impart information and right to access information held by public authorities. Article 19 (2) of the 'International Covenant on Civil and Political Rights' (ICCPR), a UNGA Resolution 2200A (XXI) of 1966 states: 'Everyone shall have the right to FoE; which 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.' Article I of the UN Educational, Scientific and Cultural Organisation (UNESCO) Declaration on 'Fundamental Principles concerning Contribution of Mass Media to Strengthening Peace and International Understanding, to Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War' [1978] states: 'The strengthening of peace and international understanding, the promotion of human rights and the countering of racism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information.' Article II of the UNESCO Declaration states: '...the exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding...' Article 13 of the 'UN Convention against Corruption', adopted by the UNGA on 31 October 2003 identifies: '(i) effective access to information for public; (ii) undertaking public information activities contributing to non-tolerance of corruption (including conducting public education programmes) and (iii) respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption...' as important measures to be taken by Governments for ensuring the participation of society in governance'. Article 10 of the 'UN Convention against Corruption' states: '... to combat corruption, each (member State) shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes and take (certain) measures (for adopting procedures /regulations, simplifying administrative procedures and publishing information...)' Principle IV of the Declaration of Principles of Freedom

of Expression in Africa states: 'Public bodies hold information not for themselves, but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law'. Principle III of the Recommendations on Access to Official Documents adopted by the Committee of Ministers of the Council of Europe in October 2002 provides: 'Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin'.

The World Conference on Human Rights, held in Vienna in 1993 had declared that the Right to Development adopted by UNGA is a universal and inalienable right and an integral part of fundamental human rights. The declaration recognised that democracy, development and respect for human rights and fundamental freedoms are inter- dependent and mutually reinforcing. Right to FoE is regarded as closely linked to Right to Development. It goes on to say that, 'the right to seek, receive and impart information is not merely a corollary of freedom of opinion and expression; it is a right in and of itself'. As such, it is one of the rights upon which free and democratic societies depend. It is also a right that gives meaning to the Right to Participate which has been acknowledged as fundamental to the realization of the Right to Development.

1.4 RTI & Good Governance

Various international covenants on freedom of information aims at making governmental activity is transparent, fair and open. These are based on the paradigm that except in matters concerning the sovereignty and security of a country, there is no room for secrecy in the affairs of the Government. Every citizen who wishes to obtain any information with respect to any other matters should be entitled to receive it. Information is crucial for good governance as it reflects and captures Government activities and processes. It becomes the oxygen of democracy. If people don't know of the goings-on in their society and of actions of the government, then they can't take a meaningful part in societal affairs. Access to information promotes openness, transparency and accountability in administration and facilitates active participation of people in the democratic governance process.

Prof. Amartya Sen has identified five substantive freedoms as being integral to the concept of development, namely political freedom, economic facilities, social opportunities, transparency and security. Transparency guarantees deal with the need for openness that people can expect: the freedom to deal with one another under

guarantees of disclosure and lucidity. When that trust is seriously violated, the lives of many people - both direct parties and third parties - may be adversely affected by the lack of openness. Transparency guarantees (including RTI) can thus be an important means to achieve freedom. These guarantees are instrumental in preventing corruption, financial irresponsibility and underhand dealings.

1.5 Constitutional Perspective

The following specific provision about ‘Expression’ and ‘Freedom of Speech and Expression’ has been made in Constitution of India.

“We, The People of India, having solemnly resolved to secure to all its citizens Liberty of thought, expression adopt, enact and give to ourselves this Constitution”

— Preamble to the Constitution of India

Article 19 (1)(a) of the Constitution of India guarantees to all its citizens the ‘Fundamental Right’ to ‘Freedom of Speech and Expression’³.

1.6 Role of the Judiciary

Supreme Court of India (SCI) in Promoting RTI recognised the Right to Freedom of Speech and Expression as also implying right to information (RTI). In the *Bennett Coleman v. Union of India case*, AIR 1973 SC 60, SCI ruled that the right to freedom of speech and expression guaranteed by Article 19(1)(a) included the right to information. Over the years, SCI has consistently ruled in favour of the citizen’s right to know. In the *State of Uttar Pradesh v. Raj Narain case*, (1975) 4 SCC 428, Mr. Justice Mathew explicitly stated, ‘It is not in the interest of the public to cover with a veil of secrecy the common routine business ... the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption’. SCI in the *Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal case*, held that, ‘the right to impart and receive information from electronic media was included in the freedom of speech’. [(1995) 2 SCC 161]. In the *People’s Union for Civil Liberties (PUCL) case*, RTI was further elevated to the status of a human right, necessary for making governance transparent and accountable. It was also

³ Pandey, J.N. (2012) Constitutional Law of India, Pub. Central Law Agency

emphasized that governance must be participatory (*PUCL v. Union of India*, 2004 (2) SCC 476).

1.7 Other Key Developments in Evolution of RTI in India

A grassroots organisation called the Mazdoor Kisan Shakti Sangathan (MKSS) took an initiative to lead the people in Bhim Tehsil, a very backward region of Rajasthan to assert their right to information. It started by asking for copies of bills and vouchers and names of persons who have been shown in the muster rolls. MKSS succeeded in, thus, getting photocopies of certain relevant documents. MKSS organized several public hearings (jan-sunwais) to discuss the findings pertaining to various issues known from the said documents. People's anger made one engineer of the State Electricity Board to return, in public, an amount of Rs.15,000 that he had extracted from a poor farmer. The Rajasthan experience of demanding RTI came to be echoed in other States. The Chief Ministers Conference on Effective and Responsive Government, held on 24th May, 1997 at New Delhi, unanimously recognised the need to enact a law on RTI. The Department of Personnel, Government of India (GoI) decided to set-up a Working Group on RTI and Promotion of Open and Transparent Government in January 1997 under the chairmanship of Mr. H. D. Shouri. The Working Group submitted its comprehensive and detailed report and the draft Bill on FoI in May 1997.

The Press Council of India, the 'Press Institute of India', the 'National Campaign for People's RTI' and the 'Forum for RTI' unanimously submitted a resolution to GoI in February, 2000 to redraft the proposed Bill. The GoI introduced the 'Freedom of Information (FoI) 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 'FoI 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 'National Advisory Council' (NAC) set up by the United Progressive Alliance (UPA) Government at the Centre, which came into power in 2004, suggested important changes to be incorporated in the FoI Act. These suggestions were examined by the Government, which decided to make the FoI Act more progressive, participatory and meaningful. Later, the UPA Government decided to repeal the FoI Act and enacted a new legislation, the 'RTI Act, 2005' Meanwhile some States had enacted their specific

legislations. These along with the national-level legislations are depicted below:

Tamil Nadu, Goa	1997
Rajasthan, Karnataka	2000
Delhi	2001
Maharashtra, Assam	2002
Madhya Pradesh	2003
Jammu and Kashmir	2004, 2009(new)
Parliament and enacted FoI Act	06.01.2003
Parliament enacted RTI Act repealing earlier FoI Act	15.06.2005
RTI Bill introduced in Lok Sabha	23.12.2004
Lok Sabha passes the RTI Bill	11.05.2005
Rajya Sabha passes the RTI Bill	12.05.2005
President of India assents the Act	15.06.2005
(Few provisions come into force)	
The RTI Act, 2005 is published in the Gazette of India, Part II, Sec. 1, Ext. No. 25	21.06.2005
The RTI Act, 2005 comes into full force.	12.10.2005

(B) RESEARCH METHODOLOGY

The title, problem, rationale, objectives, scope, research design, nature/type, approach, hypothesis, review of literature, possible contribution, limitation, time schedule and chapterisation of the study have been described below.

1.8 Title

Freedom of Information - A Critical Study with respect to Right to Information Act, 2005.

1.9 Problem

The Act provides for information on demand, so to speak, but does not sufficiently stress information on matters related to food, water, environment and other survival needs that must be given pro-actively or *suomoto*, by public authorities. The Act does

not emphasize active intervention in educating people about their right to access information, vital in a country with high levels of illiteracy and poverty or the promotion of a culture of openness within official structures. Without widespread education and awareness about the possibilities under the new Act, it could just remain on paper. The Act also reinforces the controlling role of the government official, who retains wide discretionary powers to withhold information. The working of the Central Information Commission shows that though information commissioners hear the matter, they postpone judgment for months⁴. There exist strict timelines at the Public Authority Level. However there is no time limit for disposal of appeals at the Information Commission.

It is observed that the Commissions have not been given sufficient power to implement various provisions of the RTI Act e.g. under Section 20 (1) of the RTI Act penalty can only be imposed on the CPIO and not on any other authorities of the department. Section 4 of the RTI Act is not the responsibility of the CPIO but is of the Public Authority but penalty cannot be imposed on the head of the department. The RTI may be used for correcting the system by getting the information, analyzing them and plan for the future. Since constant vigilance is the price for freedom, the role of NGOs, the Media, the courts and the civil society is important. All the stakeholders of the RTI have to work together to create a supportive environment for the Act to be effective. The important challenges before us to work together to address these problems as number of deprived population of the country are not aware about RTI, Act or they are not receiving the information from concerned government authority for some minor, technical flaws in the appeals .

Though the RTI has tried to reach far, the media and civil society have to take this movement to the educational institutions and common man as well. The lack of political desire and ignorance/empathy of common man are two very important aspects of the RTI Act for effective way of its implementation. In another, an attempt towards analyzing the provisions of RTI Act, 2005 is made, which is going to help us to realize the real status and also highlighted the areas requiring improvement.

1.10 Rationale

Information is any data in any form. It includes records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers,

⁴ Nidhi Sharma, ET Bureau, 26th, Apr, 2013, <http://economictimes.indiatimes.com/news /politics-and-nation/information-officers-callous-attitude-threatens-the-right-to-information-act/article show>.

samples, models, data held in any including electronic form. It also includes information relating to any private body which can be accessed by the public authority under any law for the time being in force.

The principles of openness, transparency and freedom of information are the hall mark of a democracy; secrecy is only the preserve of a dictatorship. The Government of India always lays emphasis on making the lives of its citizens easy, smooth and making India truly democratic and keeping this in mind the RTI Act, 2005 has been established. RTI stands for Right to Information and has been given the status of a Fundamental Right under Article 19 (1) of the Constitution of India. Article 19 (1) under which every citizen has freedom of speech and expression and have the right to know how the government works, what role it play, what are its functions and so on. The Right to Information is as important a right as the right to food and right to education.

The Act confers right to the citizens to know as to how the taxpayer's money is being spent by the Government. Right to Information Act empowers every citizen to seek any information, take notes, extracts or certified copies of documents or records and take certified samples of material. The RTI Act extends to the whole of India (except the State of Jammu and Kashmir), all bodies, which come under Government notification including NGOs, which are owned, controlled or are substantially financed by the Government. RTI Act confers right to access to information held by a Public Authority. In case, you have been denied the access to information you may file Appeal / Complaint before the Central Information Commission (CIC) using the CIC Online.

More than eight years has been passed till 2013, after the enactment of RTI Act, 2005 in India. This Act has acceptability all over and across. The citizens have started feeling differently post enactment of this Act. The government agencies have started giving information. RTI has indeed helped the people to expose the actions of a department including that of judiciary. An RTI application can provide instant solutions to problems of a large number of people if real public interest is involved. But merely getting the information will not be sufficient to correct the system unless the same is used at the right place at the right time and in right manner.

After the Act came into existence, it has become evident that there are many anticipated and unanticipated consequences of the act. These have manifested themselves in various forms. While some of the issues pertain to procedural aspects of the government others pertain to the capacity aspects. Hence, there was a need to evaluate the implementation of the Act based on actual data and information. It has

been observed that many information seekers as well as officers/staff are approaching RTI cell for clarification guidance on the various aspect of the RTI Act 2005, including whether their queries or replies are consistent with the provisions of the RTI Act. A strong need therefore has been felt to provide some guidelines which will serve the interest of both parties.

The case study on penalties imposed in landmark decisions of the Central Information Commission and also Court judgments on RTI related issues need to be analysed to strengthen the implication of RTI Act in a better way. The information seekers must face good or bad experience to get information from different PIO. The analysis of the data on experience of the information seekers will be helpful to identify the generic problem. To find out any anomaly that may be noticeable by omission in the statute will provide an area of rectification by suitable amendments.

1.11 Objectives

The main objectives of present research work have been described below.

- (i) To analyse and categorize information sought under RTI Act,
- (ii) To frame guideline for the information seekers, public authority, first appellate authority, Central Public Information Officers, Central information Commission and
- (iii) To studies on penalties imposed by CIO and Court judgments.
- (iv) To analysis of the data on experience of the seekers and providers of information for identification of generic problem.
- (v) To find out any anomaly that is noticeable by omission, in the statute.

1.12 Scope

The researcher analyses the content and structure of RTI, Act 2005. As a critical and perspective analysis, the research explores the merits and draw backs of the Act supported with information sought by individual under this Act from various organisations. To make this Act more fruitful and meaningful, role of NGOs, the media, the courts and civil society has also been studied. The scopes of the present study includes review of the experience of the central and state governments in implementing the RTI Act, review of the experiences of various categories of information seekers through published materials, diagnosis of the situation and suggest the nature of interventions is made.

1.13 Research Design

Although, there are accepted truth and theories in all fields of knowledge, the intellectuals of the society are always inclined to probe for facts of the empirical world and confirm the proved truth of his investigations by either accepting or correcting the existing theories in the light of the contemporary data and its application. In other words, present research is an investigation which is based on the original source of knowledge. It is inevitable for the advancement of the nation in particular and world in general.⁵

The Research design of this study is doctrinal or non-empirical. The research asks what the law is in particular issue. It is concerned with analysis of legal doctrine and how it is developed and applied. This is a pure theoretical research⁶. It consists of a simple research directed at finding a specific statement of the law and in depth analysis of legal reasoning⁷.

Researcher dwelt in this type of research with the philosophy of law and the topics involve are restricted. They mostly focus on the nature of law and legal authority; the theories behind particular substantive areas of law and the nature of rights, justice and political authority. Researcher has also studied the legal decision making process and the theories of legal interpretation and legal reasoning⁸. This approach helps to study legal doctrine and the underlying theory behind the doctrine.

1.14 Nature/Type

This is exploratory as well as diagnostic type of study. It is Exploratory because the study explores various provisions under RTI Act, 2005. The study is Diagnostic because its main focus to diagnose the cause of non-implementation of RTI in full swing and find out anomaly that is noticeable in the omission in the statute.

1.15 Approach

The study in hand is doctrinal or non-empirical. This is doctrinal because the data has been collected on various aspects through Annual Reports of the CIC, published articles, newspapers, websites etc. Penalties Imposed against different authorities under RTI and court decisions has also been studied to know impact of enforcement of this Act.

⁵ Faisal Fasih NUJS, 5th, May, 2010, An Introduction to Planning and Designing in Legal Research, <http://papers.ssrn.com/sol3/papers.abstract>

⁶ <http://www.scribd.com/doc/44483239/Doctrinal-and-Non-Doctrinal-Research>

⁷ McConville, M. and Wing, H. C. (Eds) (2007) Research Methods for Law, Edinburgh University Press: Edinburgh

⁸ Gordon, T. F, (2008) Artificial Intelligence and Legal Theory at Law Schools, <http://www.tfgordon.de/publications/Gordon2005b.pdf> Accessed on 25th July, 2008

For reviewing the implementation of the RTI Act, it is important to approach the information seeker groups and information provider groups in a different manner.

1.16 Hypothesis

That in spite of the fact that it is a great revolution in the history of post-independence enactment in India to achieve desired result of transparent and accountable governance as strong pillar of democracy, more public awareness, role of society, NGO and politician is expected for true enforcement of RTI, Act. That the Government of India always lays emphasis on making the lives of its citizens easy, smooth and making India truly democratic and keeping this in mind the RTI Act, 2005 has been established. That CIC has to impose more stringent penalties against information avoider PIO, CPIO at the same time try to curb the seeker of information for western interest. That more proactive role has to be played by judiciary for enforcement of decision of CIC.

1.17 Concepts

The present study employs the following definitions for its major concepts for the purpose of its research:

- Information
- Transparency
- Information seeker
- Public Authority
- Public Information Officer
- Right to Information
- Freedom of Speech and Expression
- Central Information Commission
- Penalties /Compensation

1.18 Variables

The present study employs the following definitions for its major variables for the purpose of its research:

The data has been collected from following variables:

- (i) Citizens Access to Information (ATI) is an essential step in ensuring transparency and accountability in government systems and processes.

- (ii) Importance of information and its legal prospects
- (iii) Freedom of information laws by country detail legislation that gives access by the general public to data held by national governments.
- (iv) Evolution of legislation on freedom of information in different countries including in India.
- (v) Legislation on freedom of information in different countries.
- (vi) A comparison of RTI legislation in India vs. Developed Nations and RTI legislation in India vs. South Asia.
- (vii) Pending legislation by country
- (viii) The constitutional provisions for enactment of RTI Act in India.
- (ix) Role of Supreme Court of India and other key development in the evaluation of RTI in India
- (x) RTI in constitution except Article 19 (1) (a)
- (xi) Guideline for the Public Authority, First Appellate Authority, Central Public Information Officers, information seekers
- (xii) Salient features of Right to Information Act, 2005,
- (xiii) Impact of the new law
- (xiv) Misconceptions about RTI Act,
- (xv) On powers of Commission,
- (xvi) On frivolous petitions
- (xvii) The Central Information Commission, responsibility to adjudicate appeals/ complaints filed by information seekers, dissatisfied with either non-response and/ or vague, misleading incorrect responses from Public Authorities
- (xviii) Penalties imposed by CIC and constitution of CIC.
- (xix) Judgments pronounced under RTI by different courts i.e. Hon'ble High Courts of various states and Supreme Court of India.
- (xx) How effective is India's Right to Information Act (RTI),
- (xxi) Right to Information and Good Governance,
- (xxii) Effective implementation of RTI Act

1.19 Review of Literature

To get the knowledge of previous work done on research topic, the review of literatures has been carried out by researcher and same has been described below under subheading News, Research papers/Articles and Books.

1.19.1 News

Advocates of Right to Information in South Asia adopt resolution to promote Transparent Governance in the region, 2010⁹- A regional workshop jointly organized by the Indian Institute of Public Administration and the World Bank to discuss the state of transparency and the right to information regimes in the countries of the region concluded with a resolution to work towards more transparent governance in the region.

UNESCO declaration Article 19 on right to information, 2010¹⁰- The 'Declaration of Brisbane' issued by the UNESCO World Press Freedom Day 2010 Conference on 3 May in Brisbane Australia. The Declaration sets out principles for national governments, media professionals and UNESCO to promote the Right to Information.

The Pioneer, 2007, NRI's in US allowed RTI excess¹¹ - Non-resident Indians (NRIs) living in the US would now be able to exercise the Right to Information (RTI). The Indian embassy in Washington DC has been brought under the purview of the RTI Act, 2005 and a public information officer (PIO) has been appointed.

www.freedominfo.org 2007, Jamie P. Horsley, China Adopts First Nationwide Open Government Information regulations¹²- 'mark a turning point away from the deeply ingrained culture of secrecy' in China and at the same time depart in significant respects from international standards and even from prior local-level Chinese practice.

Rajgadga V. 2007, Penalty on PIO: First time in Jharkhand¹³- The Jharkhand State Information Commission has imposed Rs. 25,000 fine on the Chairman of Palamu District Consumer Forum. This is the first time in Jharkhand where a PIO has been penalized for defying the provisions of RTI Act 2005.

Wikipedia, Freedom of information legislation¹⁴- Freedom of information legislation are rules that guarantee access to data held by the state. They establish a 'right-to-know' legal process by which requests may be made for government-held information, to be received freely or at minimal cost, barring standard exceptions. Also

⁹ <http://www.worldbank.org/en/news/press-release/2010/04/29/advocates-of-right-to-information-in-south-asia-adopt-resolution-to-promote-transparent-governance-in-the-region>

¹⁰ <http://www.article19.org/resources.php/resource/1522/en/article-19-welcomes-unesco-declaration-on-right-to-information>

¹¹ <http://cic.gov.in/CIC-Articles/nri.htm>

¹² <http://www.law.yale.edu/intellectuallife/openinformation.htm>

¹³ <http://cic.gov.in/CIC-Articles/PenaltyOnPIO-FTimelnJharkhand.htm>

¹⁴ http://en.wikipedia.org/wiki/Freedom_of_information_laws_by_country

variously referred to as open records or (especially in the United States) sunshine laws, governments are also typically bound by a duty to publish and promote openness. In many countries there are constitutional guarantees for the right of access to information, but usually these are unused if specific support legislation does not exist. Over 85 countries around the world have implemented some form of such legislation. Sweden's Freedom of the Press Act of 1766 is the oldest.

1.19.2 Research Papers/Articles

Bülent Yılmaz, 1998- The right to information: is it possible for developing countries?¹⁵- The right to information is one of the main human rights that protect and develop the human life. The use of the right to information will be able to contribute to solve the many social and cultural problems of the individual and the national level. But there are many pre-conditions which are related to economical, social, cultural and political development for realizing the right to information in a country. Unless a country has solved the main problems like hunger, education, health, social security and political freedom, it is not possible to realize the right to information.

Roy A. & Dey N., 2007, who's afraid of transparency¹⁶-The most encouraging aspects of vigilance efforts like social audits, have been the coming together of motivated people from all walks of life in a campaign mode.

www.freedominfo.org, 2006, Inter-American court finds fundamental Right of Access to Information¹⁷- In the first decision of its kind from an international tribunal, the Inter-American Court of Human Rights ruled that there is a fundamental human right to access government information.

www.cic.gov.in, Lessons from penalties imposed by CIC¹⁸-In the transparency era, scope of learning lessons from the penalty was opened now. While reviewing the decisions of Central Information Commission (CIC), where penalty was imposed for delay in furnishing information, gives a good insight about when a PIO/Deemed PIO is penalized and when they are not.

Dalal, P., The expanding horizons of right to information¹⁹- To explore the Constitutional and Statutory Rights of the individuals to acquire and disseminate information in all its contours and perspectives is described in this article. These rights

¹⁵ <http://www.oocities.org/bororissa/info.html>

¹⁶ <http://cic.gov.in/CIC-Articles/transparent.htm>

¹⁷ <http://www.freedominfo.org/2006/10/inter-american-court-finds-fundamental-right-of-access-to-information/>

¹⁸ <http://cic.gov.in/CIC-Articles/LessonsFromPenalties-KM.pdf>

¹⁹ <http://cic.gov.in/CIC-Articles/Praveen%20Dala-02-13052006.pdf>

are legally couched in terms of mandates, which are primarily, directed against the State, its instrumentalities and even against private individuals. This article provides a analysis and base to the Central Information Commission regarding the informational rights of citizens of India.

Rao, N. B., Research needed on RTI implementation²⁰- There is urgency to take stock of the ‘who, what, where, when and how’ aspects of usage of the RTI Act in different States. Only then would we be able to take quick corrective actions or interventions by the Government, by the Commissions themselves and by the civil society groups. That would also help achieve better efficiencies of targeted programmes of the Government.

The RTI is an emerging field and the law on right to information is at the development stage by way of statutory amendments (so far proposed), interpretation by the Supreme Court, High Courts, Information Commissions and to some extent by the executive guidelines. The this book on the law and practice has consulted noted jurists, Information Commissioners, Bureaucrats, Police Officers, Academicians and RTI scholars to make it more practical and realistic.

Subhash Chandra Agrawal, My experiences on RTI & Judiciary²¹-It seems that (CPIO) at Department of Justice has to reply under pressure. It always avoids replies on petty and meaningless excuses like date of newspaper-clipping etc. Even file notings are being refused. Wrong and vague replies are quite common. On being asked about eligibility of persons being politically affiliated and having contested elections for being judges, both the CPIO and the Appellate Authority were evasive for reasons best understood. CPIO’s reply was wrong when it said that government had no competence to act against retired judges of higher courts because case of Mr. Justice Shamit Mukherji is before all.

Aruna Chhaba, Subodh Shukla & Sonal Kalra., Right to information: Step towards transparent governance²²- The new legislation is a radical improvement on the relatively weak statute it seeks to replace, the Freedom of Information Act, 2002. It unequivocally confers on all citizens the right to access information and, correspondingly, makes the dissemination of such information an obligation for all public authorities. It is quoted in the preamble of the Act that ‘it provides for setting out the practical regime of right to information for citizens to secure access to

²⁰ [http://cic.gov.in/CIC-Articles/Research%20needed%20on RTI Implementation](http://cic.gov.in/CIC-Articles/Research%20needed%20on%20RTI%20Implementation)

²¹ <http://cic.gov.in/CIC-Articles/RTI-Judiciary-SC-Agrawal.pdf>

²² <http://cic.gov.in/CIC-Articles/ArunaChhaba-01.htm>

information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto’.

Enactment of the legislation has made India one of the 55 countries that have comprehensive laws to protect the citizens’ right to information. The Right to Information Act is in line with the tenets of democracy and also a suitable response to the relentless efforts and mass mobilization in favor of a comprehensive Central Act providing access to information regime.

1.19.3 Books

Kumar Niraj, Handbook on Right to Information Act, 2005²³- Freedom of Information, a phrase coined in the United States, is a very different notion from the freedom of speech, freedom of press or freedom of expression. It empowers the common man to obtain information in possession of the State. The Right to Information Act, 2005 is a very powerful tool, given in the hands of Indian citizens. It provides them a chance to transform the way the government and its officials function. Asking the government for information, one asks for the government to be transparent and accountable to its citizens. This book contains the historical perspective of this sunshine Act world over including India. The people’s struggle compelled the Indian Parliament to finally enact the Right to Information Act, 2005, which ultimately came into effect from 12th October, 2005 in all the States of India except the State of Jammu & Kashmir. The book deals with all the aspects of this Act with real life stories. It also contains an exhaustive commentary on all the sections of the Act with appropriate comments and deficiencies at appropriate places. This publication attempts to focus on the practical aspects of its implementation and throws light on certain grey areas of the Right to Information Act, 2005.

R. S. Tolia, Handbook for public information officers under RTI²⁴-This book explains the RTI Act to Public Information Officers as to how they should perform their duties under the Act. The book described about the importance of the Act and the need for its effective implementation for officers working under the act to help them understand and implement it. It tries to make the act accessible for the public and for those working under it would go a long way in bringing transparency to the system.

²³ Kumar, Niraj (2009) Handbook on Right to Information Act, 2005, Bharat’s Publications

²⁴ R. S. Tolia (2001) Handbook for public information officers under RTI, Natraj Publication

S. V. Joga Rao, Law relating to Right to Information²⁵-The passage of the Right to Information Act, 2005, is a historic movement. It replaces the culture of secrecy and control with openness with participation. But the legal framework on this topic so far has resulted in little change. Is this another that promises much, but offers little? More than the law, the RTI is a process, a tool, a concept and a cultural approach to life. Can we use this to meet the challenges of our democratic future? What is the potential and what are the road blocks? This book has been written to further the awareness levels of people concerned and the general.

P.K. Das, Handbook on The Right to Information Act²⁶-The Union Government has just enforced the new law on Right to Information, replacing the earlier 'Freedom Of Information Act'. This guide contains the text of the RTI Act, Official Secrets Act, other related laws, State Laws on RTI, Supreme Court Judgments on RTI, relevant provisions of International Conventions and Declarations, etc.

R.K.Verma and Anuradha Verma, Right to Information Law & Practice²⁷- A complete and comprehensive practical commentary on law relating to Right to Information. Serving as do it yourself guide for every citizen, private organisation as well as Public Information Officer (PIO).

R.K. Verma and Anuradha Verma, PIO's Guide to RTI²⁸-A comprehensive guide to Right to Information Act, 2005 for Public Information Officers, First Appellate Authorities and other Government Servants. Ensuring a time bound reply to the RTI applications is an additional responsibility for most of the Public Information Officers (PIOs) and the First Appellate Authorities (FAAs). While a plethora of literature exists for the applicants, there is a virtual absence of reading material which looks at the RTI Act from the point of view of a PIO. This book aims at helping the PIOs and the FAAs in fulfilling their duties efficiently as per the Act. This Guide is based on a detailed study of more than 50,000 CIC Orders and hundreds of Judgments of Courts.

R. K. Verma, Right to Information Law & Practice with Case Book on Right to Information²⁹ - A Practical commentary on law relating to Right to Information serving as do it yourself guide for every citizen, private organisation as

²⁵ Rao S.V. Joga, Law Relating to Right to Information A Comprehensive and Insightful Commentary with Comparative Perspectives Published by Pentagon Press (2008-11-30)

²⁶ P.K. Das, Handbook On The Right To Information Act, Published by Universal Law Publishing Co. Pvt. Ltd., New Delhi, 2013

²⁷ R.K Verma and Anuradha Verma Right to Information Law & Practice, 2010, Taxmann Publications Pvt. Ltd.

²⁸ R.K Verma & Anuradha Verma, PIO's Guide to RTI, 2011, Taxmann Publications Pvt. Ltd.

²⁹ R K Verma , Right to Information Law & Practice with Case Book on Right to Information, December 19th, 2009, Taxmann Publications Pvt. Ltd.

well as Public Information Officer (PIO), Citizen's Guide Powers of a citizen under the Act. How to seek information? What fees are leviable? Remedies available in case of denial of information. Private Organisations' Guide How are they covered under the Act ? What information relating to a private organisation can be sought? Who is a third party? What are the powers of a third party? Public Information Officer's Guide and PIO's obligations under the Act. How to process the application? What information should be disclosed? Conditions under which the information can be denied. How to pass an order Penalty and prosecution provisions? A subject-wise Compendium of landmark Judgment / order of Supreme Court/High Courts as well as Central Information Commission. A Complete & authentic Compendium of Central as well as state laws relating to Right to Information.

National Institute of Social Defence (Ministry of Social Justice and Empowerment), Hand Book on Right to Information Act, 2005³⁰ -The main objective of this handbook is to provide basic information to the citizens of India about NISD and to build awareness of RTI, Act 2005

N. Kumar, A Handbook on RTI Act, 2005³¹-This publication attempts to focus on the practical aspects of its implementation and throws light on certain grey areas of the Right to Information Act, 2005.

V.K. Puri, Right to Information - Practical Handbook³²-This book for Information Seekers / Officers & Appellate Authorities as per CIS Decisions along with Digest of Incorporating Act, Rules, Notifications, Circulars, State Rules, Forms & Registers

Srinivas Madhav, Right to Information³³-This book is a guide to right to information, presenting essential decisions, public interest, environmental right, anti-corruption bodies, etc. It also addresses grievance redressal mechanisms.

Prakash Kumar & K. B. Rai-Right to Know - A Hands-on Guide to the Right to Information Act³⁴-The Right to Information Act is a very powerful tool to bring transparency and usher in an era of accountability. It empowers people to get information, records etc. of government authorities as a matter of right. There are two main stakeholders in provision of information, the information seeker i.e., citizen and

³⁰ <http://www.silverinnings.com>

³¹ Kumar,N. 2009, A Handbook on RTI Act, 2005, BH's Publications

³² V.K. Puri, Right to Information - Practical Handbook, 2010, A JBH Publications

³³ Srinivas Madhav, Right to Information, 2010, Asia Law House

³⁴ Prakash Kumar & K. B. Rai- Right To Know - A Hands-on Guide to the Right to Information Act, 2008, Vikas Publications

information provider i.e., public authorities including government funded NGOs. This book caters to the requirements of both. The authors have brought in their experience of implementing the Delhi Right to Information Act in this book. It is a manual for PIOs/APIOs, Appellate Authorities and the Public Authorities. It also contains all help a citizen may require in seeking information including: how to apply, where to apply, how much fee is to be paid. In case information is delayed or denied or is believed to be incorrect then where and how to file appeal.

Shreyaskar, Pankaj K. P. RTI Act in India: Futures and Implications³⁵: Right to Information (RTI) is a new paradigm of governance in India. Shouldering high hopes in a short span of time, the literature on the RTI Act is still evolving compared to the widespread public interest that this law has generated. This book demarcates the beneficiaries of the law. Presenting the status, issues and strategies of various provisions of RTI Act in detail, the volume analyzes the facts in the light of the decisions of the Central Information Commission, superior courts and global best practices. It is useful compilation of ideas and best practices that have the potential to significantly alter the processes adopted by public authorities for dealing with information requests.

Kunwar Vijay Pratap Singh - Right to Information (RTI) Law & Practice³⁶: The RTI is an emerging field and the law on right to information is at the development stage by way of statutory amendments, interpretation by the Supreme Court, High Courts, Information Commissions and to some extent by the executive guidelines. This book has consulted noted jurists, Information Commissioners, Bureaucrats, Police Officers, Academicians and RTI scholars to make it more practical and realistic. The latest provisions, guidelines and rulings on various provisions have also been discussed in this book.

Naib, Sudhir -The Right to Information Act 2005: A Handbook³⁷: The Indian state till recently denied information about its functioning and decision-making to its citizens, ironically, using laws made during the colonial period. Apart from being an anomaly in a democratic set-up, it created an adverse impact on the quality of governance, accountability and transparency. It was only in 2005, after a prolonged freedom of information movement, that this situation was finally rectified. The government enacted the landmark Right to Information Act 2005 and gave to all its citizens the right to access information held by or under the control of public authorities.

³⁵ Shreyaskar, Pankaj K. P. (2013) RTI Act in India : Futures and Implications, Tata McGraw-Hill Education Publication

³⁶ Kunwar Vijay Pratap Singh (2014) Right to Information (RTI) Law & Practice

³⁷ Naib, Sudhir (2011) The Right to Information Act 2005: A Handbook, Oxford Publication

This Handbook is meant to serve as a practical guide to the implementation of the Act. The book begins by locating the Act in the context of a global movement for freedom of information (FOI) and discusses the efforts made by international bodies for adoption of FOI. It also presents a detailed comparative study of FOI in five countries—the US, the UK, Canada, South Africa and India. In subsequent chapters, the book adopting a step-by-step approach, discusses: the provisions of the Right to Information Act, how citizens should make use of the right to information, the comprehensive guidelines for public authorities and their obligations under the Act, which includes relevant central information commission decisions, the role of the public information officers (PIO), who are to be appointed as per the provisions in the Act by all public authorities, the exemptions allowed under the Act, finally, the appellate authorities to whom a citizen can appeal in case of unsatisfactory response by the PIO.

1.20 Future Contribution

The present study provides an insight of the freedom of information in view of RTI Act, 2005. The proposed research work will have number of contributions like it will be helpful to analyse and categorize information sought under RTI Act 2005 by information seeker. An attempt will be made for framing guideline for the information seekers, public authority, first appellate authority, Public Information Officers, CPIO and Central Information Commission which will be helpful for hassle free established procedure to seek and provide information. The Case studies on penalties imposed by CIO and Court judgments on ruling of CIO will be helpful to understand right legal interpretation and implementation of RTI. Analysis of the data on experience of the seekers and providers of information will contribute for identification of generic problem. An attempt will be made to find out any anomaly that is noticeable by omission, in the statute.

The study may also give input for the better transparency and planning for the current system in a Government organization. This Act is expected to pave the way for checking red-tapism, nepotism and corruption and to be instrumental in protection of the right of each citizen.

1.21 Limitation

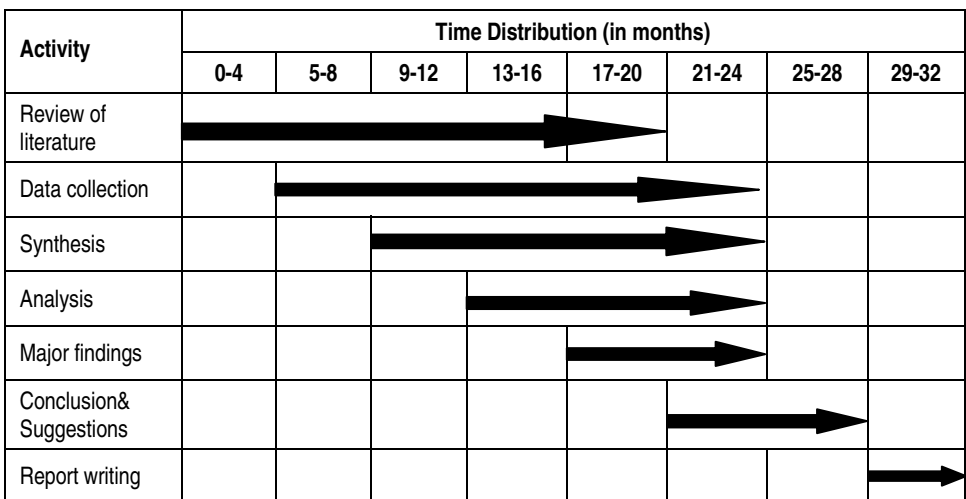
The study is confined to freedom of information with respect to RTI, Act, 2005 based on CIO decision and court judgments which may be specific to India and may not be globally acceptable. Even High Court to High court the difference of judgments on

similar issues may confuses to make firm opinion on issue and interpretation of statue.

1.22 Time Schedule

The distribution of time for each important activity like review of literature, data collection, synthesis, analysis, major findings, conclusion and report writing is given below as well as depicted in form of time bar chart.

Activity	Time
Review of literature and Data Collection	– within 8 months after registration
Synthesis and Analysis	– within 16 months
Major findings and	– within 20 months
Conclusion& Suggestions	– within 28 months
Report writing	– within 32 months



Time Bar Chart showing distribution of research activity

1.23 Chapterisation

This study is being presented into the following seven chapters dealing with various aspects on the Topic of the study.

Chapter-I Introduction: Citizens Access to Information (ATI) is an essential step in ensuring transparency and accountability in government systems and processes. This chapter is dedicated to describing importance of information and its legal prospects. It is divided into two parts. Part (A) theoretical background covers historical

perspective, RTI – a worldwide occurrence, freedom of information/RTI in international covenant, RTI and good governance, constitutional provisions, role of judiciary and other key development in the evaluation of RTI in India. Part (B) research methodology deals with title, problem, rationale, objectives, scope, research design, nature and type, approach, hypothesis, variables, concepts, review of literature, future contribution, limitation and time schedule of the study.

Chapter-II Legislation on Freedom of Information in different countries:

Freedom of information laws by country detail legislation that gives access by the general public to data held by national governments. This chapter deals with evolution of legislation on freedom of information in different countries. It covers the Freedom of information laws by country, RTI – a worldwide occurrence, Freedom of Information in international covenant, legislation by country, pending legislation by country and RTI legislation – a comparison of RTI legislation in India vs. Developed Nations and RTI legislation in India vs. South Asia.

Chapter-III Constitutional Perspective: The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only messiahs that can ensure freedom of all sorts. This chapter explores various constitutional provisions for enactment of RTI Act in India. It covers colonial acts and denial of the information, constitutional provisions of various countries recognizing RTI, statutory provisions of various countries enabling RTI, constitutional perspective of Right to Information in India, RTI in constitution except Article 19 (1) (a), movement for Right to Information in India and court decisions to protect Article 19(1) (a) of Constitution of India

Chapter-IV Right To Information Act: In order to promote, transparency and accountability in administration, Parliament passed Right to Information Bill, 2004 on 15th, June, 2005. This chapter describes RTI Act, 2005 and guideline for the Public Authority, First Appellate Authority, Central Public Information Officers, information seekers, exempted organization, Central Information Commission, RTI Complaint and Appeal. It covers historical background, the need for the Right to Information, framework, Freedom of Information Act 2002, State Level Laws, Right to Know, RTI, 2005, salient features of Right to Information Act, 2005, impact of the new law, guideline for Public Information Officers, Assistance Available to PIO under the Right to Information Act, 2005, disposal of the request, RTI: a response to Paradigm Shift in development approach, purposive interpretation, misconceptions about RTI Act, on powers of Commission and on frivolous petitions

Chapter- V Central Information Commission: The Central Information Commission, constituted in accordance with provisions of Section 12 of the RTI Act, has the responsibility to adjudicate appeals/complaints filed by information seekers, dissatisfied with either non-response and/ or vague, misleading incorrect responses from Public Authorities. A number of landmark decisions under the ambit of RTI Act were delivered by the Central Information Commission (CIC). This chapter describes in details about penalties imposed by CIC and constitution of CIC. It covers Appeal/ Complaints in the Commission Appointment of Chief Information Commissioner and Contribution of Central Information Commission

Chapter-VI Judicial Conspectus: This chapter describes in details about judgments pronounced under RTI by different courts i.e. Hon' ble High Courts of various states and Supreme Court of India. The office of Chief Justice of India is an important constitutional office and the Indian judiciary has been made an independent institution under the Constitution. The role of judiciary has been assigned as the custodian of the Constitution and the other laws and for that purpose to ensure and encourage the transparency and accountability of public institutions. The RTI Act was enacted to enable the people and the media to keep watch over the corrupt practices of the government institutions and its officials and the judiciary is supposed to assist in it by upholding the right of the people to ask for the information from any of the government organs and officials. It covers recognition of the 'Right to know', judgment of Supreme Court on the Right to Information Act and Right to Information and judiciary.

Chapter-VII Conclusion & Suggestions: The Supreme Court has interpreted Article 19(1)(a) and Article 21 of the Constitution, which enforce freedom of speech and expression and the right to life and liberty respectively, as including the 'right to know'. The last part of thesis contains conclusion and suggestions on the findings. It covers analysis, lacunae in the Right to Information Act, 2005, more RTI applications filed may not necessarily mean more information, criticisms, suggestions, action to be taken, major finding and agenda for action, role of government, other suggestions , overview of the impact, tasks ahead, challenges, achievements of RTI Act, how effective is India's Right to Information Act (RTI), performance of the Right to Information Act, 2005, Right to Information and Good Governance and Conclusion.

LEGISLATION ON FREEDOM OF INFORMATION IN DIFFERENT COUNTRIES

Freedom of information laws in different countries detail legislation that gives access by the general public to data held by national governments. They establish a 'right-to-know' legal process by which requests may be made for government-held information, to be received freely or at minimal cost, barring standard exceptions. Also variously referred to as open records or sunshine laws (in the United States), governments are also typically bound by a duty to publish and promote openness. In many countries there are constitutional guarantees for the right of access to information, but usually these are unused if specific support legislation does not exist.

2.1 Freedom of Information Laws in Different Countries

Over 90 countries around the world have implemented some form of freedom of information legislation³⁸. Sweden's Freedom of the Press Act of 1766 is the oldest in the world.^{39,40} Most freedom of information laws exclude the private sector from their jurisdiction. Information held by the private sector cannot be accessed as a legal right. This limitation entails serious implications because the private sector is performing many functions which were previously the domain of the public sector. As a result, information that was previously public is now within the private sector and the private contractors cannot be forced to disclose information.⁴¹

Other countries are working towards introducing such laws and many regions of countries with national legislation have local laws. For example, all states of the United States have laws governing access to public documents of state and local taxing entities, in addition to that country's Freedom of Information Act which governs records management of documents in the possession of the federal government. A related concept is open meetings legislation, which allows access to government meetings, not just to the records of them. In many countries, privacy or data protection laws may

³⁸ Access to Information Laws: Overview and Statutory Goals

³⁹ The World's First Freedom of Information Act

⁴⁰ Staples, William R. *Encyclopedia of privacy*. Greenwood Publishing Group.

be part of the freedom of information legislation; the concepts are often closely tied together in political discourse. 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 person making the request does not usually have to give an explanation for their actions, but if the information is not disclosed a valid reason has to be given.

2.2 RTI – A Worldwide Occurrence

Legislations granting or facilitating ‘Freedom of Information’ (FoI) or Right to Information (RTI) are a fairly worldwide phenomenon today. As on date, over 90 countries have enacted and are implementing such legislation(s) in some form or the other. Many countries provide constitutional guarantees for FoI / RTI. In some countries, specific legislations further enable the exercise of this right. Such laws also referred to as open-government laws/ sunshine laws ensure that prospective requesters of information have access to it in a simple, cost-effective and time-bound manner. Such access is provided as a matter of right. Governments are made duty-bound to facilitate it. Information, thus, made accessible / available to people is believed to, legitimately, be known by them to make democratic functioning meaningful⁴²

Chronology of Some National Freedom of Information Legislations in the World

Sweden	1766
Colombia	1888
Finland	1951
United States of America	1966
Denmark, Norway	1970
France	1978
Australia, New Zealand	1982
Canada	1983

Many countries like the United States of America (USA), Canada and Australia, have laws governing access to public documents at regional (provincial) level in

⁴¹ MazharSiraj (2010). ‘Exclusion of Private Sector from Freedom of Information Laws: Implications from a Human Rights Perspective’. *Journal of Alternative Perspectives on Social Sciences* 2 (1): 211–226.

⁴² Commonwealth Human Rights Initiative, Right to Information: International, Member States. Laws and Papers, http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm

addition to having a law at national / federal level⁴³. In many countries, privacy or data protection laws are part of the FoI legislation / regime as these concepts are believed to be closely tied together. A basic principle behind most FoI/ RTI laws is that the burden of proof falls on the body to which information is asked, not the person asking for it. Thus, requesters do not usually have to give an explanation for their request. Moreover, if the information is not disclosed, a valid reason has to be given. This is also the case under the Indian RTI Act, 2005. FoI/ RTI is expected to lead to an informed citizen and transparency of information, which are vital to the functioning of a democracy. It is also expected to contain corruption and enable holding Governments and their instruments accountable to the governed.

2.3 Freedom of Information in International Covenant

The United Nations General Assembly (UNGA), in its very first session in 1946, adopted Resolution 59 (I), which states that Freedom of information is a fundamental human right and... the touchstone of all the freedoms to which the United Nations (UN) is consecrated. Article 19 of the 'Universal Declaration of Human Rights', a UNGA Resolution 217 (III) A of 1948 recognises Freedom of Expression (FoE) including FoI and Free Press as a Fundamental Human Right⁴⁴. FoE includes the right to seek, receive and impart information and right to access information held by public authorities. Article 19 (2) of the 'International Covenant on Civil and Political Rights' (ICCPR), a UNGA Resolution 2200A(XXI) of 1966 states that everyone shall have the right to FoE; (which) 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. Article I of the UN Educational, Scientific and Cultural Organisation (UNESCO) Declaration on 'Fundamental Principles concerning Contribution of Mass Media to Strengthening Peace and International Understanding, to Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War' [1978] states that the strengthening of peace and international understanding, the promotion of human rights and the countering of racism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information. Article II of the UNESCO Declaration states that ... the exercise of freedom of opinion, expression and information,

⁴³ David Banisar, Freedom of Information around the World - A Global Survey of Access to Government Information Laws, Privacy International, 2006. www.sspa.it/share/pagine/1635/global_survey2006.

⁴⁴ Article 19, The Public's Right to Know: Principles on Freedom of Information Legislation, International Standards Series, 1999, London. www.article19.org/pdfs/standards/righttoknow.

recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding... Article 13 of the 'UN Convention against Corruption', adopted by the UNGA on 31 October 2003 identifies: '(i) effective access to information for public; (ii) undertaking public information activities contributing to non-tolerance of corruption (including conducting public education programmes) and (iii) respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption...' as important measures to be taken by Governments for ensuring the participation of society in governance'. Article 10 of the 'UN Convention against Corruption' states that... to combat corruption, each (member State) shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision making processes and take (certain) measures (for adopting procedures /regulations, simplifying administrative procedures and publishing information...) Principle IV of the Declaration of Principles of Freedom of Expression in Africa states that public bodies hold information not for themselves, but as custodians of the public good and everyone has a right to access this information, subject only to clearly defined rules established by law.

Principle III of the Recommendations on Access to Official Documents adopted by the Committee of Ministers of the Council of Europe in October 2002 provides that Member states should guarantee the right of everyone to have access, on request, to official documents held by public authorities. This principle should apply without discrimination on any ground, including that of national origin⁴⁵.

The World Conference on Human Rights, held in Vienna in 1993 had declared that the Right to Development adopted by UNGA is a universal and inalienable right and an integral part of fundamental human rights. The declaration recognised that democracy, development and respect for human rights and fundamental freedoms are inter- dependent and mutually reinforcing. Right to FoE is regarded as closely linked to Right to Development. It goes on to say that: The right to seek, receive and impart information is not merely a corollary of freedom of opinion and expression; it is a right in and of itself. As such, it is one of the rights upon which free and democratic societies depend. It is also a right that gives meaning to the Right to Participate which has been acknowledged as fundamental to the realization of the Right to Development.

⁴⁵ Toby Mendel, *Freedom of Information: A Comparative Legal Survey*, 2nd Edition, United Nations Educational Scientific & Cultural Organisation, 2008. www.unesco.org/webworld/en/foi

2.4 Legislation by country

The country wise legislation on Right to Information is described below:

2.4.1 Albania

Albania provides both constitutional and legal guarantees to the right to information (RTI). This requires public authorities to grant any request for an official document^{46,47}. A general conclusion related to implementation of the ATI (Access to Information) and RTI in Albania is that good progress has been made in developing the legislation and institutional framework supporting the implementation but the public information regime in place continues to have significant problems in its functioning. The reasons for this include problems with infrastructure, lack of sufficient political will expressed in the weakness of administrative capacity and autocratic tendencies inherited from the administration; it is also conditioned by the shortcomings of the legal framework for RTI that has remained unchanged since 1999⁴⁸.

2.4.2 Armenia

The Law on Freedom of Information⁴⁹ was unanimously approved by the Parliament on 23rd, September, 2003 and went into force in November, 2003. This law applies to the activity of the state and local self-government bodies, state offices, organizations financed from the state budget, as well as private organizations of public importance and their state officials.

2.4.3 Australia

In Australia, the Freedom of Information Act 1982 was passed at the federal level in 1982, applying to all ministers, departments and public authorities of the Commonwealth. To guarantee the public's right of access official document of the government and its agencies, this Act was enacted in 1982 by the House of Parliament of Australia.

The objectives of this Act is to extend the right of the Australian community to access information possessed by the government by making available to the public about the operations of departments and public authorities and by creating a general right of access to information to the document in possession of the Ministers and departments.

⁴⁶ HIDAA.gov.al (English)

⁴⁷ HIDAA.gov.al (Albanian)

⁴⁸ <http://www.freedominfo.org/regions/europe/albania/>

⁴⁹ F.O.I. Center - Association of an Investigative Journalists of Armenia

There is similar legislation in all states and territories as given below:

- Australian Capital Territory, the Freedom of Information Act 1989⁵⁰
- New South Wales, the Government Information (Public Access) Act 2009⁵¹
- Northern Territory, the Information Act 2003⁵²
- Queensland, the Right to Information Act 2009⁵³
- South Australia, the Freedom of Information Act 1991⁵⁴
- Tasmania, the Right to Information Act 2009⁵⁵
- Victoria, the Freedom of Information Act 1982⁵⁶
- Western Australia, the Freedom of Information Act 1992⁵⁷

2.4.4 Azerbaijan

In Azerbaijan, a Law on Access to Information was approved in 2005. It has gone into effect. Previously in 1998 there was accepted Law on Freedom on Information, but the Law of 2005 provided more detailed and secured regulation for access to official information.

2.4.5 Bangladesh

On October 21, 2008, the Caretaker Government of Bangladesh issued in the Bangladesh Gazette the Right to Information Ordinance (No. 50 of 2008), based loosely on the Indian Right to Information Act, 2005.⁵⁸The Ordinance was passed by the government of Bangladesh in the first session of this parliament on March 29, 2009.

2.4.6 Belgium

Article 32 of the Constitution was amended in 1993 to include a right of access to documents held by the government. Everyone has the right to consult any administrative document and to have a copy made, except in the cases and conditions stipulated by the laws, decrees or rulings referred to in Article 134⁵⁹.

⁵⁰ ACT legislation register - Freedom of Information Act 1989 - main page. Legislation.act.gov.au.

⁵¹ New South Wales Consolidated Acts: Government Information (Public Access) Act 2009. Austlii.edu.au.

⁵² Information Act. Department of the Attorney-General

⁵³ Right to Information Act 2009.The Office of the Queensland Parliamentary Counsel.

⁵⁴ South Australian Consolidated Acts: Freedom Of Information Act 1991. Austlii.edu.au.

⁵⁵ Tasmanian Consolidated Acts: Right to Information Act 2009. Austlii.edu.au. 2009-12-07..

⁵⁶ State of Victoria, Australia, Department of Justice.Freedom of Information. FOI.vic.gov.au.

⁵⁷ Office of the Information Commissioner (WA) .State of Western Australia.

⁵⁸ Bangladesh Right to Information Ordinance, No. 50 of 2008 (Bangla)(in Bangla).Ministry of Information, Press Information Department. 2008-10-21.

⁵⁹ www.law-democracy.org/live/wp-content/uploads/2012

2.4.7 Belize

In Belize, the Freedom of Information Act was passed in 1998 was amended in 2000.⁶⁰ Freedom of Information (Amendment) Act, 2008, which, inter alia, was passed to invalidate secrecy provisions in public contracts, to reduce the categories of exempt documents, to penalize unreasonable refusal or failure to provide access to public documents.⁶¹

2.4.8 Bosnia and Herzegovina

Bosnia and Herzegovina, was the first country in the Balkan region to adopt the Freedom of Information Act. Freedom of Access to Information Act or FOIA - was adopted by the Parliament Assembly of Bosnia and Herzegovina on 17th, November, 2000. Both federal entities - the RepublikaSrpska and the Federation of Bosnia and Herzegovina - passed freedom of information laws in 2001, the Freedom of Access to Information Act for the RepublikaSrpska and Freedom of Access to Information Act for the Federation of Bosnia and Herzegovina respectively. The FOIA Act changed on the BiH state level two times. The first alteration was passed in 2006, enabling stronger legal protection within the framework of administrative law of BiH. The second alteration was passed in December 2009, which enforced legal penalties for prescribed violations.

2.4.9 Brazil

In Brazil, the Article 5, XXXIII, of the Constitution sets that everyone shall have the right to receive information of his own interest or of public interest from public entities, which shall be given within the time prescribed by law. Also, article 22 of the Federal law grants the right to full access to public documents. A statute passed in 2011 and that was enter into force in 2012 (Federal Law 12.527/2011, promulgated on 28 November 2011) regulates the manner and the timetable for the information to be given by the State. A freedom of information law has taken effect in Brazil, challenging an embedded culture of secrecy and bureaucracy⁶².

2.4.10 Bulgaria

Right to access to public information is guaranteed by the 1991 Bulgarian Constitution⁶³. In Bulgaria, the Access to Public Information Act was passed in 2000,

⁶⁰ Belize.gov.bz

⁶¹ http://www.oas.org/juridico/PDFs/mec_avance_blz.pdf

⁶² http://www.huffingtonpost.com/2012/05/17/brazil-freedom-of-information_n_1525131.html

⁶³ <http://legislationline.org/topics/country/39/topic/3>

following a 1996 recommendation from the Constitutional Court to implement such a law, aimed at fostering access to public information.

2.4.11 Canada

In Canada, the Access to Information Act allows citizens to demand records from federal bodies. The act came into force in 1983, under the Pierre Trudeau government, permitting Canadians to retrieve information from government files, establishing what information could be accessed, mandating timelines for response.⁶⁴ This is enforced by the Information Commissioner of Canada.

There is also a complementary Privacy Act that was introduced in 1983. The purpose of the Privacy Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a federal government institution and that provide individuals with a right of access to that information. It is a Crown copy right. Complaints for possible violations of the Act may be reported to the Privacy Commissioner of Canada.

Canadian access to information laws distinguish between accesses to records generally and access to records that contain personal information about the person making the request. Subject to exceptions, individuals have a right of access to records that contain their own personal information under the Privacy Act but the general public does not have a right of access to records that contain personal information about others under the Access to Information Act. Each province and territory in Canada has its own access to information legislation. In many cases, this is also the provincial public sector privacy legislation. For example:

- Freedom of Information and Protection of Privacy Act (Alberta)
- Freedom of Information and Protection of Privacy Act (Manitoba)
- Freedom of Information and Protection of Privacy Act (Nova Scotia)
- Freedom of Information and Protection of Privacy Act (Ontario)
- Freedom of Information and Protection of Privacy Act (Saskatchewan)
- Act respecting access to documents held by public bodies and the protection of personal information (Quebec)

From 1989 to 2008, requests made to the federal government were catalogued in the Coordination of Access to Information Requests System.

⁶⁴ The Dark Country.

2.4.12 Cayman

The Freedom of Information Law of the Cayman Islands is based on the principle that the government should rarely and only in compelling circumstances, possess more information than citizens possess. The Freedom of Information Law was passed in 2007 and was brought into force in January 2009. The FOI Law gives individuals the right to timely and complete access to government information. Individuals are not required to give any reasons for requesting the information. Government may refuse access only in eleven narrow circumstances, of which all but one, are reviewable by the Information Commissioner. The FOI Law and the Commissioner expects Public Authorities to be transparent and provide people with access to official information as a matter of course⁶⁵.

2.4.13 Chile

In Chile, article 8 of the Constitution provides for the freedom of information. A law titled Law on Access to Public Information (*Ley de Acceso a la Información Pública*) took effect on April 20, 2009. The Law sets forth the principle of active participation, pursuant to which every government agency must make available to potential users, through electronic means, the information mentioned in the Law. The Law also refers to the principles that compose citizens' right of access to information, including those of maximum information dissemination, non discrimination and gratuitousness. The Law mentions exceptions to this right, however, based on the rights of third parties and on other specific and restricted grounds. Furthermore, it provides that special laws qualifying certain matters as 'reserved' from being publicly disseminated for a maximum of five years may be enacted⁶⁶.

2.4.14 China

This Regulation was adopted by the State Council of People's Republic of China on January 17th, 2007. In April 2007, the State Council of the People's Republic of China promulgated the Regulations of the People's Republic of China on Open Government Information, which came into effect on May 1st, 2008.⁶⁷ It was enforced with the objective of ensuring citizen's, legal person's and other organization's access to obtain government information. Other objectives are to enhance transparency of the work of the government, promote administration in accordance with law and ensure the role

⁶⁵ <http://www.infocomm.ky/>

⁶⁶ http://www.loc.gov/lawweb/servlet/lloc_news?disp3_120540827_text

⁶⁷ Regulations of the People's Republic of China on Open Government Information. Gov.cn.

of government information in serving the people's production and livelihood. This regulation has been adopted to make an open government policy by disclosing the official document to the people in one hand and granting them authority to seek information from the government document on the other hand.

2.4.15 Columbia

The Columbian constitution grants the right of access to public information through *Law 57 of 1985*, which thereby mandates the publishing of acts and official documents. This is implemented and applies to documents that belong to official facilities (offices or the like). Additionally there is the anticorruption statement of *Law 190 of 1955* also known as *anticorruption act* which in its 51st article mandates public offices to list in visible area all the contracts and purchases made by month. The latter taking place slowly.

2.4.16 Cook Islands

Access to official information is governed by the Official Information Act, 2008 and enacted to achieve the government's aim to enhance transparency, accountability and good governance. The law is based heavily on the New Zealand legislation.

2.4.17 Croatia

In Croatia, an *Act on the Right of Access to Information* of 2003 encompasses highest standards of transparency and oversight extends to all public authorities.⁶⁸ The law is applied a proportionality and public interest test to all information requests. The law enables reuse of information, without costs, for any purpose (non-commercial and commercial)⁶⁹.

2.4.18 Cayman Islands

In the Cayman Islands, The Freedom of Information (FOI) Law was passed on 19th October 2007 and came into effect on 5 January 2009. It gives the public a right of access to all types of records held by authorities, but also sets out some exemptions from that right.

⁶⁸ Croatian Parliament (2003-10-21). 'Zakonopravnapristupinformacijama' (inCroatian). *NN 172/2003*. Narodnenovine.

⁶⁹ <http://www.freedominfo.org/2013/02/croatia-adopts-new-freedom-of-information-law/>

2.4.19 Czech Republic

In the Czech Republic, *on Free Access to Information*, covers the ‘state agencies, territorial self-administration authorities and public institutions managing public funds’ as well as anybody authorised by the law to reach legal decisions relating to the public sector to the extent of such authorisation.⁷⁰

2.4.20 Denmark

In Denmark, the Access to Public Administration Files Act of 1985 applies to most public agencies and an unusual clause extends coverage to most private or public energy suppliers. To ensure citizens right to seek and get the administrative documents from government officials and private organizations working for the public utilities, the Access to Administrative Document Act has been enacted in 1985. This Act applies mostly to public agencies however an unusual clause extends coverage to private or public energy suppliers too. It enhances the public by granting the access to the administrative documents so as to make accountable administrative organs concerning the citizen’s right. Federal Act on the Principle of Freedom of Information in Public Administration (Freedom of Information Act, FIA), 2007.

2.4.21 Dominican Republic

Law number 200-04 - Law on Access to Information on 28th, July 2004, which allows public access to information from the government and private organizations that receive public money to conduct state business. Rough drafts and projects that are not part of an administrative procedure are not included.

2.4.22 Ecuador

In Ecuador, the Transparency and Access to Information Law of 2004 declares that the right of access to information is guaranteed by the state. Everyone has the right to freedom of thought and expression, including the freedom to seek, receive and impart information in any form of art or through any medium of one’s choice⁷¹.

2.4.23 Estonia

In Estonia, the Public Information Act⁷² of 2000 extends to all holders of information, which is clarified as being all government and local government bodies, legal persons

⁷⁰ *Another 106 Answers to your Questions (with Judgments)* is a useful English-language guide to the Act.

⁷¹ <http://www.coha.org/limits-to-information-access-and-press-freedom-in-ecuador/>

⁷² Parliament of Estonia, Public Information Act Passed 15th, November, 2000.

in public law and legal persons in private law if they are performing public duties providing health, education etc.

2.4.24 Europe

In matters concerning the local, national and trans-boundary environment, the Aarhus convention grants the public rights regarding access to information, public participation and access to justice in governmental decision-making processes. It focuses on interactions between the public and public authorities.

Council of Europe

The recognition of the right to access to public information under Article 10 (including freedom to receive information) of the European Convention on Human Rights was one of subjects in *Guerra v. Italy* case before the European Court of Human Rights in 1998. The majority considered Article 10 was not applicable to the complaint. However, the court found that in the specific case, which included living near a high-risk factory, not providing information was in violation of Article 8 (respect to private and family life). Besides, two judges expressed a dissent on applicability of Article 10 and further six judges reserved a possibility, that in other circumstances, right to access to information could be protected by Article 10.⁷³

The Parliamentary Assembly of the Council of Europe has considered in 1996, that public access to clear and full information on this subject [Chernobyl disaster] - and many others for that matter - must be viewed as a basic human right.⁷⁴ In 2009, CoE Convention on Access to Official Documents was opened for signature.⁷⁵

European Union

Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁷⁶ grants a right of access to documents of the three institutions to any Union citizen and to any natural or legal person residing or having its registered office, in a Member State. Document is defined broadly and it is assumed that all documents, even if classified, may be subject to right of access unless it falls under one of the exceptions. If access is refused, the applicant is allowed a confirmatory request. A complaint against

⁷³ Grand Chamber judgment on application no. 14967/89

⁷⁴ PACE resolution no. 1087 (1996) on the consequences of the Chernobyl disaster. Assembly.coe.int.

⁷⁵ Convention on Access to Official Documents

⁷⁶ Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

a refusal can be made with the European Ombudsman and/or an appeal can be brought before the European General Court.

In addition, Directive 2003/98/EC of the European Parliament and the Council of 17th, November 2003 on the re-use of public sector information⁷⁷ sets out the rules and practices for accessing public sector information resources for further exploitation. Since 2008, the European Commission operates the Register of Interest representatives, a voluntary register of lobbyists at the European union.⁷⁸

2.4.25 Finland

In Finland, *Act on the Openness of Public Documents* of 1951 was established the openness of all records and documents in the possession of officials of the state, municipalities and registered religious communities. Exceptions to the basic principle could only be made by law or by an executive order for specific enumerated reasons such as national security. The openness of unsigned draft documents was not mandated, but up to the consideration of the public official. This weakness of the law was removed when the law was revised in the 1990s. The revised law, *Act on the Openness of Government Activities* of 1999, also extended the principle of openness to corporations that perform legally mandated public duties, such as pension funds and public utilities and to computer documents.⁷⁹

2.4.26 France

In France, the accountability of public servants is a constitutional right, according to the Declaration of the Rights of Man and of the Citizen. The implementing legislation is Act No. 78-753 of 17 July 1978. On various measures for improved relations between the Civil Service and the public and on various arrangements of administrative, social and fiscal nature. It sets as a general rule that citizens can demand a copy of any administrative document (in paper, digitized or other form) and establishes an independent administrative authority to oversee the process.

2.4.27 Georgia

The General Administrative Code of Georgia was adopted in 1999. Chapter 3 of the Code is entitled Freedom of Information. It sets a general presumption that information

⁷⁷ Directive 2003/98/EC of the European Parliament and the Council of 17th, November, 2003 on the re-use of public sector information

⁷⁸ Webgate.ec.europa.eu

⁷⁹ Act on the Openness of Government Activities, Finnish Ministry of Justice.Om.fi.

kept, received or held by a public agency should be open. All public information should be entered into a public register in two days⁸⁰.

2.4.28 Germany

In Germany, the federal government passed a freedom of information law on September 5th, 2005. This Act was enacted by the Bundestag (Parliament of the Federal Republic of Germany) in 2005, with the underlying principles of equal rights of every person along with the juristic person to access information for good motive only. The law grants each person an unconditional right to access official federal information. No legal, commercial or any other kind of justification is necessary⁸¹. This Act focuses on an individual's rights to get official documents and duty of the public officials.

2.4.29 Greece

In Greece, article 16 (Right to Access Administrative Documents) of Law 1599/1986 (State-citizenry Relationship) introduced the right of all citizens to read most administrative documents. This right is now codified as article 5 (Access to documents) of the Administrative Procedural Code, Law 2690/1999. Under this article, citizens have a right to know the content of administrative documents. Administrative documents are defined as those produced by public sector entities, such as reports, studies, minutes, statistical data, circulars, instructions, responses, consolatory responses and decisions. In addition, citizens with a legitimate interest may also access *private* documents stored by public services. The right cannot be exercised if the document concerns the private or family lives of others or if the document's confidentiality is safeguarded by specific legal provisions. Furthermore, the public body can refuse access if the document refers to discussions in the Cabinet or if accessing the document can seriously hamper criminal or administrative violation investigations carried out by judicial, police or military authorities.

Citizens may study the documents at the place where they are archived or they may obtain a copy at their own cost. Access to one's own medical data is provided with the help of a doctor. Access to documents should take into account whether they be covered by copyright, patent or trade secret regulations. In addition, Law 3448/2006 on the reuse of public sector information, harmonizes the national laws with the requirements on the European Union Directive 2003/98/EC.⁸²

⁸⁰ <http://www.freedominfo.org/regions/europe/georgia/>

⁸¹ Act to Regulate Access to German Federal Government Information (Freedom of Information Act – FOIA) (PDF).

⁸² Article 5 of the Administrative Procedures Code — Document Access (in Greek)

2.4.30 Hong Kong

In Hong Kong there are no laws specifically enacted to guarantee the freedom of information. Since March 1995, the Government of Hong Kong has promulgated a 'Code on Access to Information' to serve a similar purpose. This code, like other internal regulations of the Government, was not legislated by the Legislative Council and has a minimal legal status. It requires government agencies listed in its appendix to appoint Access to Information Officers to answer citizens' requests for governmental records. A fee may be charged prior to the release of information. The code does not require the government to archive information.⁸³

2.4.31 Hungary

In Hungary, the Act on the Protection of Personal Data and Public Access to Data of Public Interest of 1992 extends a right of access to all data of public interest, defined as any information processed by a body performing a governmental function. Complaints and contested applications may be appealed to the Data Protection Commissioner or to the court.

In 2005 the Parliament adopted the Act on the Freedom of Information by Electronic Means (Act XC of 2005). The Act has three basic parts: 1. electronic disclosure of certain data by public sector bodies, 2. publicity of legislation and 3. openness of Court decisions.

2.4.32 Iceland

In Iceland the Information Act no. 50/1996 gives access to public information. The Information Act governs the release of records held by state and municipal administrations and private parties exercising state power that affects individual rights or obligations. The Act was adopted in 1996 and went into effect in 1997. Under the Act, individuals, including nonresidents and legal entities, have a legal right to documents and other materials without having to show a reason why they are asking for these documents. Government bodies must explain in writing if they have not processed a request in seven days⁸⁴.

2.4.33 India

The Indian Right to Information Act (RTI Act) was passed by the Indian Parliament

⁸³ Code on Access to Information

⁸⁴ <http://www.freedominfo.org/regions/europe/iceland/>

on 15th, June 2005. It came into effect on 12th, October 2005.^{85,86} The Supreme Court of India had, in several Judgments prior to enactment of the RTI Act, interpreted Indian Constitution to read Right to Information as the Fundamental Right as embodied in Right to Freedom of Speech and Expression and also in Right to Life. RTI Act laid down a procedure to guarantee this right. Under this law all Government Bodies or Government funded agencies have to designate a Public Information Officer (PIO). The PIO's responsibility is to ensure that information requested is disclosed to the petitioner within 30 days or within 48 hours in case of information concerning the life or liberty of a person.

The law was inspired by previous legislation from selected states (among them Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002) etc.) that allowed the right to information (to different degrees) to citizens about activities of respective State Government body. A number of high profile disclosures revealed corruptions in various government schemes such as scams in Public Distribution Systems (ration stores), disaster relief, construction of highways etc. The law itself has been hailed as a landmark in India's drive towards more openness and accountability.

However the RTI India has certain weaknesses that hamper implementation.⁸⁷ There have been questions on the lack of speedy appeal to non-compliance to requests. The lack of a central PIO makes it difficult to pin-point the correct PIO to approach for requests. There is also a criticism of the manner in which the Information Commissioners are appointed to head the information commission. It is alleged by RTI Activists that bureaucrats working in close proximity with the government are appointed in the RTI Commissions in a non-transparent manner.⁸⁸ The PIO, being an officer of the relevant Government institution, may have a vested interest in not disclosing damaging information on activities of his/her Institution, This therefore creates a conflict of interest. The law does not allow disclosure of information that affects national security, defence and other matters that are deemed of national interest.^{89,90,91,92} The Chapter-IV of the thesis describes RTI Act, 2005 of India in detail.

⁸⁵ <http://www.tangedco.gov.in/chapter1.php>

⁸⁶ http://www.dnaindia.com/india/report_right-to-information-act-to-complete-five-years

⁸⁷ Roberts, Alasdair S., A Great and Revolutionary Law. The First Four Years of India's Right to Information Act (January 9, 2010).

⁸⁸ TribuneIndia.com, Appointment of bureaucrat as Punjab CIC draws flak

⁸⁹ Indian Right to Information Act

⁹⁰ RTI India: The Complete Right to Information Portal of India.

⁹¹ RTI Nation: Portal to file RTI applications online

⁹² For a comparison between Indian and British legislative efforts see British Council India's Legal enews

2.4.34 Indonesia

The Public Information Disclosure Act was ratified on April 2008 and following a government review, the Transparency of Public Information Law came into effect in May 2010. The introduction of transparency legislation in Indonesia has been viewed as a move to alter the default position on information, which historically has been defined by secrecy. It has also been seen as another step in improving the accountability of Indonesian politicians and public institutions that began with the democratic reforms of 1998.

The objectives of the Act are centered on securing the rights of Indonesian citizens to public information, improving the transparency of the process of decision making and reasoning behind policies. The Act also aims to increase participation of the public in the political process, foster a new era of good governance – defined by its openness, efficiency and accountability - as well as improving the sciences and information management⁹³.

2.4.35 Ireland

In Ireland the Freedom of Information Act 1997⁹⁴ came into effect in April, 1998. The 1997 Act was subsequently amended by the Freedom of Information (Amendment) Act 2003.⁹⁵ The Act has led to a sea-change in the relationship between the citizen, journalists, government departments and public bodies. There are very few restrictions on the information that can be made public. A notable feature is the presumption that anything not restricted by the Act is accessible. It is widely regarded as a more liberal Act than the UK. Decisions of public bodies in relation to requests for information may be reviewed by the Information Commissioner.

One particular controversy which has caused concern to journalists and historians is that traditionally government ministers would annotate and sign any major policy or report documents which they had seen. However this practice has fallen out of favour because of the new openness. This annotation and signing of documents has often given a paper trail and unique insight as to ‘what the minister knew’ about a controversy or how he or she formed an opinion on a matter. Also civil and public servants have become more informal, in keeping written records of potentially controversial meeting and avoiding writing memos as a result.⁹⁶ While this information would not often be released and sometimes only under the thirty year rule, the fact that government

⁹³ <http://www.ucl.ac.uk/constitution-unit/research/foi/countries/indonesia>

⁹⁴ http://www.irishstatutebook.ie/1997_13.html

⁹⁵ Freedom of Information (Amendment) Act 2003. Irish Statute Book.

⁹⁶ Harney accused over ‘new culture of secrecy’ in Health - National News, Front page- Independent.ie

ministers now do not annotate and sign documents creates the concerns that while government is open it is not accountable as to who did or saw what or how decision making process works.

The Freedom of Information (Amendment) Act 2003 brought in fees for making requests for information and requests for review of decisions taken by Government bodies. As a result, one can incur a fee of up to •240 before even being granted access to information.

2.4.36 Israel

In Israel, the Freedom of Information Law, 5758-1998, supported by the Freedom of Information Regulations, 5759-1999, controls freedom of information. It defines the bodies subject to the legislation by a set of listed categories - essentially, most public bodies - and provides for the government to publish a list of all affected bodies. However, this list does not seem to have been made publicly available, if indeed it was ever compiled. Many public bodies are not obliged to follow the law, which limits the potential for use by the public.

The Israeli Freedom of Information Law has actually achieved the opposite intended result. Government agencies now take the position that a citizen may only request information via FOIL, i.e. an official letter designated as such and including the shekel⁹⁵ as fee. Thus an Israeli citizen in many cases cannot simply write a letter asking a question and can be asked to file a FOIL application with a fee and wait the minimum statutory 30 days for a reply, which the agency can extend upto 60 days. In many cases FOIL letters are simply ignored or some laconic response is sent stating the request is either unclear, unspecific, too vague or some other legalese, anything in order to keep the information away from the public. When the 60 days are up, the anticipated result usually yield nothing significant and the applicant must petition the District Court to compel disclosure, a procedure that requires attorneys to draft pleadings and a payment a (approx.) \$420 court fee. A judgment in such FOIL appeals in Israel can take years and again the agency can easily avoid disclosure by simply not complying. There are no real sanctions for non-compliance. While there are rare successes in Courts compelling Israeli government agencies to disclose information, they are usually in non-controversial areas such as harmless civil matters. The law provides for the expected 'security' exemption and an applicant applying for such information can expect not to benefit from FOIL (and also have his or her court appeal rejected). Applicants can be helped by The Movement for Freedom of Information.⁹⁷

⁹⁷ Meida.org.il

2.4.37 Italy

Chapter V of Law No. 241 of 7th, August, 1990 provides for access to administrative documents. However, the right to access is limited. The law states that those requesting information must have a legal interest. The 1992 regulations require 'a personal concrete interest to safeguard in legally relevant situations.' The courts have ruled that this includes the right of environmental groups and local councilors to demand information on behalf of those they represent. It was amended in 2005. The revision appears to adopt the court rulings and relax the interest somewhat to allow access when an individual can show they represent a more general public interest.

2.4.38 Jamaica

In Jamaica, the relevant legislation is the Access to Information Act, 2002 with the aim to reinforce the fundamental principles of democracy. The Jamaican government and its people have met the challenges of passing, implementing, enforcing and exercising the right to information and have succeeded in demonstrating the law's value and its potential⁹⁸.

2.4.39 Japan

In Japan, the 'Law Concerning Access to Information Held by Administrative Organs' was promulgated in 1999 by the Parliament of Japan to ensure the administrative organ accountable and to promote fair and democratic administration. The law was enforced in 2001. In many local governments, it establishes the regulations about information disclosure from the latter half of the 1980s.⁹⁹

Access to Information Act was enacted in Japan with the intention to protect the sovereignty of the people by allowing them to exercise their right to obtain administrative documents. This law creates for the first time a legally enforceable right of access to Japanese national over the government held documents. Based on it, Japanese citizens can demand for the access of public document.

2.4.40 Jordan

In Jordan, Freedom of information act is making it compulsory for Jordanian government institutions to disclose information to journalists and citizens – failure to do so means they can complain to a government body called the Information Council

⁹⁸ <http://www.cartercenter.org/documents/2364.pdf>

⁹⁹ Ministry of Public Management, Home Affairs, Posts and Telecommunications Law Concerning Access to Information Held by Administrative Organs.

(IC).The right to information is everyone's right, reads a government advertisement published in Jordanian newspapers as part of campaign by the Information Council to inform the public about their right to information under the Access to Information Law.

2.4.41 Latvia

The Constitution of Latvia states: 'Article 100. Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.' The right to access state held information has been repeatedly recognized by the Constitutional Court of Latvia, most notably in its judgment 'On Conformity of the Cabinet of Ministers 21 January, 1997 Regulations No.46' 'On Government Agreements' with the 20 November, 1998 'Information Accessibility Law'¹⁰⁰

The Law on Freedom of Information was signed into law by the State President in November 1998 and has been amended a number of times recently. Any person can ask for information in 'any technically feasible form' without having to show a reason. The request can be oral or written. Bodies must respond in 15 days.

2.4.42 Liberia

President Ellen Johnson Sirleaf signed the Freedom of Information Act of 2010 into law in October 2010. Liberia became only the fourth country in Africa and the first in West Africa, to pass such legislation.¹⁰¹ The law allows both the media and individual citizens to demand information 'from any public authority or any private authority that carries out government functions.'¹⁰²

2.4.43 Macedonia

Article 16 of the Constitution of Macedonia guarantees 'access to information and the freedom of reception and transmission of information'. The Law on Free Access to Information of Public Character was adopted on 25th, January 2006. It is scheduled to go into force in September 2006. The law allows any natural or legal person to obtain information from state and municipal bodies and natural and legal persons who are performing public functions. The requests can be oral, written or electronic. Requests must be responded to in 10 days.

¹⁰⁰ Judgment 04-02(99)

¹⁰¹ Ellen Signs Freedom of Information Act into Law. *Daily Observer*.

¹⁰² Liberian President Signs Freedom of Information Act into Law. *allAfrica.com*.

2.4.44 Malaysia

The state of Selangor passed the Freedom of Information Enactment (Selangor) 2010 on 1st, April 2011, allowing the Malaysian public an access to the state documents including that of local councils, city halls and state government-linked companies.¹⁰³ Subsequently, the state of Penang passed the Freedom of Information bill on 4 November 2011, allowing the public to access to state documents.¹⁰⁴

2.4.45 Mexico

The Constitution was amended in 1977 to include a right of freedom of information. Article 6 says in part, the right of information shall be guaranteed by the state. The Supreme Court made a number of decisions further enhancing that right. The Federal Law of Transparency and Access to Public Government Information was unanimously approved by Parliament in April 2002 and signed by President Fox in June 2002. It went into effect in June 2003.

2.4.46 Montenegro

A freedom of information law was passed in Montenegro late in 2005, after a process of several years. However, implementation of the law has been problematic, resulting in dozens of court cases over the years. In July 2012, the parliament passed a law requiring government agencies to proactively publish some information.

2.4.47 Netherlands

Article 110 of the Constitution states: 'In the exercise of their duties government bodies shall observe the principle of transparency in accordance with the rules to be prescribed by Act of Parliament.'

The Dutch act on public access to government information entered into force in 1980 and is updated several times later. Under the act known as the *Wet Openbaarheid van Bestuur* or *WOB* for short, any person can demand information (called *wobbing*) related to an administrative matter if it is contained in documents held by public authorities or companies carrying out work for a public authority. The request can either be written or oral. The authority has two (on environmental issues) or four weeks to respond. The act also obliges the government to provide information *unsolicited* as it is in the interest of good and democratic governance.

¹⁰³ Selangor passes Freedom of Information Enactment.

¹⁰⁴ Penang passes Freedom of Information Bill.

2.4.48 New Zealand

In the 1980s New Zealand passed the Official Information Act and the Local Government Information and Meetings Act to enable citizens to resort to this repository, as of right. If a request was made, the information thereafter had to be made available, unless there was good and sufficient reason for the declinature of the request. That was a sea change from the philosophy which had prevailed to that point of time in our history. This implemented a general policy of openness regarding official documents and replaced the Official Secrets Act¹⁰⁵.

2.4.49 Nigeria

President Goodluck Jonathan has signed into law the Freedom of Information (FoI) Bill, awaited for 12 years by media proprietors and practitioners alike, during which the Villa got knocks for filibustering and lawmakers complained of bombardment by campaigners. The House of Representatives passed the Bill on February 24th, 2011 and the Senate dialed up integrity on March 16th as it delivered on promise to pass it. The harmonised version was passed by both Chambers on May 26th, 2011. It was conveyed to Jonathan on May 27th and he signed it on May 28th, 2011.¹⁰⁶ Two states in Nigeria (namely Ekiti and Lagos State) have adopted the Freedom of Information Act at State level but they have extended the response date at State level from 7 days to 14 days. FOI expert and author of Nigeria Freedom of Information Act: A Practical Guide For Nigerians, Temitope Olodo, on BEN TV Channel 184 [1] told viewers that ‘the passing of the law was a victory for Nigerians all over the world’.¹⁰⁷

2.4.50 Norway

The current freedom of information legislation was enacted May 19th 2006,¹⁰⁸ and superseded the previous law of 1970¹⁰⁹ by January 1st, 2009. Article 100 of the Constitution gives access to public documents.¹¹⁰ The basic principle of the law is everyone has the right to access to State and municipal documents and to be present at sittings of courts and elected assemblies.

¹⁰⁵ <http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

¹⁰⁶ Jonathan signs FoI Bill. *Daily Independence*.

¹⁰⁷ www.temitopeolodo.co.uk

¹⁰⁸ Freedom of Information Act, Norway

¹⁰⁹ Freedom of Information Act, 1070, Norway

¹¹⁰ Implementation of the International Covenant on Civil and Political Rights - regjeringen.no

2.4.51 Pakistan

Pakistan was the first country in South Asia to have promulgated the Freedom of Information Ordinance in 2002. President Pervez Musharraf promulgated the Freedom of Information Ordinance 2002 in October 2002 to ensure transparency, freedom of information and to ensure that the rights of citizens to access public records and documents. Consultation was made with Ministry of Law, Human Rights and Parliamentary affairs with the intention to make the federal government accountable to its citizens while drafting this law. It has ensured citizen's right to access the official document imposing obligation to government officials to maintain the public records.

The law allows any citizen access to public records held by a public body of the federal government including ministries, departments, boards, councils, courts and tribunals. It does not apply to government owned corporations or provincial governments. The bodies must respond within 21 days can take samples of materials of any Government work, inspect any Government works Inspect any government documents, take copies of any government documents, ask any questions from the Government or seek any information. To know the working of government the citizens participate in government sector to make the country democratic. More recently, by virtue of the 18th Amendment of 2010, Article 19-A has been inserted in the Constitution of Pakistan. It gives the right to access to information the status of a fundamental constitutional right. Article 19-A 'Right to Information' reads: 'Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law'.

Pakistan's northwestern province of Khyber Pakhtunkhwa on 20th, August, 2013 unveiled Right to Information Ordinance. The ordinance makes it binding upon the government to set up an independent information commission and makes obstruction in access to any record a penal offence punishable by up to two years imprisonment. The ordinance, promulgated by the governor was made. For the first time in the country, the law provides protection to 'whistleblowers', stating that no one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal obligation, for releasing information on wrongdoings or which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith.¹¹¹

¹¹¹ <http://thepeninsulaqatar.com/pakistan-afghanistan/249542-pakistan-province-unveils-right-to-information-ordinance.html>, 20th, August, 2013

2.4.52 Paraguay

In Paraguay, a law protects *habeas data*, meaning that any citizen can request a copy of publicly or privately held information relating to him and request that any inaccurate data found be destroyed. This has been primarily used by former dissidents after the fall of the lengthy dictatorship (1954–1989) of Alfredo Stroessner. In 2005, efforts have been made to add transparency to purchases made by the Government, with a system that publishes bids on the Web, as well as the resulting purchases.

2.4.53 Peru

In pursuant to the Article 2 of the Political Constitution of Peru 1993, Law of Transparency and Access to Public Information was enacted in 2003 to promote transparency and ensure citizens access to the information held by the public authority. The Act has been promulgated with the principle of disclosure of the information by the public authority either in the form of written or through internet.

2.4.54 Poland

Article 61 of the Constitution provides for the right to information and mandates that Parliament enact a law setting out this right. The Law on Access to Public Information was approved in September 2001 and went into effect in January 2002. The Act allows anyone to demand access to public information, public data and public assets held by public bodies, private bodies that exercise public tasks, trade unions and political parties. The requests can be oral or written. The bodies must respond within 14 days.

2.4.55 Republic of Moldova

Article 34 of the Constitution provides for a right of access to information. The Law of the Republic of Moldova on Access to Information¹¹² was approved by Parliament in May 2000 and went into force in August 2000. Under the law, citizens and residents of Moldova can demand information from state institutions, organizations financed by the public budget and individuals and legal entities that provide public services and hold official information.

2.4.56 Romania

Since 2001 there is one law on Freedom of Information and one on transparent decision making processes in public administration (a sunshine law)^{113,114}. Positive

¹¹² Freedominfo.org

¹¹³ Access to Public Information: Guide for Citizens

¹¹⁴ Transparency of Decision-Making in Public Administration - citizens & administration guide

rulings from the courts have strengthened the Romanian freedom of information law and made it a well-used instrument. The media and civil society embraced the law and have used its provisions to create positive legal precedents, good practices and monitoring tools¹¹⁵.

2.4.57 Serbia

In Serbia the information law was introduced in 2004. The Access to Public Information Act gives access to documents of public authorities. Greater outreach and awareness raising is needed to inform the public not only about their right to access public information, but on the ways in which they can make effective use of this right¹¹⁶.

2.4.58 Slovakia

Slovakia passed the Freedom of Information Act in May 2000 (Num. law: 211/2000 Z. z.). Under the law, everybody can demand information from state institutions, organizations, from municipalities, individuals and legal entities financed by the public budget.¹¹⁷

2.4.59 Slovenia

Slovenia passed the Access to Public Information Act in March 2003.¹¹⁸ The Act governs the procedure which ensures everyone free access to public information held by state bodies, local government bodies, public agencies, public funds and other entities of public law, public powers holders and public service contractors.¹¹⁹

2.4.60 South Africa

Section 32 of the Constitution of South Africa guarantees ‘the right of access to any information held by the state; and any information that is held by another person and that is required for the exercise or protection of any rights.’ This right is implemented through the Promotion of Access to Information Act, which was enacted on 2 February 2000 by the Parliament of the Republic of South Africa to give effect to the constitutional right of access to any information held by the State and by the any other person. The right of access to *privately* held information is an interesting feature, as most freedom of information laws only covers governmental bodies.

¹¹⁵ <http://www.freedominfo.org/regions/europe/romania/>

¹¹⁶ http://oas.org/dil/access_to_information_human_Policy_Recommendations_Transparency_International_Right_to_Information_as_an_Anti-Corruption_Tool.pdf

¹¹⁷ Zakon o slobodnompristupu k informacijam

¹¹⁸ Dostopdoinformacij.si

¹¹⁹ AccessToInformation.si, Commissioner’s site

This Act is a progressive one having jurisdiction over the individual person too. To enjoy this right, public can demand information from the State bodies, juristic and natural person too.

2.4.61 South Korea

The Constitutional Court ruled in 1989 that there is a constitutional right to information 'as an aspect of the right of freedom of expression and specific implementing legislation to define the contours of the right was not a prerequisite to its enforcement.' The Act on Disclosure of Information by Public Agencies was enacted in 1996 by the South Korean government with the intent of ensuring people's right to know and to secure participation of the people in State affairs and went into effect in January 1998. It allows citizens to demand information held by public agencies.

The Act is enforced to promote transparency in the operation of state affairs. Act provides an obligation to the government for disclosing the matters concerning the information possessed and managed by public agencies.

2.4.62 Sweden

In Sweden, the Freedom of the Press Act of 1766 granted public access to government documents. It thus became an integral part of the Swedish Constitution and the first ever piece of freedom of information legislation in the modern sense. In Swedish this is known as the Principle of Public Access,¹²⁰ and has been valid since.

The Principle of Public Access means that the general public are to be guaranteed an unimpeded view of activities pursued by the government and local authorities; all documents handled by the authorities are public unless legislation explicitly and specifically states otherwise and even then each request for potentially sensitive information must be handled individually and a refusal is subject to appeal. Further, the constitution grants the Right to Inform, meaning that even some (most) types of secret information may be passed on to the press or other media without risk of criminal charges. Instead, investigation of the informer's identity is a criminal offense.

2.4.63 Switzerland

Switzerland is a federal state. Access to federal documents is governed by the Swiss Federal Act on the Principle of Freedom of Information in Public Administration¹²¹.

¹²⁰ The Principle of Public Access

¹²¹ http://www.admin.ch/ch/e/rs/152_3/index.html

Access to documents at the cantonal level is governed by cantonal laws, which are mostly similar to the federal law.

Federal Assembly of Swiss Confederation adopted it in 2004 which came into effect from 2007. It was enacted to promote transparency with regard to the mandate and activities of the public administration by ensuring public access to official documents. This Act gives twin approaches of this right. Firstly, it requires the State's accountability for the disclosure of public official document and secondly, guarantees the right of the citizen to ask and inspect the information from the public offices.

2.4.64 Thailand

Thai constitutions have recognised the right to information since 1991, a right that has been reformulated in both constitutions passed since. Under the current (2007) formulation, Section 56 provides that: 'A person shall have the right to receive and get access to public information in possession of a governmental agency, State agency, State enterprise or local government organisation unless the disclosure of such information shall affect the security of State, public safety, interests of other persons which shall be protected or personal data of other persons as provided by law.' In 1997, the Official Information Act was passed to regulate for the constitutional right¹²².

2.4.65 Trinidad and Tobago

Freedom of Information principles in Trinidad and Tobago originated from the Harare Declaration that was signed by Commonwealth Heads of Government in 1995. Consequently, the Freedom of Information Act, 1999, as amended, was assented to on November 4th, 1999 and came into full effect on February 20th, 2001. The Act seeks to enhance governance through increased transparency and accountability and to facilitate increased public participation in the development of national policy¹²³.

2.4.66 Turkey

In Turkey, the Turkish Law on the Right to Information was signed on October 24th, 2003 and it came into effect 6 months later on April 24th, 2004. The object of this law is to regulate the procedure and the basis of the right to information according to the principles of equality, impartiality and openness that are the necessities of a democratic and transparent government¹²⁴.

¹²² <http://www.ucl.ac.uk/constitution-unit/research/foi/countries/thailand>

¹²³ http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_papers/tt_areport_foia_2001-03_trinidad_tobago.pdf

¹²⁴ http://www.bilgiedinmehakki.org/en/index.php?option=com_content&task=view&id=7&Itemid=8

2.4.67 Uganda

In Uganda, the Access to Information Act was approved in 2005 and went into effect in 2006. To give effect to the constitutional right to information in pursuant to Article 41 of its constitution, Access to Information Act was enacted in 2005 by the parliament of the Uganda. Other reasons for the enactment of this law are to prescribe the classes of information held by the public authority along with prescribing the procedure of obtaining access to that information.

Along with guaranty of the constitutional right to information, it has been adopted to make government accountable, transparent and effective and also to combat maladministration and corruption. Empowerment of the public to effectively scrutinize and participate in government decisions are also the reasons for its enforcement.

2.4.68 Ukraine

The 1996 Constitution does not include a specific general right of access to information but contains a general right of freedom of collect and disseminate information and rights of access to personal and environmental information. The 1992 Law on Information (since 2011.05.09 - new edition) is a general information policy framework law that includes, classification of information, a citizen's a right to access information, accreditation policy, information of public interest and exemptions from liability for journalists. Law on Access to Public Information was adopted 13th January 2011 and go into force from 9 may 2011. It widens the range of subjects, obliged to provide information, gives legislative definition of public information and makes public information accessible with statutory restrictions.^{125, 126}

2.4.69 United Kingdom

The Freedom of Information Act 2000 (2000 c. 36) is the implementation of freedom of information legislation in the United Kingdom on a national level, with the exception of Scottish bodies, which are covered by the Freedom of Information (Scotland) Act 2002 (2002 asp. 13). Environmental information is covered by further legislation Environmental Information Regulations 2004. Tony Blair, the UK Prime Minister who introduced the Freedom of Information Act, later expressed regret over the Act, claiming that the Act impeded the ability of officials to deliberate 'with a reasonable level of confidentiality'.¹²⁷

¹²⁵ Lawyer: Law on access to public information gives no clear definition of such information, Kyiv Post
¹²⁶ (Ukrainian) Продоступдопублічноїінформації, VerkhovnaRada

¹²⁷ Rosenbaum, Martin (1 September 2010). 'Why Tony Blair thinks he was an idiot'. *BBC News* (British Broadcasting Corporation).

It was enacted in 2000 by the parliament of the United Kingdom but came into force only from 1st January 2005. This Act makes a provision for the disclosure of information held by public authorities and aims to ensure transparency and accountability. The Act includes provision to extend its coverage to organizations that carry out functions of the public nature and to contractors who provide services having a function similar to that of public authority.

2.4.70 United States

In the United States the Freedom of Information Act was signed into law by President Lyndon B. Johnson on July 4th, 1966 and went into effect the following year. Ralph Nader has been credited with the impetus for creating this act, among others.¹²⁸ The Electronic Freedom of Information Act Amendments was signed by President Bill Clinton on October 2nd, 1996.

The Act applies only to federal agencies. However, all of the states, as well as the District of Columbia and some territories, have enacted similar statutes to require disclosures by agencies of the state and of local governments, though some are significantly broader than others. Some state and local government agencies attempt to divert state open records laws by claiming copyright for their works and then demanding high fees to license the public information.¹²⁹ The ruling in *Santa Clara v. CFAC* will likely curtail the abuse of copyright to avoid public disclosure in California, but agencies in other states like Texas and New York continue to hide behind copyright. Some states expand government transparency through open meeting laws, which require government meetings to be announced in advance and held publicly.

Comparison of RTI Act with the USA Act

The United States enacted a Freedom of Information Act (FOIA) in 1966 and introduced amendments in 1974 and 1986. This Act is applicable to government agencies. 'Agencies' under the act include the whole executive arm of the state as well as military department, government corporations and government controlled corporations and any independent regulatory agency. The Act begins with the obligation on the government agencies to publish (in the Federal Register) information about the organization of the agency; functions; procedure; the persons/officials from whom information can be collected; the availability of forms; the scope of information

¹²⁸ IMDb.com

¹²⁹ Petersen, Barbara A. (1992), 'Copyright and State Government: An Analysis of Section 119.083, Florida's Software Copyright Provision', *Florida State University Law Review* 20 (2): 441-486.

available; the substantive rules and statements of general policy or interpretations of general applicability adopted by the agency and amendments thereof.

The agencies are obligated to provide records not included in the above categories, upon request, which reasonably describes the record. The right to make a request lies with 'any person', i.e., any legal entity like an individual, private corporation etc. The request has to be in accordance with the rules in place regarding time, place, fees and procedure to be followed. The regulations have to be made by each agency and framed pursuant to notice and receipt of public comments thereon. It must include a schedule of the fees and the guidelines to determine the waiver or reduction of the fees. The Act contains minimum tests for fees. Fees have to be limited to reasonable standard charged for search, duplication and review when requested for commercial use. This is limited to reasonable charges for duplication only when request is by educational or scientific institution, for scholarly or scientific research; or by representative of the news media. For any other kind of request, reasonable standard charges for document search and duplication is the norm¹³⁰.

Time period for compliance with a request is ten (10) days from receipt of the request. Decision will be notified immediately to the requestor with reasons. In case of refusal, it must mention the right to the requester to appeal to the head of the agency and the names and titles/positions of the person responsible for the denial. The time limit is extendable with notice and reason but only for a maximum of 10 more days. Such extension is allowed for search and consultation time. The first appeal lies to the head of the agency and has to be determined within twenty (20) days from the date of receipt of the appeal. From this departmental appeal lies the right of judicial review by the District Court. The court can be approached directly, in case of no response on the request within twenty days or if the decision of the departmental appeal is not given within twenty days. Additional time is given for review of the request by the court after retaining jurisdiction if the government can show existence of exceptional circumstance and due diligence of the agency in responding to the request.

The United States like other developed countries enacted laws such as the Freedom of Information Act 1966, which allow individuals to access records of government agencies in order to ascertain the proper functioning of such agencies. The Freedom of Information Act like our own Right to Information Act provides for a specific time period within which applications made under the act must be complied with. The Freedom of Information of Act provides that only a reasonable fee for compiling with

¹³⁰ DeRuvo, Silvia L. (2010) *The Essential Guide To RTI An Integrated, Evidence-Based Approach*, Wiley Publisher

the request for information shall be levied on the citizen. Similarly the Right to Information Act also provides for a prescribed fee that will be levied on the citizen making an application for information.

Freedom of Information Act, which expressly provides for the District courts in the US to exercise the power of judicial review in case of non-response from the authorities established under the act or by way of appeal from such authority. The power of judicial review though not expressly provided under the Act is inherent, as this power has been given to them by the Constitution. With the ongoing stress on both constitutional and inherent rights of American citizens and the added assertion of government subservience to the individual, it was necessary for the available of government information to the public. For the fulfillment of that assertion, the Freedom of Information Act was adopted in 2007 in USA.

2.4.71 Uruguay

The Act was enacted in 2008 under President Vazquez's Administration and is mainly implemented by the Judiciary. Uruguay is considering expanding the exemptions in its freedom of information law, with the Senate now working on government proposals being called 'regressive' by groups fighting the changes. Among other things, the bill would allow less access to documents used to develop policy and to evaluation documents¹³¹.

2.4.72 Zimbabwe

In Zimbabwe, the Access to Information and Privacy Act (AIPPA) was signed by their President Robert Mugabe in February 2002. It applies to information that is being held by public bodies only. The right of appeal where access to information has been denied lies to the Zimbabwe Media and Information Commission. As well as the records that are normally subject to exemption in other jurisdictions, the Act exempts what is called protected information from disclosure. This includes advice relating to policy, information relating to inter-governmental relations or negotiations and information relating to the financial or economic interest of public bodies or the State¹³².

2.5 Pending Legislation by Country

- In Argentina, national freedom of information legislation is pending, though some individual regions have legislation on a local level.

¹³¹ <http://www.freedominfo.org/regions/latin-america/uruguay/>

¹³² <http://www.ictparliament.org/node/2018>

- In Barbados, the Government headed by David Thompson has proposed to put in place a Freedom of Information Bill.¹³³ The Government has launched various initiatives to vet the proposed bill with the citizens of the country for comment.
- In Botswana, the government was quoted as saying ‘The Freedom of Information Bill is not a priority for the new ministry, but some activities like information gathering and initial planning will start.’¹³⁴
- In Fiji, the constitution gives a general right of access, but enabling legislation has not yet been passed. A draft Freedom of Information Bill was circulated in 2000 but derailed by political unrest; the government has not yet begun work on a second bill.
- In Ghana, although the 1992 Constitution provides for a right to information, a Right to Information Bill was only introduced to Parliament in 2003. The bill was heavily criticised and resubmitted in 2005. However, it still has serious weaknesses, while no will has been shown to ensure it will be enacted.
- In Kenya, the Freedom of Information Bill was last in Parliament in 2007 as a private members Bill. The Bill however lapsed in the 1st reading, being that 2007 was an election year that could have contributed to the Bill not getting adequate debate time. The Freedom of Information Bill 2008 was thus drafted as a Government Bill and was to be presented to Cabinet for discussion and later to Parliament¹³⁵.
- In Lesotho, the Access and Receipt of Information Bill was before Parliament in 2003-4, but the current status of the legislation is unknown.
- In the Maldives, there is currently no freedom of information legislation. In 2004, the government announced that a bill was expected to be passed in that year, but this has not yet transpired. Maldives Parliament endorses Access to Information Bill
- In Mauritius, there is currently no freedom of information legislation. In 2005, the government pledged to enact a Freedom of Information Act but no legislation has yet been passed.
- In Mozambique, the government produced a draft Freedom of Information Bill in August 2005. It is expected to become law soon.

¹³³ Barbados.gov.bb

¹³⁴ Uproar over draconian Media Bill

¹³⁵ <http://www.icj-kenya.org/index.php/freedom-of-information/299-status-of-freedom-of-information-in-kenya>

- In Nauru, the Freedom of Information Act 2004 was laid before the parliament in that year, but was not passed. Further work on the legislation is currently being held back, pending a review of the country's Constitution.
- Philippines. Article III, Section 7 of the country's Bill of Rights recognizes the people's right to information on matters of public concern. Its Supreme Court has upheld this right in many of its decisions. However, there is no legislation that sets the procedures for access and disclosure of information and provides penalties for officials who fail to release the requested information, without justifiable reasons. In 2008, the Lower House of the Philippine Congress passed House Bill No. 3732 (Freedom of Information Act) that addresses these gaps. A counterpart bill is still pending in the Philippine Senate. Leading the campaign for the bill's passage is the Access to Information Network, co-convened by Action For Economic Reforms and Transparency and Accountability Network.
- In Sri Lanka, the 2004 draft Freedom of Information Act has been endorsed by both major parties. The draft Freedom of Information Act providing for the freedom of access to official information is ready.

2.6 RTI Legislation –A Comparison

A Comparison of RTI Legislation in India vs. Developed Nations is given in Table-2.1 and RTI Legislation in India vs. South Asia is given in Table-2.2 below. Though RTI Act of India was enacted in 2005 in comparison to Sweden-1766, UK -2000 and USA-1966, Freedom of Press/Information Act RTI has constitutional protection by interpreting. Under RTI, Act right to access of information is limited to citizen of India while the access of information under the Act of Developed Nations is not limited by nationality or residence.

Any citizen, including overseas citizens of India and persons of Indian origin, can ask for information under this law. This right includes inspection of work, documents and records, taking notes, extracts or certified copies of documents or records and taking certified samples of material held by the public authority or under its control.

A comparison to RTI Act of India with South Asian nations like Bangladesh, Nepal and Pakistan, it is seen that RTI Act of India provides for 17 kinds of information voluntarily then 4, 5 and 12 kinds of informations as proactive discloser by Bangladesh, Nepal and Pakistan respectively. Exempted informations can be disclosed if public

Table2.1: RTI Legislation –A Comparison of India vs. Developed Nations

Country	India	Sweden	UK	USA
Constitutional Protection	Protected (by interpreting)	Protected	Not protected	Not protected
Legislation	RTI 2005	Freedom of Press Act 1766	FOI Act 2000`	FOI Act 1966
Right of Access	Limited only to citizens	Not limited by nationality or residence	Not limited by nationality or residence	Not limited by nationality or residence. But with exceptions
Procedural Guarantees	Only contract details required	Personal details of the applicants+ reasons for request	Personal details of the applicants+ description of the information desired	Personal details of the applicants+ description of the information desired
	48 hours time limit applies to protect life or liberty	No specific timelines, requests dealt quickly and promptly	Has a longer set of time limits	Special time limits apply to cases of compelling need
	Allow transfers of request	No mention about transfer of requests or consultation with third parties	Direct transfers of request are permitted	No mention about transfer of requests or consultation with third parties. In practice, transfer of requests is common
Procedural Guarantees	Access upon payment of fee, including for information provided in electronic format. No fee for BPL	Inspection of document provided free of charge. Rates apply when copies exceed nine pages	Contains two separate systems for fees, one for ordinary request and another for more complicated requests	Contains provisions relating to fees, distinguishing between commercial, educational or scientific institutions, and other requesters
	When information refused, notice sent giving reasons and how to lodge an appeal	When information refused, notice sent giving reasons	When information refused, notice sent giving reasons	Refusal notice includes name of the deciding official, quantity of information denied
Duty to Publish	Extensive rules on proactive or routine publication and regular updates	No obligation to publish. In practice, information provided via websites	No information regarding publication	Certain information published in the Federal Register, while others available for inspection
Exception	Do contain rare or peculiar exceptions .information which would incite offence	Unique exception . relating preservation of animal/plant species	Contain rare or peculiar exceptions relating to the royal family	Contain rare or peculiar exceptions. relating to information about oil wells

interest outweighs harm to protected interests under RTI Act of India while same provisos are not there in the RTI Acts of Bangladesh, Nepal and Pakistan. The RTI Act of India has been lauded by democracy advocates all over the world, since it is at par (or even better) than similar laws enacted in countries in the West. For instance, in the US and UK, the respective information disclosure acts require the applicant to disclose his personal details, whereas in India, no such details are required. The RTI Act is one legislation that is indeed the pride of Indian democracy.

India's Right to Information Act has been ranked second in a survey of information laws in 95 countries, in which developed countries, such as the US and UK, ranked far behind developing nations. Serbia topped the RTI rankings in the survey, which measured the law's legal framework and not the quality of its implementation in 95 countries. The survey was conducted by two human rights organisations — Access Info Europe (AIE) and the Canada-based Centre for Law and Democracy (CLD). The survey's results were published in a report, RTI Rating Data Analysis Series: Overview of Results and Trends. Countries were ranked based on points given on seven parameters right to access, scope, requesting procedures, exceptions and refusals, appeals, sanctions and protections and promotional measures.

Serbia, which introduced the information law in 2004, scored 135 points while India, with 130 points, shared the second spot with Slovenia. The Indian law scored high on right to access, requesting procedure, appeals, exceptions and refusals, but came up short on the scope of the Act framed, sanctions and protections and promotional measures. The RTI rankings threw up surprising results for developed countries, which fared poorly compared to developing ones. The developing countries have better legal framework because they have taken views of the experts and law makers as the Act has evolved.

The developed countries do poorly in terms of right of access and scope and better in terms of appeals. This probably reflects the absence of constitutional protection for RTI in many developed countries, the limited scope of their laws in terms of the legislature and judicial branches of government and their stronger belief in independent oversight. Eastern and Central Europe, on the other hand, does poorly on appeals, perhaps reflecting their lack of experience with independent administrative bodies and exceptionally well on scope, perhaps a reflection of their belief in the need to bring all public bodies under the ambit of the law to avoid the abuses of the past¹³⁶.

¹³⁶ Ashutosh Shukla India's RTI Act second best in the world, Oct 16th, 2013, DNA, <http://www.dnaindia.com/mumbai/report-india-s-rti-act-second-best-in-the-world-1904090>

Table 2.2: RTI Legislation –A Comparison of India vs. South Asia

Country	India	Bangladesh	Nepal	Pakistan
Constitutional Protection	Protected (by interpreting)	Protected (by interpreting)	Protected	Protected
Legislation	RTI 2005	RTI Act, 2009	RTI Act, 2007	FOI Ordinance, 2002
Information about private bodies	Body owned, controlled or substantially financed and NGO funded directly or indirectly by the government; private bodies regulated by public authorities	Private organization running on foreign or government funding/exchequer; organization undertaking public functions under contract with government or public organisation	Body receiving grants from the government; NGO running on foreign or government funding or international organisation	No provisions
Proactive Disclosure	Provides for 17 kinds of information voluntarily	Too limited. Allows only four kinds of information voluntarily	Provides for 12 kinds of information voluntarily	Too limited. Provides only five kinds of information voluntarily
Exemptions	10 exemptions + 1 additional ground for refusal (infringes copyright)	20 exemptions	5 categories of exemption	4 categories of exemption+ 9 exemptions related to the type of record. 5 additional grounds for refusal
Public Interest	Exempted informations can be disclosed if public interest outweighs harm to protected interests	No provision	No provision	No public interest override. Government can refuse to disclose in public interest
Fee Exceptions	Exempted for those below poverty line. Also free if the public authority fails to comply with time limits.	Government in consultation with IC 's may exempt from paying fee	No exemption	Fee as it may be prescribed but with aim of providing information promptly and at the lowest reasonable cost
Urgent Request	Relating to life and liberty of a person. Within 48 hours	Relating to life and death, arrest and release from jail. Within 24 hours. No protection to whistleblowers	Relating to defence of human life. Within 24 hours	No Provision
Protection for Whistleblowers	No protection to Whistleblowers. Protection to officials for anything done in good faith under the Act. However, the Public Interest Disclosure(Protection of Informers) Bill 2010 is before the Parliament	Protection to officials for anything done in good faith under the Act	Partial protection provided	No protection to Whistleblowers. Protection to officials for anything done in good faith under the Act

Constitutional recognition stands paramount specially when relating to the fundamental human rights such as RTI. Rights are the interests which are recognized and protected by law. The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only messiahs that can ensure freedom of all sorts. Information has a pivotal role in strengthening public by making them knowledgeable. Therefore the next chapter will explore various constitutional provisions for enactment of RTI Act in India.

CONSTITUTIONAL PERSPECTIVE

The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only messiahs that can ensure freedom of all sorts. To intensify the process of paradigm shift from state centric to citizen centric model of development the Right to Information movement in India came into existence in 1990s by resolving a major contradiction between the Colonial Acts, which prevents access to information and the Indian Constitution, which recognizes seeking information as a fundamental right to promote transparent, accountable, responsible, participatory and decentralized democracy. As a result of grassroots movement for the Right to Information to combat the corruption, well informed citizens and to promote the Good Governance, the state has responded in the form of Right to Information Act – 2005. With the introduction of the Right to Information Act, 2005 the Colonial Acts such as the Official Secrets Act, Indian Evidence Act and the Civil Service Code of Conduct Rules, which contain provisions that restrict the Fundamental Right to Information as ensured to the citizens in the Constitution, has become irrelevant.

3.1 Colonial Acts and Denial of the Information

The battle for appropriate legislation for the Right to Information has been fought on two main planks. The first is a demand for amendment of the draconian colonial Official Secrets Act, 1923 and the second, campaign for an effective law on the Right to Information. The Official Secrets Act, 1923, is a replica of the erstwhile British Official Secrets Act and deals with espionage on the one hand, but has the damaging catch all Section 5 which makes it an offence to part with any information received in the course of official duty, to non-officials. During the last decade, the focus of citizens' groups has shifted from demanding merely an amendment to the Official Secrets Act, to the demand for its outright repeal and its replacement by a comprehensive legislation, which would make disclosure the duty and secrecy the offence. Because even the powerful grassroot organisation like The Mazdoor Kisan Shakti Sangathan (MKSS) continues to experience enormous difficulties in securing access to and copies of

government documents, despite clear administrative instructions that certified copies of such documents should be available to the citizen on demand. This highlighted to citizens groups how important it is that the people's Right to Information should be enforceable by law.

3.2 Constitutional Provisions of Various Countries Recognizing RTI

Constitutional recognition stands paramount specially when relating to the fundamental human rights such as RTI. In this regard various countries have given place to RTI in their respective constitutions. Some of them are as following:

Article 20 of the 1987 Constitution of Austria;

Article 32 of the Constitution of Belgium as amended in 1993

Article 41 of the Constitution of Bulgaria;

Article 23 of the Constitution of Albania;

Article 38 of the Constitution of Croatia;

Article 44 of the Constitution of Estonia;

Article 10 (3) of the Constitution of Greece;

Sec. 32 (1) of the Constitution of Republic of South Africa pursuant to The Constitution Act 106 of 1996.

3.3 Statutory Provisions of Various Countries Enabling RTI

Apart from the constitutional recognition, specific statutes are sometimes necessary to be formulated in order to effectuate proper exercise of rights. This is so because mere recognition sometimes is not sufficient to provide results. Statutes here come to the rescue by providing optimal output through an elaborate mechanism. As stated earlier that Sweden enacted the first legislation in this regard. The Freedom of Information Act is now part of the Constitution of Sweden¹³⁷. Therefore, let us now see some of the important statutes providing RTI to the people. They are as following:

1888 Code of Political and Municipal Organisation of Columbia enabled the individuals to request documents held by the government;

The Freedom of Information Act, 1966 of U.S.A.;

The Freedom of Information Act, 1982 of Australia;

¹³⁷ <http://www.scribd.com/doc/19453145/Critical-Analysis-of-Working-of-RTI-in-India>

The Access to Information Act, 1983 of Canada;

The Official Information Act, 1982 of New Zealand;

The Freedom of Information Act, 2005 of England; and

Legislations passed by many Asian countries such as The Philippine, Hong Kong, Thailand, South Korea, Japan, etc.

3.4 Constitutional Perspective of Right to Information in India

Rights are the interests which are recognized and protected by law. The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only messiahs that can ensure freedom of all sorts. Information has a pivotal role in strengthening public by making them knowledgeable.

Accessing information, however in a developing country like India is a cumbersome task to be accomplished by majority of less educated and illiterate citizens oblivious of its rights. Red tapism and bureaucratic supremacy is highly hesitant in empowering people. Moreover the colonial legacy which was copious with policy of secrecy still haunts the system. Here the Constitution of India comes to the rescue of the 'little man' by bestowing upon him certain fundamental rights within Part III. The rights cannot be violated except the procedures lay down by the law, which are in consonance with spirit of Constitution. Similarly, RTI is a right imbibed within Article 19(1) (a)¹³⁸ of the constitution. The right to information has not been expressly provided in the constitution. It is derived from the Article 19 (1) (a). That is to say, it is implicitly imbibed within the constitutional framework. However, judiciary in several landmark cases has expressly held RTI as natural concomitant of Article 19 (1) (a). Let us now see some important cases which raised RTI to the status of a constitutional right because of the juristic interpretation of the learned judges. Judicial activism has carved the sculpture out of Article 19 (1) (a) - which is the bedrock of democracy. Upon a thorough analysis it can be safely stated that direction towards the realization of RTI within the constitutional ambit incepted right from the verdict in *Hamdard Dawakhana v. Union of India*¹³⁹. Supreme Court for the first time declared RTI to be part of Article 19 (1) (a) in *Bennett Coleman v. Union of India*¹⁴⁰ where it held Newsprint Control Order of

¹³⁸ Protection of certain rights regarding freedom of speech, etc.- (1) All citizens shall have the right-(a) to freedom of speech and expression

¹³⁹ AIR 1960 SSC 554

¹⁴⁰ AIR 1973 SC 106

1972-1973 issued under the Essential Commodities Act, 1955 to be *ultravires* Article 19 (1) (a) of the constitution. Ray, CJ in the majority judgment opined that, it is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of press embodies the right of the people to read. Here what is referred as 'right of the people to read' refers to the right of the readers to get the information.

The strongest exposition in this regard came from Justice K. K. Mathew in *State of U. P. v. Raj Narain*¹⁴¹ who emphasized that in 'government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries. The facts of this case were that Raj Narain who challenged the validity of Mrs. Gandhi's election required disclosure of Blue Books which contained the tour program and security measures taken for the Prime Minister. Though the disclosure was not allowed, Mathew, J. held that the people of country were entitled to know the particulars of every public transaction in all its hearing. The major breakthrough was attained in *S. P. Gupta v. Union of India*¹⁴² when the apex court imparted constitutional status to RTI. The point of contention in this case was again with regards to the claim for privilege laid by the government of India in respect disclosure of certain documents including correspondence between Chief justice of India and the Chief Justice of Delhi High Court in connection with the confirmation of Justice Kumar who was an additional Judge of the Delhi High Court.

Justice Bhagwati, in his ever humanistic tone advocated the concept of open government stating it to be the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19 (1) (a) of the Constitution. It was held by the learned Judge that, RTI or access to information is essential for an ideally successful democratic way of life. Hence, it is imperative that disclosure of information regarding the functioning of Government must be the rule and secrecy is justified only where the strictest requirement of public interest demands. Liberal approach of apex court towards the disclosure of information is discernible in *Sheela Barse v. Union of India*¹⁴³ where court issued directions for release of information to her relating to under trials kept in different parts of country. Point to be noted here is that such direction was not issued by invoking Article 19 (1) (a).

¹⁴¹ AIR 1975 SC 885

¹⁴² AIR 1982 SC 149

¹⁴³ AIR 1986, 1773

Therefore it can be inferred that a person having proper stand can seek information from the government. Similarly, the court was unequivocal of the importance of people's participation and upheld their right to know in *Pune Environmental case*¹⁴⁴. Supreme Court further in a historic decision provided the voter's right to know the antecedents of the candidates¹⁴⁵. Scope of Article 19 (1) (a) was widened and it was affirmed that the right to know of the candidate contesting election to a House of Parliament or a state legislature or a *panchayat* or a municipal corporation is a pre-condition to the exercise of a citizen's right to vote. Thus people have a constitutional right to know the antecedents of the candidates contesting election for a post which is utmost importance in democracy. Later Government brought an ordinance followed by an Act to nullify effects of the judgment. The Act was declared unconstitutional by the Supreme Court in *People's Union of Civil Liberties v. Union of India*.

An important observation was made by the court that the fundamental rights enshrined in the Constitution... have no fixed contents. From time to time, this court has filled in the skeleton with soul and blood and made it vibrant. Freedom of speech and expression and its relation with RTI has been vividly described by the apex court in *Secretary, Ministry of I & B, Government of India v. Cricket Association of Bengal*¹⁴⁶ in the following words: The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfillment. It enables people to contribute to debates on moral and social issues. It is the best way to find a truest model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political discourse so essential to democracy. We may end this succinct analysis of the judicial decisions which have played a major role in granting RTI constitutional status via interpretation of Article 19 (1) (a) and assimilation of the spirit with which framers of the Constitution dedicated it to the people of India. Democracy thrives on RTI which is the foundation of democracy. The same is aptly echoed in the words of apex court as; true democracy cannot exist unless the citizens have a right to participate in the affairs of the policy of the country. The right to participate in the affairs of the country is meaningless unless the citizens are well informed on all issues in respect of which they are called upon to express their

¹⁴⁴ *Bombay Environmental Action Group v. Pune Cantonment Board*, SLP (Civil)11291/1986 (13th, October, 1986), unreported, but reproduced in A. Rosencranz (*etal ed.*), *Environmental Law and Policy in India, Cases, Materials and Statutes*, p.149 (Tripathi Publication, Bombay, 1991) cited in Avinash Sharma, *Right to Information: A Constitutional Perspective*, Nyayadeep, Vol. VIII, Issue -3

¹⁴⁵ *Union of India v. Association for Democratic Reforms*, AIR 2002 SC 2112.

¹⁴⁶ (1995) 2 SCC 161

views. One sided information, disinformation, misinformation and non-information all equally create uninformed citizens which make democracy a farce when medium of information is monopolized either by a partisan central authority or by private individuals or oligarchy organizations. This is particularly so in a country where a large bulk of the population is illiterate.

As a result of the prolonged Indian national movement against the British imperialist colonial rule, the liberal democratic political system with a written Constitution which included rule of law, social justice, development, adult franchise, periodic elections and multiparty system has come into existence¹⁴⁷. For the transparent functioning of the democratic political system, the founding fathers of the Constitution included the provisions of the right to expression in Part three of the Constitution in the fundamental rights. While there is no specific right to information or even right to freedom of the press in the Constitution of India, the right to information has been read into the Constitutional guarantees which are a part of the Chapter on Fundamental Rights. The Indian Constitution has an impressive array of basic and inalienable rights contained in Part three of the Constitution. These include the Right to Equal Protection of the Laws and the Right to Equality Before the Law (Article 14), the Right to Freedom of Speech and Expression (Article 19 (1)(a)) and the Right to Life and Personal Liberty (Article 21). The Right to Constitutional Remedies in Article 32, backs these that is, the Right to approach the Supreme Court in case of infringement of any of these rights. These rights have received dynamic interpretation by the Supreme Court over the years and can truly said to be the basis for the development of the Rule of Law in India. As pointed out by H.M. Seervai¹⁴⁸, corruption, nepotism and favoritism have led to the gross abuse of power by the Executive, which has increasingly come to light partly as a result of investigative journalism and partly as a result of litigation in the Courts. The legal position with regard to the right to information has developed through several Supreme Court decisions given in the context of all above rights, but more specifically in the context of the Right to Freedom of Speech and Expression, which has been said to be the adverse side of the Right to Know and one cannot be exercised without the other. The interesting aspect of these judicial pronouncements is that the scope of the right has gradually widened, taking into account the cultural shifts in the polity and in society. The development of the right to information as a part of the Constitutional Law of the country started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of

¹⁴⁷ Kothari Rajni, *Politics in India* (1970), Boston: Little Brown Series.

¹⁴⁸ Foremost Constitutional expert

speech and expression such as challenging governmental orders for control of newsprint bans on distribution of papers, etc. It was through these cases that the concepts of the public's right to know developed¹⁴⁹.

3.5 RTI in Constitution Except Article 19 (1)(a)

RTI is not exclusively traceable in Article 19 (1)(a) only. There are some other provisions too, which in some or the other way provide right to access the information or to obtain the information to concerned persons. Article 22 (1) of the Constitution of India entitles every person who is detained to know the grounds of his/her detention. Similarly, Article 311 (2) of the Constitution provides that a government servant is entitled to know why he/she is being dismissed or removed or reduced in rank and to be given an opportunity to make representation against the proposed action. The horizon of RTI has expanded so much so that Supreme Court in a recent judgment has considered RTI to be the offshoot of Article 21 of the Constitution of India¹⁵⁰.

3.6 Movement for Right to Information in India

Paradoxes are galore in our system. But movements by the masses for a right to which they are entitled by the virtue of being a part of democracy is a disturbing aspect. However it is true that, while the common public has been aware of the importance of RTI, those wielding the political clout have been reluctant in transforming the right into practical legal reality. It all began in 1990 when the Mazdoor Kisan Shakti Sangathan (MKSS), a collective of farmers and labourers, was formed in Devdungri, a Rajasthan hamlet. Members of the collective were working for a state employment generation scheme, yet were being paid significantly less than the guaranteed minimum wage¹⁵¹

This prompted them to demand their legal entitlement. In response they got an answer that the official documents are not consonant with the necessary work that ought to be done by them. Such official documents were wrapped in the walls of bureaucratic 'secrecy' unavailable even to the persons to which they were related. However, some clues by the sympathetic officer indicated enormous anomalies. Tackling the discrepancies required some unique medium to sensitize the people directly

¹⁴⁹ *People's Union for Civil Liberties v. Union of India*, AIR 2003 SC 2363

¹⁵⁰ *Essar Oil Ltd. v. Haldar Utkarsha Samiti*, AIR 2004 SC 1834

¹⁵¹ Tarunabh Khaitan, Dismantling the walls of secrecy, *Frontline*, 44 (February 27th, 2009).

and easily for this purpose, MKSS adopted the means of placing the disclosed information (whatever could be elicited) in the public domain through live wire village based public hearing colloquially referred as *jansunwais*.

This movement raised famous slogans like *hamara paisa, hamara hisaab* (our money, our accounts) and *hum janenge, hum jiyenge* (we will know, we will live). Overall it can be safely asserted that *transparency* and *accountability* were the two pronged demands of the movement, which they wanted to be instilled in the system as whole. Dawn of the RTI ushered with this movement, which made people realize that secrecy enabled corrupt officials to siphon off minimum wages and other entitlements of the poor. A movement demanding the RTI was thus born and its first champions were the disempowered rural workers in the remote rural area of Rajasthan¹⁵²

Movements for RTI cannot be seen as isolated events. They are co-existent with a movement to make democracy real and functional. RTI was demanded as the right to work, the right to obtain famine relief or the right to receive minimum wages. Secrecy and national interest were some excuses which were heavily used by the power wielders to wrap information insulating it from reach of the masses. Corruption, therefore, was breeding prolifically in face of lack of accountability and an open government. Importance of open government was observed by eminent juristic mind of the nation, Bhagwati, J. in the following words 'Open government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception'¹⁵³ 'Loksatta', an NGO in Andhra Pradesh has undertaken mass awareness campaigns across the State and through a 'post card campaign' made representations to the Prime Minister of India demanding the enactment of a right to information law.

The Rajasthan experience on demanding right to information was echoed in other States. In response to the pressure of the grassroots movements as well as to satisfy the international money lending institutions to borrow the loans, some of the State Governments such as Goa (1997), Tamil Nadu (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Assam (2002), Maharashtra (2003), Madhya Pradesh (2003) and Jammu & Kashmir (2003) introduced the Right to Information Act. Among all these Acts, Maharashtra Right to Information Act was considered as the model act in promoting transparency, accountability and responsiveness in all the Institutes of the State as well as the private organizations which are getting financial support from

¹⁵² Supra footnote 15

¹⁵³ *S.P. Gupta v. Union of India*, AIR 1982 SC 149, p. 234

the Government. Tamil Nadu Act was considered as the most innovative one in how to refuse the information to the seekers. The growing demand for a right to public information from various sections of the society, led by civil society organisations in these States could no longer be ignored. The need to enact a law on right to information was recognised unanimously by the Chief Ministers Conference on Effective and Responsive Government, held on 24th May, 1997 at New Delhi. The Government of India, Department of Personnel, decided to set-up a 'Working Group' (on the 'Right to Information and Promotion of Open and Transparent Government') in January 1997 under the chairmanship of Mr. H. D. Shourie, which submitted its comprehensive and detailed report and the draft Bill on Freedom of Information in May 1997. The Press Council of India, the Press Institute of India, the 'National Campaign for People's Right to Information' and the Forum for Right to Information unanimously submitted a resolution to the Government of India to amend the proposed Bill in February, 2000. 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 (FoI) Act, 2002.

It has been a long winding road on December 16th, 2002 the Rajya Sabha passed the Freedom of Information Bill 2002 (FOI Bill, 2002). The battle for a law on right to information in India has been a long one – in the past seven years there have been several drafts of model legislation prepared¹⁵⁴. In 1996, the Press Council of India presented a draft model law, another draft was presented by Consumer Education and Research Council, Ahmadabad, neither of which have been seriously considered by the government. It was in 1997 that the United Front government set up a working group under the Chairmanship of Mr. H.D Shourie (Shourie Committee) with the mandate to prepare a draft freedom of information legislation. It needs to be said at this point that the Shourie Committee Bill has come under criticism for not meeting the standard of disclosure set down in the Bill presented by civil society in the previous year¹⁵⁵. Perhaps a reflection of the fact that the Shourie Committee consisted of 10 members - 8 of whom were senior bureaucrats from the Central Government. Due to political upheaval at the Centre the Shourie Committee draft was never introduced in Parliament. However in 2000, the Freedom of Information Bill, 2000 introduced in Parliament, was a

¹⁵⁴ Deepika Mogilishetty-Farias, *The Freedom of Information Bill 2002– a comparative perspective*, Commonwealth Human Rights Initiative

¹⁵⁵ A comparative analysis of the Shourie Committee Bill and the Press Council and CERC drafts *Legislating freedom of information: India in Comparative Perspective*, Vikram Chand, (CHRI, 1998).

modified and even more watered down version of the Shourie Committee Bill. The FOI Bill 2000 was referred to the Parliamentary Standing Committee on Home Affairs for examination. The Standing Committee sought suggestions and recommendations from many organizations and experts on the issue and submitted its report in July 2001¹⁵⁶. The Standing Committee report listed the various suggestions presented to it and recommended that the government take into consideration the suggestion made by civil society and includes the same where the Bill was found lacking. In addition the Standing Committee made some specific recommendation. The government chose not to consider any of the suggestion made by organizations and experts before the Standing Committee, some specific suggestions made by the Standing Committee have been included the net result is the FOI Bill 2002 – a bureaucrats delight and a citizens nightmare.

In the meantime while the law at the center has been doing the rounds of various departments and committees, several states have taken the initiative and enacted laws on the right to information namely, Tamil Nadu, Goa, Rajasthan, Karnataka, Maharashtra¹⁵⁷ and NCT Delhi. In Madhya Pradesh and Chhattisgarh there are no laws on right to information but government has issued executive orders Right to Information Ordinance 2002 to over 50 departments to provide the citizen access to information. It is a fundamental right after all. In *State of U.P v Raj Narain*¹⁵⁸ the Supreme Court said that in a government of responsibility like ours where the agents of the public must be responsible for their conduct there can be but a 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 wary when secrecy is claimed for transactions which can at any rate have no repercussions on public scrutiny. Unlike South Africa, Nepal, Ghana and many other countries the Constitution of India does not specifically state that the right to information is a fundamental right. But, there are innumerable judicial decisions that clearly state that right to information is inherent to a democracy and flows from the right to freedom of speech and expression guaranteed under the Constitution, thereby

¹⁵⁶ Electronic copy of the report of the standing committee can be accessed on <http://www.humanrightsinitiative.org/Programmes/rti/Law/Legislation/Asia/India/freedomofinfo.htm>

¹⁵⁷ The Maharashtra government enacted the Maharashtra Right to Information Act in 2000 – the law was found to be lacking in many respects. In September 2002 – the Government promulgated the Maharashtra

¹⁵⁸ Justice K. K. Mathew, Supreme Court of India, AIR 1975 SC 865

making right to information a fundamental right. In fact the Supreme Court has clearly affirmed the linkage between the right to know and the right to life in *Reliance Petrochemicals Limited v. Proprietors of Indian Express Newspapers Bombay Pvt. Ltd.* AIR 1989 SC 190, we must remember that people at large have a right to know in order to take part in participatory development in industrial life and democracy. Right to know is a basic right that citizens of our country aspire under Article 21 of our Constitution.

The interesting aspect of the position in India is that right to information is seen not only as a part of the right to freedom of speech and expression but also as an inherent part of the fundamental right to life. This gains importance in the Indian context as demonstrated by the right to information movement in Rajasthan where members of the Mazdoor Kissan Shakti Sanghatan demand information on issues relating to life and livelihood and expose corruption in the functioning of the government through *jan sunwaii*'s through the process of social audit. A question is often raised – why do you need a law if right to information is a fundamental right. The answer is quiet simple really – a law is required in order to put in place a system and a people friendly mechanism through which the ordinary citizen can access relevant information. The biggest obstacle to providing information is the culture of secrecy prevalent in government, which can only be countered by a culture of openness. It is necessary to cast a specific duty on public bodies to provide information this can only be done through a law that lays down these duties and recognizes the right of the citizen. Like all other fundamental rights, the right to information is also subject to certain reasonable limits – these limits should be clearly defined in order to avoid arbitrary blockage of information. Lastly, a fundamental right can only be enforced by moving the High Court or the Supreme Court – needless to say it is impossible for ordinary citizens in the country to file a petition in higher courts every time information is denied to them.

The salient features have evolved over the years from practical experience of implementing right to information laws – content of law varies from country to country, but there are certain basic features that need to be there in order to have a workable right to information legislation. Model laws¹⁵⁹ suggested by various organizations- Indian and international, are based on the principle that right to information legislations must have: Clear and narrowly defined exemptions, which are subject to a public interest

¹⁵⁹ Model law drafted after a South Asia study on right to information by Commonwealth Human Rights Initiative (India), Article 19 (UK), Centre for Policy Alternatives (Sri Lanka) and Human Rights Commission (Pakistan),

override, Simple procedure for accessing information, Minimal fee structure, Duty on the government to mandatorily and voluntarily provide certain types of information, Reasonable and specific time limits for providing information, an independent mechanism for citizens to appeal against denial/delay of information, Penalty provisions to be applied against officers delay in providing information or provide wrong/misleading information, an independent monitoring body to oversee and review the implementation of the law.

The biggest failing of the FOI Bill, 2002 is that it does not provide for penalties to be levied and for an independent appeal mechanism. If the government claims to usher in an era of openness and transparency, the least they can do is reflect that intention in the content of the law. Even though the FOI Bill 2002 purports to put in place a system to provide the citizen access to information – the system is completely useless since it only makes the citizen run from pillar to post and cause increased harassed. The FOI Bill 2002 was a halfhearted measure at bringing in transparency and accountability in government. The government had deliberately ignored suggestions and recommendations made by many experts and organisations before the Standing Committee, there was really no significant difference between FOI Bill 2000 and FOI Bill 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. National Advisory Council (NAC) was set up by the United Progressive Alliance (UPA) government which came at the centre in 2004. FoI Act was a very weak law and did not confer the deserving status of constitutional status to RTI. NAC recommended various changes to be incorporated in FoI Act. The Central Government decided to make changes which would make the Act more participatory and meaningful. But later on the government decided to repeal the FoI Act and enacted a new legislation, the Right to Information Act, 2005, to provide an effective framework for effectuating the right of information recognised under Article 19 of the Constitution of India Prime Minister of India, emphasizing on the importance of RTI in the governance of country, reflected the culmination of what was a sporadically vehement movement initiated by the otherwise disempowered masses. He said that four years ago I said to you that an important challenge we face is the challenge of providing good governance. We have taken several steps to make Government transparent, efficient and responsive. The Right to Information Act was one major step. We have initiated reform and modernization of Government.¹⁶⁰

¹⁶⁰ The Prime Minister, Dr. Manmohan Singh, addressing the Nation from the ramparts of the Red Fort on the 62nd Independence Day

In Government of responsibility like ours where all the agents of the public must be responsible for their conduct, there can be but a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by the public functionaries. The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption.

3.7 Court Decisions to Protect Article 19(1)(a) of Constitution of India

The right to information has not been expressly provided in the constitution. It is derived from the Article 19 (1) (a). Hon'able Supreme Court of India interpreted the Article 19 (1) (a) in following its judgments.

3.7.1 An unreasonable restriction on the right of free speech and expression

In *Maneka Gandhi v. Union of India*¹⁶¹, the impugned order by the Government of India to impound her passport, has effect of placing an unreasonable restriction on the right of free speech and expression guaranteed to the petitioner under Article 19(1) (a).

3.7.2 The freedom of press embodies the right of the people to read

In *Bennett Coleman & Co. & Ors v. Union of India & Ors*¹⁶² although Art. 19(1) (a) does not mention the freedom of the Press, it is the settled view of this Court that freedom of speech and expression includes freedom of the Press and circulation. Newsprint Control Order of 1972-1973 issued under the Essential Commodities Act, 1955 to be *ultravires* Article 19 (1) (a) of the constitution. Ray, CJ in the majority judgment opined that, it is indisputable that by freedom of the press is meant the right of all citizens to speak, publish and express their views. The freedom of press embodies the right of the people to read. Here what is referred as 'right of the people to read' refers to the right of the readers to get the information.

3.7.3 The singing of the National Anthem

In *Bijoe Emmanuel & Ors v. State of Kerala & Ors*¹⁶³, to compel each and every pupil to join in the singing of the National Anthem despite his genuine, conscientious religious objection, then such compulsion would clearly contravene the rights guaranteed by

¹⁶¹ 1978 AIR 597, 1978 SCR (2) 621

¹⁶² 1973 AIR 106, 1973 SCR (2) 757

¹⁶³ 1987 AIR 748, 1986 SCR (3) 518

Art.19(1)(a) and Art. 25(1). It was held that children's expulsion from the school for not to join in the singing of the National Anthem was a violation of their fundamental right under Article 19(1)(a) which also includes the freedom of silence.

3.7.4 Right to receive knowledge through electronic media

In *K.M. Nataraj, Advocate and others v. State of Karnataka and Another*¹⁶⁴, the freedom of speech and expression guaranteed under Art. 19(1)(a), guarantees the right to information and right to receive knowledge through electronic media relating to telecast of 'Wills World Cup' Cricket, 1996. The power cut or depriving the public of their right to view the telecast of 'Wills World Cup' Cricket, 1996, which is a mega event, without properly rescheduling the timings relating to power cut to enable the public to view the World Cup Cricket would amount to depriving the citizens of this country who are residing in this State, the right to freedom of information guaranteed to them under Art. 19(1)(a) of the Constitution of India.

3.7.5 Freedom of Speech and Press lay at the foundation of all democratic organizations

In *Romesh Thappar v. The State of Madras*¹⁶⁵, the freedom of speech and expression includes freedom propagation of ideas and that freedom is ensured by the freedom of circulation. Freedom of Speech and Press laid at the foundation of all democratic organizations, for without free political discussion no public education, so essential for the proper functioning of the process of popular Government, is possible.

3.7.6 The freedom to circulate one's views

In *Life Insurance Corp. of India and others v. Prof. Manubhai D. Shah Etc.*¹⁶⁶, the words 'freedom of speech and expression' must be broadly construed to include the freedom to circulate one's views by words of mouth or in writing or through audio-visual instrumentalities. Therefore, includes it the right propagati one's the views through the print media or through any other communication channel e.g. the radio and the television. The print media, the radio and the tiny screen play the role of public educators, so vital to the growth of a healthy democracy.

¹⁶⁴ AIR 1997 Kant 36, ILR 1996 KAR 2678, 1996 (5) KarLJ 694

¹⁶⁵ 1950 AIR 124, 1950 SCR 594

¹⁶⁶ 1993 AIR 171, 1992 SCR (3) 595

3.7.7 For propagating his ideas a citizen had the right to publish them

In *Sakal Papers (P) Ltd. and Others v. The Union of India*¹⁶⁷, the freedom of speech and expression guaranteed by Art. 19(1) (a) included the freedom of the press. For propagating his ideas a citizen had the right to publish them, to disseminate them and to circulate them, either by word of mouth or by writing. The right extended not merely to the matter which he was entitled to circulate but also to the volume of circulation. The impugned Act and Order placed restraints on the latter aspect of the right. But its very object the Act was directed against circulation and thus interfered with the freedom of speech and expression. Article 19(2) did not permit the State to abridge this right in the interests of the general public. The State cannot make inroads on the right of, other newspapers which Art. 19(1)(a) guarantees to them. The only restrictions which may be imposed on the, rights of an individual under Art. 19(1)(a) are those which cl. (2) of Art. 19 permits and no other.

3.7.8 The expression on one's ideas through any communicable medium or visible representation

In *Lovell v. City of Griffin*¹⁶⁸, the freedom of speech and expression means the right to express one's own convictions and opinion's freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression on one's ideas through any communicable medium or visible representation, such as, gesture, signs and the like.

3.7.9 Free propagation of ideas

In *W.N. Srinivasa Bhat and Anr. v. The State of Madras and Anr.*¹⁶⁹, the expression connotes also publication and thus the freedom of the press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. The freedom of propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation the publication would be of little value.

3.7.10 Freedom of press is the heart of social and political intercourse

In *Indian Express News papers v. Union of India & Ors. Etc.*¹⁷⁰, the freedom of press is the heart of social and political intercourse. The press has now assumed the role of the

¹⁶⁷ 1962 AIR 305, 1962 SCR (3) 842

¹⁶⁸ 303 U.S. 444 (1938)

¹⁶⁹ AIR 1951 Mad 70, (1951) IMLJ 115

¹⁷⁰ 1986 AIR 515, 1985 SCR (2) 287

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. Role of Press and Newspapers-Duty of Court to hold the balance even and to strike down any unconstitutional invasion of press like levying taxes on other matters.

3.7.11 A free press is vital to a democratic society

In *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express*¹⁷¹, the Constitution of India is not absolute with respect to freedom of speech and expression, as enshrined by the First Amendment to the American Constitution. A judiciary is not independent unless courts of justice are enabled to administer law by absence of pressure from without, whether exerted through the blandishments of reward or the menace of disfavour. A free Press is vital to a democratic society for its freedom given its power. The law of contempt must be judged in a particular situation. The process of due course of administration of justice must remain. Public interest demands that there should be no interference with judicial process and the effect of the judicial decision should not be pre-empted or circumvented by public agitation or publications. At the same time, 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 in our land under Article 21 of our Constitution. A balance has to be struck between the requirements of free Press and fair trial.

3.7.12 Freedom of press is essential to political liberty

In *Brij Bhushan and another v. The State of Delhi*¹⁷², the American Press Commission has said that Freedom of press is essential to political liberty. When men cannot freely convey their thoughts to one another, no freedom is secured, where freedom of expression exists the beginning of a free society and means for every retention of liberty are already present. Free-expression is therefore, unique among liberty.

3.7.13 The citizens have a right to know

In *Dinesh Trivedi v. Union of India*¹⁷³, under the 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. However, like all other rights, even this right has recognized

¹⁷¹ 1989 AIR 190, 1988 SCR Supl. (3) 212

¹⁷² 1950 AIR 129, 1950 SCR 605

¹⁷³ (1997) 4 SCC 306

limitations; it is, by no means, absolute. Implicit in this assertion is the proposition that in transaction which has serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.

To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Sunlight is the best disinfectant. But it is equally important to be alive to the dangers that lie ahead. It is important to realize that undue popular pressure brought to bear on decision-makers is Government can have frightening side-effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision-maker who may find it safer not to take any decision. It will paralyze the entire system and bring it to a grinding halt. So we have two conflicting situations almost enigmatic and we think the answer is to maintain a fine balance which would serve public interest.

3.7.14 The freedom of speech and expression

In *People's Union for Civil Liberties v. Union of India*¹⁷⁴, the Supreme Court held that right of information is a facet of the freedom of speech and expression as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions.

Article 19(1)(a) of the Constitution of India provides the right to freedom of speech and expression to its citizens. This was included in the fundamental rights with the intention of building a coherent environment and bringing forward the thought of the people in a democratic set up. The right to freedom of speech and expression was incomplete without information. Unless the people have complete, factual, updated and primary information about the government machinery, it is not possible to think of having any useful discussion on the subject. When there was no right to Information, citizens were forced to grapple in the dark while the bureaucrats kept all the information hidden. To make matters worse, bureaucrats had the weapon of the Official Secret Act which was more important than the right to freedom of speech and expression as a result of which the rights of citizens remained limited. However, the RTI Act, which

¹⁷⁴ (2004) 2 SCC 476,

if used sensibly and efficiently can take the country in the direction of new democracy and good governance.

Freedom of Information is a right imbibed within Article 19(1)(a)¹⁷⁵ of the constitution. The right to information has not been expressly provided in the constitution. It is derived from the Article 19 (1)(a). That is to say, it is implicitly imbibed within the constitutional framework. Moreover as stated above, judiciary in several landmark cases has expressly held right to information as natural concomitant of Article 19 (1)(a). The Supreme Court in number of landmark judgments held that right of information is a facet of the freedom of speech and expression as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions.

Apart from the constitutional recognition, specific statutes are sometimes necessary to be formulated in order to effectuate proper exercise of rights. This is so because mere recognition sometimes is not sufficient to provide results. Statutes here come to the rescue by providing optimal output through an elaborate mechanism. Therefore, let us now see some of the important statutes providing RTI to the people in India in next chapter.

¹⁷⁵ Protection of certain rights regarding freedom of speech, etc. (1) All citizens shall have the right (a) to freedom of speech and expression

RIGHT TO INFORMATION ACT

In order to promote, transparency and accountability in administration, Parliament passed Right to Information Bill, 2004 on 15th June, 2005. The Right to Information Act 2005 (RTI) is an Act of the Parliament of India to provide for setting out the practical regime of right to information for citizens. The Act applies to all States and Union Territories of India except the State of Jammu and Kashmir. Jammu and Kashmir has its own act called Jammu & Kashmir Right to Information Act, 2009. Under the provisions of the Act, any citizen may request information from a public authority (a body of Government or instrumentality of State) which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. The Right to Information Act, 2005 was introduced in the Lok Sabha on 23rd, December, 2004. The bill was subsequently passed by the House on 11th May 2005, after adopting certain amendments. The bill was later passed by the Rajya Sabha on 12th, May, 2005 and got the President's assent on 15th, June, 2005 the Act would come into force on the one hundred and twentieth day of its enactment. Information disclosure in India was hitherto restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act now relaxes.

4.1 Historical Background

Information Rights have a long history of 246 years. World's first Freedom of Information Act was issued in Stockholm on Dec. 2nd, 1766¹⁷⁶. The importance accorded to freedom of information can be gauged internationally from the fact that the UN General Assembly, in its very first session in 1946, adopted resolution 59 (1), which states, *Freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated*¹⁷⁷. Also, Universal declaration

¹⁷⁶ History of Rising RTI in India < <http://www.nyayabhoomi.org/treatise/history/history1.htm>>

¹⁷⁷ Dr. Shaikh Ghulam Rasool, 24th, Mar 2013, Right to Information, a key towards transparency, <http://www.risingkashmir.in/news/right-to-information-a-key-towards-transparency-43947.aspx>

of human rights 1948 states act 19(2), Every one shall have the right to freedom of expression which shall include freedom to: Seek, receive and impart information; Regardless of frontiers; Either orally, in writing or in print, etc. Article 13 of the UN convention against corruption, adopted by UN's General assembly on 31st, October, 2003 with following identities:

- Effective information access to public
- Undertaking public information activities contributing to non-tolerance of corruption (including conducting public educational programmes).
- Respecting promoting and protecting the freedom to, seek, receive, publish and disseminate information in concerning corruption, as important measures to be taken by government for ensuring the participation of the society in governance.

It has taken India 82 years to transition from an opaque system of governance, legitimized by the colonial Official Secrets Act, to one where citizens can demand the right to information. The enactment of the Right to Information Act 2005 marks a significant shift for Indian democracy, for the greater the access of citizens to information, the greater will be the responsiveness of government to community needs. Right to Information is derived from our fundamental right of freedom of speech and expression under Article 19 of the Constitution. If we do not have information on how our Government and Public Institutions function, we cannot express any informed opinion on it. Democracy revolves around the basic idea of Citizens being at the center of governance. And the freedom of the press is an essential element for a democracy to function. It is thus obvious that the main reason for a free press is to ensure that Citizens are informed. Thus it clearly flows from this, that the Citizens Right To Know is paramount.

The Act and its rules define a format for requisitioning information, a time period within which information must be provided, a method of giving the information, some charges for applying and some exemptions of information which will not be given.¹⁷⁸

4.2 The Need for the Right to Information

In recent years, there has been an almost unstoppable global trend towards recognition of the right to information by countries, intergovernmental organizations, civil society

¹⁷⁸ Analysing the Right to Information Act in India, 2010, http://www.cuts-international.org/cart/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf

and the people. The right to information has been recognized 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. The greater the access of the citizen to information, the greater the responsiveness of government to community needs. Alternatively, the more restrictions that are placed on access, the greater will be the feelings of 'powerlessness' and 'alienation'. Without information, people cannot adequately exercise their rights as citizens or make informed choices.

The free flow of information in India remains severely restricted by three factors:

- a. The legislative framework includes several pieces of restrictive legislation, such as the Official Secrets Act, 1923;
- b. The pervasive culture of secrecy and arrogance within the bureaucracy; and
- c. The low levels of literacy and rights awareness amongst India's people.

The primary power of RTI is the fact that it empowers individual Citizens to requisition information. Hence without necessarily forming pressure groups or associations, it puts power directly into the hands of the foundation of democracy- the Citizen.

4.3 Framework

Disclosure of State information in British India was (and is) governed from 1889 by the Official Secrets Act. This law secures information related to security of the State, sovereignty of the country and friendly relations with foreign states and contains provisions which prohibit disclosure of non-classified information. Civil Service conduct rules and the Indian Evidence Act impose further restrictions on government officials' powers to disclose information to the public¹⁷⁹.

4.4 Freedom of Information Act, 2002

Passage of a national level law, however, proved to be a difficult task. Given the experience of state governments in passing practicable legislation, the Central Government appointed a working group under H. D. Shourie and assigned it the task of drafting legislation. The Shourie draft, in an extremely diluted form, was the basis for the Freedom of Information Bill, 2000 which eventually became law under the

¹⁷⁹ Global Trends on the Right to Information: A Survey of South Asia. <http://www.article19.org/pdfs/publications/south-asia-foi-survey.pdf>

Freedom of Information Act, 2002. This Act, never came into effective force because the enabling Rules were not notified.

4.5 State Level Laws

The RTI Laws were first successfully enacted by the state governments of Tamil Nadu (1997), Rajasthan (2000), Goa (2000), Delhi (2001), Maharashtra (2002), Karnataka (2002), Assam (2002), Madhya Pradesh (2003) and Jammu and Kashmir (2004). The Maharashtra and Delhi State level enactments are considered to have been the most widely used. The Delhi RTI Act is still in force. Jammu & Kashmir, has its own Right to Information Act of 2009, the successor to the repealed J&K Right to Information Act, 2004 and its 2008 amendments

4.6 Right to Know

Democratic governance assumes that citizens have certain rights to elect their representatives and to influence the policies and programmes that their governments make. Right to provide or withhold, consent is a part of the underlying foundation of democracy. In recent years, many democracies are finding that the citizens—the building blocks of democracy, the demos—are feeling alienated from the structures and processes of formal democracy. That is precisely why voting percentages in democratic elections have been declining (specially among the youth); people's trust in elected political representatives has reached an all-time low; authoritarian and sectarian forces are gaining momentum over democratic, secular forces worldwide.

Democratic governance systems attempted to codify certain rights and obligations of the citizens in the Constitutions of countries. Freedoms of association, expression and actions have been variously codified in such Constitutions. Yet, many democracies, old and new, also carried the premise of 'eminent domain' which implies that the governments can act in 'sovereign public interest' to limit such freedoms and rights. This premise of state sovereignty, as opposed to citizen sovereignty, has been the underlying rationale for various laws related to land acquisition, taxation and access to 'official' decision-making¹⁸⁰.

Many colonial governments had introduced legislations to protect 'official secrecy'; most governments continued such restrictions even after independence from colonial rule. The Official Secrets Acts in various countries not only legitimized secrecy in

¹⁸⁰ Shreyaskar, Pankaj K. P. (2013) RTI Act in India : Futures and Implications, Tata McGraw-Hill Education Publication

transacting official government business; it also made sharing of 'official' information a criminal offence. Such a protective shield then insulated public representatives and government officials from any critical scrutiny by the public itself.

Citizens were not only deprived of information relevant to their own lives and livelihood, but also denied the possibility of acting as citizens to participate in the making of democratic governance itself. Right to Know, therefore, is the basic right of citizens, without which other rights and citizenship responsibilities cannot be adequately discharged. Therefore, exercising the Right to know is the essential first step in strengthening citizen leadership and in democratizing governance. Knowledge is Power. Empowerment of the marginalized and excluded citizens requires knowing and learning¹⁸¹.

4.7 RTI Act, 2005

In order to promote, transparency and accountability in administration, Parliament passed Right to Information Bill, 2004 on 15th June, 2005, The Right to Information Act was notified in the Gazette of India on 21st June, 2005. The Right to Information Act has become fully operational from 12th October, 2005, so as to enable a citizen of India to secure access to information under the control of Public Authorities.

After the Act came into existence, it has become evident that there are many anticipated and unanticipated consequences of the act. These have manifested themselves in various forms. While some of the issues pertain to procedural aspects of the government others pertain to the capacity aspects. Hence, there was a need to evaluate the implementation of the Act based on actual data and information¹⁸².

4.7.1 Objectives of the Act

The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption and make our democracy work for the people in real sense. It goes without saying that an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed. The Act is a big step towards making the citizens informed about the activities of the Government.

¹⁸¹ Analysis of Judgments of the Central Information Commission on the Right to Information Act, 2005, October 2007, PRIA, New Delhi

¹⁸² Understanding the key issues and constraints in implementing the RTI Act, PricewaterhouseCoopers

Objective of the Act is to establish 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, the constitution of a Central Information Commission and State Information Commission and for matters connected therewith and incidental thereto.¹⁸³ Transparency and accountability of the public authority therefore are two main objectives which the Act seeks to achieve. Provisions are therefore society centric aiming towards the empowerment of people making them participate in the country's democratic process. Survival of a democratic government is highly dependable on the accountability of the public functionaries. Absence of it breeds unrest and generated apathy in masses against the system. Accountability can be achieved by providing information to the people about the functioning of government. It is a prerequisite towards a real participatory democracy. People can play important role in a democracy only if it is an open government where there is full access to information in regard to functioning of government¹⁸⁴. Evidently, the major objectives of the act can be summed up as following:-

- (i) Greater Transparency in functioning of public authorities.
- (ii) Improvement in accountability and performance of the Government.
- (iii) Promotion of partnership between citizens and the Government in decision making process; and
- (iv) Reduction in corruption in the Government departments.

The objectives stated above need to be fulfilled in order to justify the sovereignty granted to the people of India by the Constitution, in real sense. All these parameters are critical elements of good governance. An attempt is therefore made below to examine the extent to which the RTI has been successful in influencing the above factors in desirable direction.

4.7.1.1 Greater transparency

With a view to ensuring maximum disclosure of information regarding government rules, regulations and decisions, every public authority is mandated to 'maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act'. The public authorities are therefore required to make pro-active disclosures through publication of relevant documents. Besides, the

¹⁸³ The preamble to the RTI Act, 2005.

¹⁸⁴ *People's Union for Civil Liberties v. Union of India*, AIR 2003 SC 2363

public authorities are also required to 'provide as much information *suo mototo* the public at regular intervals through various means of communication, including internet, so that the public have minimum resort to the use of this Act to obtain information'.

In compliance of the above provisions of the Act, all the levels of the Government the Centre, States and Local Bodies, including Village level Panchayats have put the records in public domain, through publications as well as internet in the regional languages. And, to facilitate the access to information, a citizen has the right to:

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts or certified copies of the documents or records;
- (iii) taking certified sample of material; and
- (iv) obtaining information in electronic form, if available.

Thus, all the public authorities have duly placed the information in public domain and that a citizen has the right to observe as to what is going on inside an organization. In the cases where the information sought for are not provided within the stipulated period of 30 days or the information furnished are incomplete, misleading or incorrect, a requester is free to file a complaint or appeal before the Information Commission (IC), for necessary directions to the parties as per the provisions of the Act. The Commission has the mandate, *inter-alia*, to impose penalty and/or to recommend disciplinary action against the information providers, if held responsible for obstructing the free flow of information. Accordingly, information seekers and the NGOs have put pressure on the public authorities for promoting the culture of openness in functioning of the Government. A large number of PIOs have already been fined for violation of the provisions of the Act, which has, in effect, created conditions for providing information to a requester. Due to perceived benefits of transparency and accountability, RTI applications have annually increased by 8 to 10 times. There is thus massive use of the right to know. Of the millions of applications for information, less than 5 percent have been denied information under various exemption categories. In effect, thus, there is greater transparency than before in the working of the public bodies. In a large number of cases, the Commission has ordered for providing the details of the decision-making processes, which include file notings, cabinet papers, records of recruitment, selection and promotion of staff, documents pertaining to tender processes and procurement procedure, the lists of beneficiaries of the Government's subsidized schemes, such as, food grains supplied through ration shops, water and electricity, domestic gas, educational and health facilities, shelter for poor, muster rolls underemployment guarantee schemes, etc. The disclosure of vital information, such as

above, has thus resulted in checking corrupt practices in delivery of services and ensuring the reach of entitlements to the poor. The disclosure of information relating to use of funds allocated to rural employment guarantee scheme, MLA/MP local area funds, etc. have contributed to advocacy in favour or against the policies and/or political leaderships¹⁸⁵.

4.7.1.2 Greater accountability

The RTI provides people with the mechanism to access information, which they can use to hold the government to account or to seek explanation as to why decisions have been taken, by whom and with what consequences or outcomes. In addition, every public authority is required to provide reasons for its administrative or quasi-judicial decisions to the affected persons under Section 4(1)(d) of the Act. Until the implementation of the RTI Act, it was not possible for an ordinary persons to seek the details of a decision making process, which was found most often, as ineffective in terms of its outcome. It was, therefore, not possible to hold a free and frank discussion on issues of common concern of people or to fix the responsibility for any action. Such an era of darkness in policy planning is over. The information regime has, in effect, created conducive conditions for everyone to have a better understanding of how the government works or how a particular decision was reached. Such a chance given to people empowers them to make appropriate choice of leadership and the policies that affect them. This has begun to happen with salutary effects on delivery of socioeconomic services, particularly for the poor. For instance, being fully aware that the records pertaining to the decision making process, including file notings, are required to be put in public domain, the concerned officials at all levels objectively record the reasons for the observations made by them. Attempts are also made to effectively implement the programmes as the relevant details are proactively disclosed. In effect, thus, the quality of decision making and delivery of services have duly improved.

Also, due to effective implementation of the flagship programmes for alleviation of wide-spread poverty, the mis-match between the planned targets and actual realization has been minimized. Specific mention may be made about the following schemes, which have been provided necessary financial where withal as well as administrative support by the Centre and the States for effective implementation of the programmes

- National Rural Employment Guarantee Scheme (Assured jobs),

¹⁸⁵ Alam Afroz (2010) Suchana Ka Adhikar (Hindi), Jama'at-e-Islami Hind (community & social wing), Jamia Nagar, New Delhi, India

- Sarwa Shiksha Abhiyan (Education for all)
- Mid-day Meal Scheme
- Drinking Water Mission
- Integrated Child Development Services
- National Rural Health Mission
- Bharat Nirman (Rural Infrastructure, mainly road, electricity, drinking water, sanitation etc.)
- Indira Avas Yogna (Shelter for poor)

All these programmes and several other similar schemes covered under the MP/ MLA Local Area Development Fund aim at providing the basic human needs for maintaining a decent standard of living. These schemes, moreover, enable them to build their strengths and abilities to realize their socioeconomic objectives. Even before the enactment of the right to information, similar programmes were implemented but the achievements were always below the general expectations. The reason may be lack of legal right to know and to scrutinize the public action and to question the authority. With empowered citizens and free flow of information, there is significant quantitative and qualitative improvement in the delivery of services and realization of benefits of the programmes designed and implemented for the poor. For instance, disclosure of information relating to:

- (i) attendance of staff in schools has helped in checking teachersabsenteeism and students drop out;
- (ii) attendance of doctors and nurses at primary health centres has led to improvement in health care facilities in rural areas;
- (iii) the details of supplies and distribution of food grains through ration shops has assured the reach of entitlements to the beneficiaries;
- (iv) the supply and demand for petroleum products, such as, domestic gas has reduced black marketing;
- (v) muster rolls and beneficiary of employment guarantee schemes has exposed corruption and ensured effective delivery of services to the poor; and
- (vi) Allotment of retail outlets (petrol pumps) and agencies for distribution of LPG gas has ensured fair play and objective decisions, as reflected from substantial reduction in litigation cases in the matter.

As a result of increased Government's accountability in delivery of services, rural to urban migration has, of late, decelerated, as widely reported in the media. This is

also corroborated by the findings of a national level survey (forthcoming), jointly conducted by the Transparency International and the Centre for Media Studies. The survey has revealed that in the opinions of 40 per cent of respondent (all below the poverty line), corruption and malpractices in implementation of poverty alleviation programmes have declined due to RTI induced accountability of the Government and its functionaries at various levels.

RTI route has generally been followed by a large number of people for resolving disputes between the parties on the issues pertaining to the decisions on administrative and commercial matters. Disclosure of information regarding the process of decision making or the grounds for action taken has helped resolve disputes on such issues as claim of refund of taxes paid by the individuals/companies, settlement of insurance claims, payment of dues of contractors, process of sanction and recovery of loans, etc. Since a reply is to be given within thirty days, disputes have been resolved faster. A large number of grievances pertaining to service matters, mainly promotion and pension benefits have also been redressed due to openness and promptness in taking action on requests made under the RTI. As a result, filing of appeals in the Courts has substantially declined, as reported, for instance, by the Oil Companies, which grant dealerships for distribution of petroleum products. The Courts have also advised the petitioners to obtain information under the RTI before filing the cases before the Courts. It thus shows a strong and positive impact of RTI on transparency and accountability of the Government.

4.7.1.3 Promotion of Citizen-Government partnership

The RTI Act provides a framework for promotion of citizen-government partnership in carrying out the programmes for welfare of the people. The principle of partnership is derived from the fact that people are not only the ultimate beneficiaries of development, but also the agents of development. The stakeholders' participation leads to better projects and more dynamic development. Under the RTI regime, citizens' participation has been promoted through (a) access to information and involvement of affected groups/communities in design and implementation of projects; and (b) empowerment of local government bodies at village level through the involvement and cooperation with NGO's self-help groups.

The pro-active disclosure of information has enabled the beneficiaries, mainly through NGOs, to assume a central role in design and execution of projects. RTI has instilled a wider sense of ownership in the development activities. Besides, access to

information has enabled the people to participate in economic and political processes through a dialogue between people and the government officials or public campaign on public policies. For instance, information obtained under RTI, in respect of utilization of funds allocated under rural employment guarantee scheme¹⁸⁶, has been used by NGOs for campaign in favour or against the political leaders during recent elections in some States, with a desirable impact on political process. Almost all the welfare projects, particularly at Village and Panchayat levels, are being designed and developed in cooperation and support with the NGOs or affected persons, with a view to raising the satisfaction level of people.

4.7.1.4 Reduction in corruption

Lack of transparency and accountability encourage the government officials to indulge in corrupt practices, which result in lower investments due to mis-use or diversion of funds for private purposes. As a result, the government's social spending yields no worthwhile benefits, because, for instance, the teachers do not teach, doctors and nurses do not attend health centres, ration card holders do not receive subsidized food grains and the promised jobs are not provided to the people. In the process, it perpetuates poverty and harms the poor. It creates an environment of distrust between the people and the government, which impinge upon the development and jeopardize democratic governance.

Under the RTI regime, there is unprecedented transparency in the working of public departments. As a result, there is better understanding of the decision making process and greater accountability of government. This has led to reduction in corruption in the country as evident from the following:

- (i) The Transparency International (TI) has consecutively reported in the last two years that perceived corruption in India (a score of 3.5 out of 10) has declined at the rate of about 15-20 per cent per year, due mainly to the implementation of the RTI Act.
- (ii) The Centre for Media Studies in collaboration with TI has recently accomplished an all India survey study (un-published) of the poor below the poverty line. The views of the poor have been elicited in respect of all the flagship programmes that have been implemented for alleviation of poverty. At least 40 per cent of the respondents have reported that corruption has declined.

¹⁸⁶ Uppal, R. K., Mishra Bishnupriya, Mishra Bishnupriya (EDT) (2009) Right To Information (RTI) And Rural Development In India, New Central Book Agency Publisher

- (iii) It has also been observed that wherever NGOs are actively involved in the development activities, the perceived corruption is abysmally low¹⁸⁷.

4.7.2 Scope

Democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed. says the preamble of the Indian Right to Information (RTI) Act. The Act covers the whole of India except Jammu and Kashmir, where J&K Right to Information Act is in force. It is applicable to all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is also defined in the Act that bodies or authorities established or constituted by order or notification of appropriate government including bodies owned, controlled or substantially financed by government or non-Government organizations substantially financed, directly or indirectly by funds provided by the government are also covered in it.

Perusal of the Act clearly signifies that it is applicable both to Central and State governments and all public authorities. A public authority¹⁸⁸ which is bound to furnish information means any authority or body or institution of self-government established or constituted (a) by or under the Constitution, (b) by any other law made by Parliament, (c) by any other law made by State Legislature, (d) by a notification issued or order made by the appropriate Government and includes any (i) body owned, controlled or substantially financed, (ii) non-government organizations substantially financed, - which, in clauses (a) to (d) are all, directly or indirectly funded by the appropriate Government.

4.7.3 Right to Information vis-a-vis other Acts

The RTI Act has over-riding effect vis-a-vis other laws in as much as the provisions of the RTI Act would have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or in any instrument having effect by virtue of any law other than the RTI Act.

¹⁸⁷ Ansari M. M. 2008, Impact of Right to Information on Development: A Perspective on India's Recent Experiences, (An invited lecture delivered at UNESCO Headquarters, Paris, France, on May 15th, 2008

¹⁸⁸ Sec. 2 (h) of RTI Act, 2005

4.7.4 Important provisions of the Right to Information Act, 2005

RTI Act, 2005 contains provisions which impart it the nature same to that of a code. It elaborately deals with the necessary definitions, constitution of the Information Commissions both at the state and central level, imposition of penalty, rulemaking power conferred upon appropriate governments etc. It is not possible to deal with all the provisions in detail. Therefore, some of the important provisions are discussed as following:

4.7.5 Definition: Information

The Act defines information in sec. 2(f) as any material in any form, including the records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force. Sec. 2(i) defines the word 'record' as including (a) any document, manuscript and file, (b) any microfilm, microfiche and facsimile copy of a document, (c) any reproduction of image or images embodied in such microfilm and (d) any other material produced by a computer or any other device.

4.7.6 Definition: Right to Information

The right to information is defined in sec. 2(j) as a right to information accessible under the Act which is held by or under the control of any public authority and includes a right to (i) inspection of work, documents, records, (ii) taking notes, extracts or certified copies of documents or records, (iii) taking separate samples of material, (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

4.7.7 What is information

1. Information is material in any form. It includes records, documents, memos, e-mail, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic relating to any private body which can be accessed by the public authority under any law for the time being in force.
2. A citizen has a right to seek such information form a public authority with is held by the public authority or witch is held under its control. This right includes

- inspection of work, documents and records; taking notes, extracts or certified copies of document or records; and taking certified samples of material held by the public authority or held under the control of the public authority.
3. The act gives the citizen a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.
 4. A citizen has a right to obtain to an information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs provided such information is already stored in a computer or in any other device from which the information may be transferred to diskettes etc.
 5. The information to the applicant should ordinarily be provided in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or any cause harm to the safety or preservation of the records, supply of information in that form may be denied.
 6. The Act gives the right to information only to the citizens of India. It does not make provision for giving information to corporation, Associations, Companies etc. which are legal entities/persons, but not citizens. However, if an application is made by an employee or office - bearer of any Corporation, Association, Company, NGO etc. indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation etc.
 7. Only such information is required to be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. It is beyond the scope of the Act to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.

4.7.8 Maintenance and Publication of Records

Proactive disclosure of information by the public authorities has been provided under Sec.4 (1) of the Act. The provision casts a duty on public authorities to maintain records for easy access and to publish within 120 days of enactment of the statute the name of the particular officers who should give the information and in regard to the framing of the rules, regulations etc. For this purpose, Sec. 4 (3) states that for the very

existence of the state as well as detriment to the national interests. Section 8 exempts from disclosure certain information and contents as stated in sub clauses (a) to (j) thereof. Information expressly forbidden by any court of law or tribunal or the disclosure of which may constitute contempt of court¹⁸⁹; information which could impede the process of investigation or apprehension or prosecution of offenders¹⁹⁰ are some of those which are exempted from disclosure. Section 8 (2) provides that a public authority may allow access to information if public interest in disclosure outweighs the harm to the protected interests. Moreover Sec. 8(3) exempts information regarding matters or events which happened 20 years before the date of application seeking information. It is significant to note that the Act is not applicable to certain intelligence and security organizations contained in the Second schedule of the Act¹⁹¹ (such organizations may be omitted from the schedule or new organizations may be added by the central government¹⁹²). However proviso to Sec. 24 (1) provides that in case the demand for information pertains to allegations of corruption and human rights violations, the Act shall apply to such institutions

Sec. 2(h) contains the definition of ‘public authority’ from whom information can be sought under the Act. The Act makes it obligatory for the public authorities to maintain and publish all their records. The RTI Act states that public authorities shall make known the particulars of facilities available to citizens for obtaining information and the names, designations and other particulars of the Public Information Officers.

Sec. 3 of the Act declares that all citizens have the right to information.

Sec. 4 makes it a duty of public authorities to maintain records for easy access and to publish within 120 days the name of the particular officers who should give the information and in regard to the framing of the rules, regulations etc. Sub-section (3) of **Sec. 4** states that for the performance of Sub-section (1), all information shall be disseminated widely and in such form and manner, which is easily accessible to the public.

Sec. 6 permits persons to obtain information in English or Hindi or in the official language of the area from the designated officers. Another instance where the Act empowers the citizens is Section 6(2) which provides that the person need not give any reason for the request or any personal details. One of the obvious rationales behind this section is that the identity of the person seeking information must be withheld in

¹⁸⁹ Sec. 8 (1) (b) of RTI Act, 2005.

¹⁹⁰ Sec. 8 (1) (h) of RTI Act, 2005

¹⁹¹ Sec. 24 (1) of RTI Act, 2005

¹⁹² Sec. 24 () of RTI Act, 2005

order to protect him from any possible threats from the person about whom information is sought.

Sec. 7 requires the request to be disposed of within 30 days provided that where information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours. Even though the Act has been lauded for the impact it has had on taking on the corrupt practices of the government, where it has ably struck the right chord is in enabling the common man to overcome problems he may face due to a particular official act.

Sec. 7(7) before any decision is taken for furnishing the information, the designated officer shall take into consideration the representation, if any, made by a third party under sec. 11.

A request rejected shall be communicated under sec. 7(8) giving reasons and specifying the procedure for appeal and the designation of the appellate authority. Sec. 7(9) exempts granting information where it would disproportionately divert the resources of the public authority or would be detrimental to the safety and preservation of the record in question. Information Providers is a term used for the entire eco-system appointed/ leveraged by the appropriate Government to implement the RTI. It includes Public Information Officers (PIOs), First Appellate Authority (FAA), Information Commissions and enabling institutions like Administrative Training Institutes. Information Seekers is a term used for the Common Citizens and organizations supporting/enabling a common citizens in accessing information under RTI

4.7.9 Other important provisions

Sec. 12 and **Sec. 15** provide for the constitution of Central Information Commission and State Information Commission respectively. Sec. 18 deals with powers and functions of the Information Commissions.

Sec. 20 provides penalties for non – furnishing information as required by the Act in a sum of Rs. 250/- per day but not exceeding Rs. 25000.

Sec. 21 states that no suit or prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done under the Act or rules.

Sec. 22 overrides the Official Secrets Act, 1923 or another law for the time being in force insofar as they are inconsistent with the Act.

Sec. 23 bars all courts from entertaining any suit, application or other proceeding in respect of any order made under the Act and every order under the Act should be first appealed against.

Sec. 25 imposes an obligation on the Central Information Commission and the State Information Commission to prepare an annual report on the implementation of the provisions of the Act in that year and forward it to the appropriate government.

4.7.10 Right to access

Any citizen, including overseas citizens of India and persons of Indian origin, can ask for information under this law. This right includes inspection of work, documents and records, taking notes, extracts or certified copies of documents or records and taking certified samples of material held by the public authority or under its control.

4.7.11 Procedural guarantees

A citizen, who desires to obtain any information under the Act, should submit an application to the PIO of the concerned public authority. The application should be precise and specific with name and complete postal address of the applicant. There is no prescribed format of application for seeking information. The application need to be submitted along with an application fee as prescribed in the Fee Rules. Table 4.1 shows maximum time, which may be taken to dispose off the applications in different situations. If a public authority fails to comply with the specified time limit, the information to the concerned applicant would have to be provided free of charge.

4.7.12 Assistance available to the applicant

The RTI Act provides that the Public Information Officer has a duty to render reasonable assistance to the persons seeking information. As per provisions of the Act, a person, who desires to obtain any information is required to make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is made, If a person seeking information is not able to make such request in writing, the Public Information Officer should render reasonable assistance to him to reduce the same in writing. Where access to a record is required to be provided to a sensorily disabled person, the Public Information Officer should provide assistance to such person to enable him to access the information. He should also provide such assistance to the person as may be appropriate for the inspection of records where such inspection is involved.

4.7.13 Time period for supply of information

1. The CPIO should supply the information within thirty days of the receipt of the request. Where the information sought for concerns the life or liberty of a person, the same should be provided within forty-eight hours of the receipt of the request.
2. Every public authority is required to designate an officer at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer (CAPIO) to receive the application or appeals under the Act for forwarding the same to the Central Public Information Officer or the Appellate Authority or the Central Information Commission, as the case may be. If request for information is received through the CAPIO, the information may be provided within 35 days of receipt of application by the CAPIO in normal course and 48 hours plus 5 days in case the information sought concerns the life or liberty of a person.
3. In case of application transferred from one public authority to another public authority reply should be provided by the concerned public authority within 30 days of the receipt of the application by that public authority in normal course and within 48 hours in case the information sought concerns the life or liberty of a person.
4. The Central Public Information Officers of the intelligence and security organizations specified in the Second Schedule of the Act may receive applications seeking information pertaining to allegations of corruption and human right violations. Information in respect of allegation of violation of human right, which is provided only after the approval of the Central Information Commission, should be provided within forty-five days from the date of the receipt of request. Time limit prescribed for supplying information in regard to allegation of corruption is the same as in other cases.
5. Where the application is asked to pay additional fee, the period intervening between the dispatch of the intimation about payment of fee and the payment of fee by the applicant shall be excluded for the purpose of calculation the period of reply. The following Table 4.1 shows the maximum time which may be taken to dispose off the application in different situation.

Table 4.1: Time period for Disposal of RTI Application

Situation	Time limit for disposing the application
Information in normal course	30 days
Information concerning the life or liberty of a person	48 hours
Information if the application is received through APIO	5 days added to above time periods
If application received after transfer from another public authority: In normal course	Within 30 days of receipt by the concerned public authority
Information concerns the life or liberty of a person	Within 48 hours of receipt by the concerned public authority
Supply of information by organisations specified in the second Schedule: If information relates to allegations of violation of human rights	45 days from receipt of application
If information relates to allegations of corruption Information relating to third party who has treated it as confidential	Within 30 days of receipt of application
Information relating to third party who has treated it as confidential	Provided after following certain prescribed procedure given in the Act under Sec. 11
Information where the applicant is asked to pay additional fee	Period between informing the applicant about additional fee and the payment of fee excluded for calculating the period of reply

4.7.14 Powers

The Act empowers applicant citizens to:

- (i) Obtain copies of permissible governmental documents.
- (ii) Inspect permissible governmental documents.
- (iii) Inspect permissible Governmental works and obtain samples.

4.7.15 Power to make rules

The Central Government, State Governments and the Competent Authorities as defined in Sec.2(e) are vested with powers to make rules to carry out the provisions of the Right to Information Act, 2005. (Sec.27 & Sec.28)

4.7.16 Partial disclosure

The Act allows those part(s) of the record which are not exempt from disclosure and which can reasonably be severed from parts containing exempt information to be provided.

4.7.17 Applicability

The first draft of right to information bill was presented to Parliament on 22nd December, 2004. It came into full effect on 12th October, 2005. It is applicable to all constitutional authorities including the executive, legislature and judiciary, any institution or body established or constituted by an act of Parliament or State legislature. The Act applies both to Central and State Governments and all public authorities. A public authority (Sec. 2(h)) which is bound to furnish information means any authority or body or institution of self-government established or constituted (a) by or under the Constitution, (b) by any other law made by Parliament, (c) by any other law made by State Legislature, (d) by a notification issued or order made by the appropriate Government and includes any (i) body owned, controlled or substantially financed, (ii) non-government organization substantially financed - which, in clauses (a) to (d) are all, directly or indirectly funded by the appropriate Government.

4.7.18 Information exempted from disclosure

Sub-section (1) of Section 8 and Section 9 of the Act enumerate the types of information which is exempt from disclosure. Sub-Section (2) of Section 8, however, provides that information exempted under Sub-section (1) or exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure outweighs the harm to the protected interest. Further, Sub-section (3) of Section 8 provides that information exempt from disclosure under Sub-section (1), exempted as provided in clauses (a), (c) and (i) thereof, would cease to be exempted after 20 years from the date of occurrence of the related event etc.

It may be noted that Section 8(3) of the Act does not require the public authorities to retain records for indefinite periods. The records should be retained as per the record retention schedule applicable to the form of an OM or a letter or in any other form even after destruction of the file/record. The Act requires furnishing of information so available after the lapse of 20 years even if such information was exempt from disclosure under Sub-section (1) of Section 8. It means that the information 'which, in normal course, is exempt from disclosure under Sub-section (1) of Section 8 of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to be exempt and there would be no obligation, even after lapse of 20 years, to give any

- i. information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the

- State, relation with foreign state or lead to incitement of an offence;
- ii. information the disclosure of which would cause a breach of privilege of parliament or State Legislature; or
 - iii. cabinet papers including records of deliberation of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (1) Sub-section (1) of Section 8 of the Act,

It is important to note that the Act specifies that intelligence and security organizations are exempted from the application of the Act. However, it is provided that in case the demand for information pertains to allegations of corruption and human rights violations, the Act shall apply even to such institutions.

4.7.19 Maintenance and computerisation of records

Proper management of records is of utmost importance for effective implementation of the provisions of the Act. A public authority should, therefore, maintain all its records properly. It should ensure that the records are duly catalogued and indexed in such a manner and from that it may facilitate the right to information.

The public authority should computerize all its records which are appropriate to be computerized, Record so computerized should be connected through a network on different systems so that access to such records is facilitated.

4.7.20 Suo moto disclosure

1. Every public authority should provide as much information *suo moto* to the public through various means of communications so that the public have minimum resort to the use of the Act obtain information. Internet being one of the most effective means of communications, the information may be posted on the website.
2. Section 4(1)(b) of the Act, in particular, requires every public authority to publish following sixteen categories of information:
 - i. the parliament of its organization, functions and duties;
 - ii. the powers and duties of its officers and employees;
 - iii. the procedure followed in the decision making process, including channels of supervision and accountability;
 - iv. the norms set by it for the discharge of its functions;
 - v. the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

- vi. a statement of the categories of document that are held by it or under its control;
 - vii. the particulars of any arrangement that exists for consultation without representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
 - viii. a statement of the boards, councils, committees and other bodies consisting of two more persons constituted as part or for the purpose of its advice and as to whether meetings of those boards, councils, committees and other bodies are open to the public or the minutes of such meetings are accessible for public;
 - ix. directory of its officers and employees;
 - x. the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
 - xi. the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
 - xii. the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
 - xiii. particulars of recipients of concessions, permits or authorizations granted by it;
 - xiv. details in respect of the information, available to or held by it, reduced in an electronic form;
 - xv. the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if reduced in an electronic form;
 - xvi. the names, designations and other particulars of the Public Information Officers;
2. Besides the categories of information enumerated above, the Government may prescribe other categories of information to be published by any public authority. It need be stressed that publication of the information as referred to above is not optional. It is a statutory requirement which every public authority is bound to meet.
 3. Another important point to note is that it is not sufficient to publish the above information once. The public authority is obliged to update such information every year. It is advisable that, as far as possible, the information should be updated as and when any development takes place. Particularly, in case of

publication on the internet, the information should be kept updated all the time.

4.7.21 Dissemination of information

The public authority should widely disseminate the information. Dissemination should be done in such form and manner which is easily accessible to the public. It may be done through notice boards, newspapers, public announcements, media broadcast, the internet or any other means. The public authority should take into consideration the cost effectiveness, local language and most effective method of communication in the local area while disseminating the information.

4.7.22 Publication of facts about policies and decision

Public authorities formulate policies and take various decisions from time to time. As provided in the Act, while formulating important policies or announcing the decisions affecting the public, the public authority should publish all relevant facts about such policies and decisions for the information of public at large.

4.7.23 Providing reasons for decisions

The public authorities take various administrative and quasi-judicial decisions which affect the interests of certain persons. It is mandatory for the concerned public authority to provide reasons for such decisions to the affected persons. It may be done by using appropriate mode of communication.

4.7.24 Designation of PIOs and APIOs etc.

Every public authority is required to designate Public Information Officers in all the administrative units or offices under it. Every public authority is also required to designate Assistant Public Information Officers at each sub-divisional level. The Government of India has decided that Central Assistant Public Information Officers (CAPIOs) appointed by the Department of Posts would act as CAPIOs for all the public authorities under the Government of India.

4.7.25 Designation of Appellate Authority

Sub-section (8) of Section 7 of the RTI Act provides that where a request for information is rejected, the Public Information Officer shall, *inter-alia*, communicate the particulars of the Appellate Authority to the person making the request. Thus, the applicant is informed about the particulars of the Appellate Authority when a request

for information is rejected but there may be cases where the Public Information Officer does not reject the application, but the applicant does not receive a decision within the time as specified in the Act or he is aggrieved by the decision of the Public Information Officer. In such a case the applicant may like to exercise his right to appeal. But in absence of the particulars of the appellate authority, the applicant may face difficulty in making an appeal. All the public authorities should, therefore, designate the First Appellate Authorities and publish their particulars along with the particulars of the Public Information Officers.

4.7.26 Acceptance of fee

According to the Right to Information (Regulation of Fee and Cost) Rules, 2005 as amended by the Right to Information (Regulation of Fee and Cost) Rules, 2006, an applicant can make payment of fee in case or by demand draft or bankers cheque or India Postal Order payable to the Accounts Officer of the public authority. The public authority should ensure that payment by any of the above modes is not denied or the applicant is not compelled to draw IPO etc. in the name of any officer other than the Accounts Officer. If any public authority does not have any Accounts Officer, an officer may be designated as such for the purpose of receiving fee under the RTI Act or rules made there under.

4.7.27 Free for seeking information

An applicant, along with his application, is required to pay a sum of Rs. 10/- as application fee in case or by way of a demand draft or a banker's cheque or an Indian Postal Order payable to the Accounts Officer of the public authority, \. The applicant may also have to pay additional fee, as prescribed by the Right to Information (Regulation of Fee and Cost) Rules, 2005 for supply of information as gives below:

- a. rupees two (Rs. 2/-) for each page (in A-4 or A-3 size paper) created or copied;
- b. actual charge or cost price of a copy in Larger size paper;
- c. actual cost or price for samples or models;
- d. for inspection of records, no fee for the first hour; and a fee of rupee five (Rs. 5/-) for each subsequent hour (or fraction thereof);
- e. for information provided in diskette or floppy rupees fifty (Rs. 50/-) per diskette of floppy; and
- f. for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication.

If the applicant belongs to 'below poverty line (BPL)' category, he/she is not required to pay any fee. However he/she should submit a proof in support of his/her claim to belong to the below poverty line. The application not accompanied by the prescribed fee of Rs. 10/- or proof of the applicant's belonging to below poverty line, as the case may be, shall not be a valid application under the Act and, therefore, does not entitle the applicant to get information.

It may be noted that where the CPIO decides that the information shall be provided on payment of fee in addition to the application fee, CPIO is inform the applicant:

- i. the details of further fees required to be paid:
- ii. the calculations made to arrive at the amount of fee asked for;

4.7.28 Compliance with the orders of the CIC

While deciding an appeal, the Central Information Commission, may require the concerned public authority to take such steps as may be necessary to secure compliance with the provisions of the Act. In this regard the Commission may pass an order to provide information to an applicant in a particular form; appoint a Public Information Officer; publish certain information or categories of information; make necessary changes to its practices in relation to the maintenance, management and destruction of records; enhance the provision of training for officials; provide an annual report as prepared in compliance with clause (b) Sub-section (1) of Section 4.

The Commission has power to pass orders requiring a public authority to compensate the complainant for any loss or other detriment suffered by him. It also has power to impose penalty on the Public Information Officer as provided in the Act. It may be noted that penalty is imposed on the Public Information Officer which is to be paid him. However, the compensation, ordered by the Commission to be paid to an applicant would have to be paid by the public authority,

The decisions of the Commission are binding. The public authority should ensure that the orders passed by the Commission are implemented. If any public authority is of the view that on order of the Commission is not the consonance with the provisions of the Act, it may approach the High Court by way of a Writ petition.

4.7.29 Contents and format of application

An applicant making request for information is not required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Also, the Act of the Rules do not prescribe any format of

application for seeking information. Therefore, the applicant should not be asked to give justification for seeking information or to give details of his job etc. or to submit application in any particular form.

There is no prescribed form of application for seeking information. The application can be made on plain paper. The application should, however, have the name and complete postal address of the applicant. Even in cases where the information is sought electronically, the application should contain name and postal address of the applicant. The information seeker is not required to give reasons for seeking information.

4.7.30 Invalid applications

Soon after receiving the application, the CPIO should check whether the applicant has made the payment of application fee of Rs. 10 or whether the applicant is a person belonging to a Below Poverty Line (BPL) family. If application is not accompanied by the prescribed fee or the BPL Certificate, it cannot be treated as a valid application under the RTI Act and may be ignored.

4.7.31 Transfer of application

The Act provides that if an application is made to a public authority requesting for an information, which is held by another public authority; or the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or relevant part of it to that other public authority within five days from the receipt of the application. The public authority should sensitize its officers about this provision of the Act lest the public authority is held responsible for delay.

1. If the subject matter of the application concerns any other public authority, it should be transferred to that public authority. If only a part of the application concerns the other public authority, a copy of the application may be sent to that public authority, clearly specifying the part which relates to that public authority. While transferring the application or sending a copy thereof, the concerned public authority should be informed that the application fee has been received. The applicant should also be informed about the transfer of his application and the particulars of the public authority to whom the application or a copy thereof has been sent.
2. Transfer of application or part thereof, as the case may be, should be made as soon as possible and in any case within five days from the date of receipt of the

application. If a CPIO transfers an application after five days from the receipt of the application, he would be responsible for delay in disposing of the application to the extent of number of days which he takes in transferring the application beyond 5 days.

3. The CPIO of the public authority to whom the application is transferred, should not refuse acceptance of transfer of the application on the ground that it was not transferred to him within 5 days.
4. A public authority may designate as many CPIOs for it, as it may deem necessary. It is possible that in a public authority with more than one CPIO, an application is received by the CPIO other than the concerned CPIO. In such a case, the CPIO received by the application should transfer it to the concerned CPIO immediately, preferable the same day. Time period of five days for transfer of the application applies only when the application is transferred from one public authority to another public authority and not for transfer from one CPIO to another in the same public authority.

4.7.32 Supply of information

The answering Public Information Officer should check whether the information sought or a part thereof is exempt from disclosure under Section 8 or Section 9 of the Act. Request in respect of the part of the application which is so exempt may be rejected and rest of the information should be provided immediately or after receipt of additional fees, as the case may be. Where a request for information is rejected, the Public Information Officer should 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 authority to whom an appeal can be made.

If additional fee is required to be paid by the applicant as provided in the Fee and Cost Rules, the Public Information Officer should inform the applicant

- (i) the details of further fees required to be paid;
- (ii) the calculations made to arrive at the amount of fees asked for;
- (iii) the fact that the applicant has a right to make appeal about the amount of fees so demanded;
- (iv) the particulars of the authority to whom such an appeal can be made; and
- (v) the time limit within which the appeal can be made.

4.7.33 Supply of part information by severance

Where a request is received for access to information which is exempt from disclosure but a part of which is not exempt and such part can be severed in such a way that the severed part does not contain exempt information then, access to that part of the information/record may be provided to the applicant. Where access is granted to part of the record in such a way, the Central public Information Officer should inform the applicant that the information asked for is exempt from disclosure and that only part of the record is being provided, after severance, which is not exempt from disclosure. While doing so, he should give the reasons for the decision, including any finding on any material fact or any findings on any material question of fact, referring to the material on which those findings were based. The CPIO should take the approval of appropriate authority before supply of information in such a case and should inform the name and designation of the person giving the decision to the applicant also.

4.7.34 Third party information

1. Third party in relation to the Act means a person other than the citizen who has made request for information. Any public authority other than the public authority to whom the request has been made shall also be included in the definition of third party.
2. It may be noted that information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Section 8(1) (d) requires that such information should not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
3. If an applicant seeks any information which relates to or has been supplied by a third party and that third party has treated that information as confidential, the Central Public Information Officer should consider whether the information should be disclosed or not. The guiding principal in such cases should be that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. However, procedure as given below should be followed before disclosing such information. It may be noted that procedure need be followed only when the third part has treated the information as confidential.
4. If the CPIO intends to disclose the information, he should within five days from the receipt of the application, give a written notice to the third party that

the information has been sought by the applicant under the RTI Act and that he intends to disclose the information. He should request the third party to make a submission in writing or orally, regarding whether the information should be disclosed. The third party should be given a time of ten days, from the proposed disclosure, if any.

5. The Central Public Information Officer should make a decision regarding disclosure of information keeping in view the submission of the third party. Such a decision should be taken within forty days decision, the CPIO should give a notice of his decision to the third party in writing. The Notice give to the third party should include a statement that the third party is entitled to prefer an appeal under Section 19 against the decision.
6. The third party can prefer an appeal to the First Appellate Authority against the decision made by the Central Public Information Officer within thirty days from the date of the receipt of notice. If not satisfied with the decision of the First Appellate Authority, the third party can prefer the second appeal to the Central Information Commission.
7. If an appeal has been filed by the third party against the decision of the CPIO to disclose the third party information, the information should not be disclosed till appeal is decided.

4.7.35 Filing of appeal

An applicant can file an appeal to the first appellate authority if information is not supplied to him within the prescribed time of thirty days or 48 hours, as the case may be or is not satisfied with the information furnished to him. Such an appeal, should be filed within a period of thirty days from the date on which the limit of 30 days of supply of information is expired or from the date on which the information or decision of the Public Information Officer is received. The appellate authority of the public authority shall dispose of the appeal within a period of thirty days or in exceptional cases within 45 days of the receipt of the appeal.

If the appellate authority fails to pass an order on the appeal within the prescribed period or if the appellant is not satisfied with the order of the first appellate authority, he may prefer a second appeal with the Information Commission within ninety days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

The appeal made to the Central Information Commission should contain the following information: -

- (i) Name and address of the appellant;
- (ii) Name and address of the Public Information Officer against the decision of whom the appeal is preferred;
- (iii) Particulars of the order including number, if any, against which the appeal is preferred;
- (iv) Brief facts leading to the appeal;
- (v) If the appeal is preferred against deemed refusal, particulars of the application, including number and date and name and address of the Public Information Officer to whom the application was made;
- (vi) Prayer or relief sought;
- (v) Grounds for prayer or relief;
- (vi) Verification by the appellant; and
- (vii) Any other information, which the Commission may deem necessary for deciding the appeal.

The appeal made to the Central Information Commission should be accompanied by the following documents:

- (i) Self-attested copies of the orders or documents against which appeal is made;
- (ii) Copies of the documents relied upon by the appellant and referred to in the appeal; and
- (iii) An index of the documents referred to in the appeal.

4.7.36 Filing of complaints

If any persons is unable to submit a request to a Central Public Information Officer either by reason that such an officer has not been appointed by the concerned public authority; or the Central Assistant Center Public Information Officer has refused to accept his or her application or appeal for forwarding the same to the Central Public Information Officer or the appellate authority, as the case may be; or he has been refused access to any information requested by him under the RTI Act; or he has not been given a response to a request for information within the time limit specified in the Act; or he has been required to pay an amount of fee which he considers unreasonable; or he believes that the been give incomplete, misleading or false information, he can make a complaint to the Central Information Commission.

4.7.37 Imposition of penalty

As pointed out above, an applicant under the Act has a right to appeal to the Central Information Commission and also to make complaint to the Commission. Where the Central Information Commission at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer has without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished subject to the condition that the total amount of such penalty shall not exceed twenty-five thousand rupees. The Central Public Information Officer shall, however, be given a reasonable opportunity of being heard before any penalty is imposed on him. The burden of proving that he acted reasonably and diligently and in case of denial of a request that such denial was justified shall be on the Central Public Information Officer.

4.7.38 Disciplinary action against CPIO

Where the Central Information Commission at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it may recommend for disciplinary action against the Central Public Information Officer.

4.7.39 Protection for work gone in good faith

Section 21 of the Act provides that 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 Act or any rule made there under. A CPIO should, however, note that it would be his responsibility to prove that his action was in good faith.

4.7.40 Development of programmes etc.

It is expected of each public authority that it would develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged

communities, as to how to exercise the rights contemplated under the Act and ensure timely and effective dissemination of accurate information about their activities. Training of the Public Information Officers and other officers of a public authority is very important for meeting these expectations and effective implementation of the provisions of the Act¹⁹³. The public authorities should, therefore arrange for training or their officers designated as Public Information Officer/First Appellate Authority and other officer who are directly or indirectly involved in the implementation of the provisions of the Act.

4.7.41 Role of the government

Section 26 of the Act enjoins the central government, as also the state governments of the Union of India (excluding J&K), to initiate necessary steps to:

- Develop educational programs for the public especially disadvantaged communities on RTI.
- Encourage Public Authorities to participate in the development and organization of such programs.
- Promote timely dissemination of accurate information to the public.
- Train officers and develop training materials.
- Compile and disseminate a User Guide for the public in the respective official language.
- Publish names, designation postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc.

4.7.42 Constitutional avenues remain open

Under the Act, where a citizen has exhausted the remedy of appeal or second appeal, the finality given to the orders of the commissioners and appellate authorities is only for the purposes of the Act and the citizen has a right to approach the High Court under Art. 226 or where it refers to a fundamental right, he may even approach the Supreme Court under Art. 32.

¹⁹³ M. M. Ansari, Impact of Right to Information on Development: A Perspective on India's Recent Experiences, United Nations Educational Scientific and Cultural Organization, 2008. <<http://unesdoc.unesco.org/images/0018/001865/186510m.pdf>>

4.7.43 How to use Right to Information Act

The full Act in Hindi and English is available on the website of Department of Personnel and Training- www.persmin.nic.in. The application under the Act has to be filed with the PIOs & APIOs. A person seeking information shall submit the application with the PIO or the APIO of the concerned department.

4.8 Salient features of Right to Information Act, 2005

Specifically, the main objectives of the law on RTI are: to operationalise the fundamental right to information; to set up systems and mechanisms that facilitate people's easy access to information; to promote transparency and accountability in governance; to minimize corruption and inefficiency in public offices and to ensure people's participation in governance and decision making¹⁹⁴. RTI can be said to be based on two main concepts:

- (a) The right of the public to access the information and the corresponding duty of the Government to meet the request, unless specifically defined exemptions apply;
- (b) The duty of the Government to proactively provide certain key information even in absence of a request.

The RTI Act, 2005 basically has two parts- (a) substantive law and (b) procedural law. Section 3 coupled with some other provisions like Secs. 8, 9, 18, 19 and 20 of the Act deal with substantive law while Sec.6 along with some other provisions like Sec.7 of the Act deal with procedural law. Thus the Act is a code in itself.¹⁹⁵ Following are some of the main features which make this legislation a positive step towards the realization of tenets that have been conceived by the founding fathers of the Constitution.

1. RTI empowers every citizen to:
 - a. Ask any question from the government or seek any information.
 - b. Take copies of any government document and inspect any document.
 - c. Inspect any government works.
 - d. Take samples of material of any government work.
2. One can seek information from any department of the central and state

¹⁹⁴ M. M. Ansari (Information Commissioner), Impact of Right to Information on Development: A Perspective on India's Recent Experiences, An invited lecture delivered at UNESCO Headquarters, Paris, France, on May 15th, 2008.

¹⁹⁵ Dr. Niraj Kumar, Treatise on Right to Information Act, 2005, 530 (First edition, 2007).

government, from panchayati raj institutions and from any other institutions that is under the control of central or State government.

3. In each department at least one officer is designated as public information officer (PIO). He or she accepts the request forms and provides information sought by people.
4. In each sub-district/divisional level there are assistant public information officers (APIOs).
5. Any person seeking information should file an application in writing or through electronic means in Hindi or English along with applicable fees with the PIO or APIO¹⁹⁶.

4.9 Impact of the New Law

Now that the statute requires information about the pendency of the applications, reasons as to why they are not disposed of or the reasons behind the rejection of an application, there is bound to be improvement in the efficiency of the departments. As of now, the only supervision of efficiency is supervision that is made by the superior officers at the time of reviewing the employees' work and while recording comments in the annual confidential reports or ACRs. This process has not proved successful and though it may be continued, still the threat of a Designated official calling for the relevant information at the instance of a citizen will be a salutary check on the inefficiency of officers. It also checks lethargy or bad faith or corrupt motives.

Another important aspect is that in India we have not given respect and prominence to the rights of the individual Citizen. True democracy is impossible until we recognize the majesty of the individual Citizen. If individual Citizens are empowered to ensure greater accountability and transparency in governance, it can bring about a major change. There has been no vehicle available for individual citizens to impact the governance structure. In a system reeking with corruption and becoming increasingly insensitive to the problems of the disadvantaged Citizenry, the Right to Information has shown promise of empowering Citizens to get accountability and act as an enforcer of good governance¹⁹⁷.

¹⁹⁶ Tarakanta Mohanty, Provisions and Salient Features of the Right to Information Act, 2005, Orissa review*

¹⁹⁷ Sharma, S. D. (2012) Right to information implementation problems and solution, Neha Publishers & Distributors

The overall impact of these decisions has been to establish clearly that the right to freedom of information or the public's right to know, is embedded in the provisions guaranteeing fundamental rights in the Constitution. Various Indian laws provide for the right to access information in specific contexts. Section 76 of the Indian Evidence Act, 1872, contains what has been termed a 'Freedom of Information Act in embryonic form'. This provision requires public officials to provide copies of public documents to anyone who has a right to inspect them. The Factories Act, 1948, provides for compulsory disclosure of information to factory workers regarding dangers including health hazards and the measures to overcome such hazards, arising from their exposure to dangerous materials. While this is an excellent provision, in practice it is violated with impunity. The Environment (Protection) Act 1986 and the Environmental Impact Assessment Regulations provide for public consultation and disclosure in various circumstances.

4.10 Guide for the Public Authority

Public authorities are the repository of information which the citizen have right to have under the Right to Information Act, 2005. As defined in the Act, a Public authority is any authority or body or institution of self-government established or constituted by or under the Constitution; or by any other law made by the Parliament or a State Legislature; or by notification issued or order made by the Central Government or a State Government. Bodies owned, controlled or substantially financed by the Central Government substantially financed by the Central Government or State Government also fall within the definition of public authority. The financing of the body or the NGO by the Government may be direct or indirect¹⁹⁸.

The Act casts important obligation on public authorities so as to facilitate the citizens or the country to access the information held under their control. The obligations of the authority are basically the obligations of the head of the authority, which should ensure that these are met in right earnest. Reference made to public authority in this document is, in fact, a reference to the head of the public authority¹⁹⁹.

4.11 Guideline for Public Information Officers (PIO)

The Public Information Officer of a public authority plays a pivotal role in making the right of citizens to information a reality. The Act casts specific duties on him and makes

¹⁹⁸ Guide on Right to Information Act, 2005, Government of India. <<http://rti.gov.in/RTICorner/Guideonrti.pdf>>

¹⁹⁹ Sahai, Nandini and Rajgadia, Vishnu (2008) Book on RTI, Published by UNESCO, FES-India and MICCI

him liable for penalty in case of default. It is therefore, essential for a Public Information Officer to study the Act carefully and understand its provisions correctly. Besides the issues discussed elsewhere in this document, a Public Information Officer should keep the following aspects in view while dealing with the applications under the Act²⁰⁰.

Section 6(1) of the RTI Act, 2005 provides that a person who desires to obtain any information shall make a request to the PIO of the concerned public authority. Section 6(3) provides that where an application is made to a public authority requesting for any information which is held by another public authority or the subject matter of which is more closely connected with the functions of another public authority. the public authority to which such an application is made, shall transfer the application to that other public authority. The provisions of Sub-section (1) and Sub-section (3) of Section 6, suggest that the Act requires an information seeker to address the application to the Public Information Officer of the 'concerned public authority'. However, there may be cases in which a person of ordinary prudence may believe that the information sought by him/her would be available with the public authority to which he/she has addressed the application, but is actually held by some other public authority. In such cases, the applicant makes a bonafide mistake of addressing the application to the Public Information Officer of a wrong public authority. On the other hand where an applicant addresses the application to the Public Information Officer of a public authority, which to a person of ordinary prudence, would not appear to be the concern of that public authority. the applicant does not fulfill his responsibility of addressing the application to the 'concerned public authority'.

Given here in under are some situations which may arise in the matter and action required to be taken in such cases:

- (i) A person makes an application to a public authority for some information which concerns some another public authority. In such a case, the Public Information Officer receiving the application should transfer the application to the concerned public authority under intimation to the applicant. However, if the Public Information Officer of the public authority is not able to find out as to which public authority is concerned with the information even after making reasonable efforts to find out the concerned public authority, he should inform the applicant that the information is not available with his public authority and that he is not aware of the particulars of the concerned public authority to which

²⁰⁰ Guide on Right to Information Act, 2005 (2009) Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training

the application could be transferred. It would, however, be the responsibility of the PIO, if an appeal is made against his decision, to establish that he made reasonable efforts to find out the particulars of the concerned public authority.

- (ii) A person makes an application to a public authority for information, only a part of which is available with that public authority and a part of the information concerns some 'another public authority.' In such a case, the Public Information Officer should supply the information concerning his public authority and a copy of the application should be sent to that another public authority under intimation to the applicant.
- (iii) A person makes an application to a public authority for information, a part of which is available with that public authority and the rest of the information is scattered with more than one other public authorities. In such a case, the Public Information Officer of the public authority receiving the application should give information relating to it and advise the applicant to make separate applications to the concerned public authorities for obtaining information from them. If no part of the information sought, is available with it but is scattered with more than one other public authorities, the Public Information Officer should inform the applicant that information is not available with the public authority and that the applicant should make separate applications to the concerned public authorities for obtaining information from them. It may be noted that the Act requires the supply of such information only which already exists and is held by the public authority or held under the control of the public authority. It is beyond the scope of the Act for a public authority to collect the information from various public authorities to supply it to the applicant. At the same time, since the information is not related to anyone another particular public authority, it is not the case where application should be transferred under Sub-section (3) of Section 6 of the Act. It is pertinent to note that Sub-section (3) refers to 'another public authority' and not to 'other public authorities'. Use of singular form in the Act in this regard is important to note.
- (iv) If a person makes an application to a public authority of Central Government for some information which is the concern of a public authority under any State Government or the Union Territory Administration, the Public Information Officer of the public authority receiving the application should inform the applicant that the information may be had from the concerned State Government/UT Administration. Application, in such a case, need not be transferred to the State Government/UT Administration.

In brief, if the application is accompanied by the prescribed fee or the Below Poverty Line Certificate, the Public Information Officer should check whether the Subject matter of the application or a part thereof concerns some other public authority. If the Subject matter of the application concerns any other public authority, it should be transferred to that public authority. If only a part of the application concerns the other public authority, a copy of the application may be sent to that public authority, clearly specifying the part which relates to that public authority. While transferring the application or sending a copy thereof, the concerned public authority should be informed that the application fee has been received. The applicant should also be informed about the transfer of his application and the particulars of the public authority to whom the application or a copy thereof has been sent. Transfer of application or part thereof, as the case may be should be made as soon as possible and in any case within five days from the date of receipt of the application. If a Public Information Officer transfers an application after five days from the receipt of the application, he would be responsible for delay in disposal of the application to the extent of number of days which he takes in transferring the application beyond 5 days. The Public Information Officer of the public authority to whom the application is transferred, should not refuse acceptance of transfer of the application on the ground that it was not transferred to him within 5 days,

A public authority may designate as many Public Information Officers for it, as it may deem necessary. It is possible that in a public authority with more than one Public Information Officer, an application is received by the Public Information Officer other than the concerned Public Information Officer, In such a case, the Public Information Officer receiving the application should transfer it to the concerned Public Information Officer immediately, preferably the same day. Time period of five days for transfer of the application applies only when the application is transferred from one public authority to another public authority and not for transfer from one Public Information Officer to another in the same public authority.

4.12 Assistance Available to PIO

The Public Information Officer may seek the assistance of any other officer as he or she considers necessary for the proper discharge of his or her duties. The officer, whose assistance is so sought by the Public Information Officer, would render all assistance to him. Such an officer shall be deemed to be a Public Information Officer and would be liable for contravention of any provisions of the Act the same way as any other Public

Information Officer. It would be advisable for the Public Information Officer to inform the officer whose assistance is sought, about the above provision, at the time of seeking his assistance. Some Public Information Officers, on the basis of above referred provision of the Act, transfer the RTI applications received by them to other officers and direct them to send information to the applicants as deemed Public Information Officer. Thus, they use the above referred provision to designate other officers as Public Information Officer. According to the Act, it is the responsibility of the officer who is designated as the Public Information Officer by the public authority to provide information to the applicant or reject the application for any reasons specified in Sections 8 and 9 of the Act. The Act enables the Public Information Officer to seek assistance of any other officer to enable him to provide information to the information seeker, but it does not give him authority to designate any other officer as Public Information Officer and direct him to send reply to the applicant. The import of the provision is that, if the officer whose assistance is sought by the Public Information Officer, does not render necessary help to him, the Information Commission may impose penalty on such officer or recommend disciplinary action against him the same way as the Commission may impose penalty on or recommend disciplinary action against the Public Information Officer.

4.13 Guide for First Appellate Authority

It is the responsibility of the Central Public Information Officer (CPIO) of a public authority to supply correct and complete Information within the specified time to any person seeking information under the RTI Act, 2005. There are possibilities that a CPIO may not act as per provisions of the Act or an applicant may not otherwise be satisfied with the decision of the CPIO. The Act contains provision of two appeals to tide over such situations. The first appeal lies within the public authority by the concerned public authority. The first Appellate Authority happens to be an officer senior in rank to the CPIO. The second appeal lies with the Central Information Commission. The Central Information Commission (Appeal Procedure) The Central Information Commission (Appeal Procedure) Rules, 2005 govern the procedure for deciding appeals by the Central Information Commission. In order to perform his/her duties effectively, the Appellate Authority should study the Act carefully and understand its provisions correctly. This document explains some of the important aspects of the Act which a First Appellate Authority should, in particular, be conversant with.

4.14 Guide for the Central Public Information Officers

The Right to Information Act, 2005 empowers citizens to get information from any Public Authority. The Central Public Information Officer (CPIO) of a public authority plays a pivotal role in making the right of a citizen to information a reality. The casts specific duties on him and makes him liable for penalty in case of default. It is, therefore, essential for a CPIO to study the Act carefully and understand its provisions correctly. Following aspects should particularly be kept in view while dealing with the applications under the Act.

4.15 Guide for the Information Seekers under the Right to Information Act, 2005

Application for seeking information should be made to an officer of the public authority who is designated as Central Public Information Officer (CPIO). All the public authorities have designated their Central Public Information Officer and have posted their particulars on their respective web-sites. This information is also available on the 'RTI PORTAL' (www.rti.gov.in). Persons seeking information are advised to refer to the web-site of the concerned public authority of the 'RTI PORTAL' for ascertaining the name of the concerned CPIO. If it is found difficult to identify or locate the concerned Central Public Information Officer of a public authority, application may be sent to the Central Public Information Officer without specifying the name of the CPIO at the address of the public authority.

A citizen who desires to obtain any information under the Act, should make an application to the Central Public Information Officer (CPIO) of the concerned public authority in writing in English or Hindi or in the official language of the area in which the application is made. The applicant can send the application by post or through electronic means or can deliver it personally in the office of the public authority. The application can also be sent through a Central Assistant Public Information Officer appointed by the Department of Post at sub-divisional level or other sub-district level. It is observed that some applicants seek information in respect of many subjects by way of one application. It creates problem for the Public Information Officer as well as the applicant. The applicant should, therefore, see to it that by way of one application, he seeks information in respect of one Subject only.

4.16 Disposal of the Request

1. The CPIO is required to provide information to the applicant within thirty days of the receipt of a valid application. If the information sought for concerns

the life or liberty of a person, the information shall be provided within forty-eight hours of the receipt of the request. If the CPIO is of the view that the information sought for cannot be supplied under the provisions of the Act, they would reject the application. However, while rejecting the application, he shall inform the applicant the reasons for such rejection and the particulars of the appellate authority. He would also inform the applicant the period with which appeal may be preferred.

2. If an applicant is required to make payment for obtaining information, in addition to the application fee, the Central Public Information Officer would inform the applicant about the details of further fees along with the calculation made to arrive at the amount payable by the applicant. After receiving such a communication from the CPIO, the applicant may deposit the amount by way of cash against proper receipt or by Demand Draft or by Banker's cheque or by Indian Postal Order in favour of the Accounts Officer of the concerned public authority. The CPIO is under no obligation to make available the information if the additional fee intimated by him is not deposited by the applicant.
3. Where an additional fee is required to be paid, the period intervening between the dispatch of the intimation regarding payment of additional fee and payment of fee by the applicant shall be excluded for the purpose of computing the period of thirty days within which the CPIO is required to furnish the information.
4. If the CPIO fails to send decision on the request on the information within the period of thirty days or forty-eight hours, as the case may be, the information may be deemed to have been refused.

4.16.1 First appeal

If an applicant is not supplied information within the prescribed time thirty days or 48 hours, as the case may be, is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the CPIO. Such an appeal, should be filed within a period of thirty days from the date on which the limit of 30 days of supply of information is expired or from the date on which the information or decision of the CPIO is received. The information sought by an applicant should either be supplied to him or his application should be rejected within the time prescribed by the Act. If additional fee need be charged from the applicant, communication in this regard should be sent to him within the time limit prescribed for sending information. If the applicant does not receive information or decision about rejection of request or communication about payment of additional fee within the

specified time, he can make an appeal to the First Appellate Authority. Appeal can also be made if the applicant is aggrieved by the decision of the Public Information Officer regarding supply of information or the quantum of fee decided by the Public Information Officer.

A third party can prefer an appeal to the First Appellate Authority if it is not satisfied with the decision made by the Public Information Officer about disclosure of the information for which it has objected. Such an appeal can be made within thirty days from the date of the receipt of notice from the Public Information Officer to the effect that he proposes to disclose the concerned information. If not satisfied with the decision of the First Appellate Authority, the third party can prefer the second appeal to the Chief Information Commission. The appellate authority of the public authority shall dispose of the appeal within a period of thirty days or in exceptional cases with 45 days of the receipt of the appeal. However, in cases where disposal of appeal takes more than 30 days, the Appellate Authority should record in writing the reasons for such delay.

4.16.2 Second appeal

If the appellate authority fails to pass an order on the appeal within the prescribed period or if the appellant is not satisfied with the order of the first appellate authority, he may prefer a second appeal with the Central Informational Commission within ninety days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant. The appeal made to the Central Informational Commission should contain the following information:-

- i. Name and address of the appellant;
- ii. Name and address of the Central Public Information Officer against the decision of whom the appeal is preferred;
- iii. Particulars of the order including number, if any, against which the appeal is preferred;
- iv. Brief facts leading to the appeal;
- v. If the appeal is preferred against deemed refusal, particulars of the application including number and date and name and address of the Central Public Information Officer to whom the application was made; Prayer or relief sought;
- vi. Grounds for prayer or relief;
- vii. Verification by the appellant; and
- viii. Any other information, which the Commission may deem necessary for deciding the appeal.

The appeal made to the Central Informational Commission should be accompanied by the following documents:

- i. Self-attested copies of the order or documents against which appeal is made;
- ii. Copies of the documents relied upon by the appellant and referred to in the appeal; and
- iii. An index of the documents referred to in the appeal.

4.16.3 Complaints

If any person is unable to submit a request to a Central Public information Officer either by reason that such an officer has not been appointed by the concerned public authority; or the Central Assistant Central Public information Officer has refused to accept his or her application or appeal for forwarding the same to the Central Public information Officer or the appellate authority, as the case may be; or he has been refused access to any information requested by him under the RTI Act; or he has not been given a response to a request for information within the time limit specified in the Act; or he has been required to pay an amount of fee which he considers unreasonable; or he believes that he has been given incomplete, misleading or false information, he can make a complaint to the Central information Commission.

4.16.4 Disposal of appeals and complaints by the CIC

The Central Information Commission decides the appeals and complaints and conveys its decision to the appellant/complainant and first appellate authority (CPIO)/ Public Information Officer. The Commission may decide an appeal/complaint after hearing the parties to the appeal/complaint or by inspection of documents produced by the appellant/complainant and Public Information Officer or such senior officer of the public authority who decided the first appeal. If the Commission chooses to hear the parties before deciding the appeal or the complaint, the Commission will inform the date of hearing to the appellant or the complainant at least seven clear days before the date of hearing. The appellant/complainant has the discretion to be present in person or through his authorized representative at the time of hearing or not to be present. Deciding appeals under the RTI Act is a quasi-judicial function. It is, therefore, necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at²⁰¹.

²⁰¹ Analysis of Judgments of the Central Information Commission on the Right to Information Act, 2005 (2007) PRIA, New Delhi

If an appellate authority while deciding an appeal comes to a conclusion that the appellant should be supplied information in addition to what has been supplied by the Public Information Officer, he may either (i) pass an order directing the Public Information Officer to give such information to the appellant; or (ii) he himself may give information to the appellant. In the first case the appellate authority should ensure that the information ordered by him to be supplied is supplied to the appellant immediately. It would, however, be better if the appellate authority chooses the second course of action and he himself furnishes the information along with the order passed by him in the matter. If, in any case, the Public Information Officer does not implement the order passed by the appellate authority and the appellate authority feels that intervention of higher authority is required to get his order implemented, he should bring the matter to the notice of the officer in the public authority competent to take action against the Public Information Officer. Such competent officer shall take necessary action so as to ensure implementation of the provisions of the RTI Act.

4.16.5 Important web-sites

Given below are the addresses of some important web-sites which contain substantial information relevant to the right to information:

- i. Portal of the Government of India (<http://indiainimage.nic.in>).
- ii. Portal on the Right to Information (www.rti.gov.in).
- iii. Website of the Central Information Commission (<http://cic.gov.in>)

4.16.6 Exempted Organisations

The List of 22 exempted organizations is given below:

- Intelligence Bureau, Ministry of Home Affairs
- Directorate of Revenue Intelligence, Ministry of Finance
- Central Economic Intelligence Bureau, Ministry of Finance
- Directorate of Enforcement, Ministry of Finance
- Narcotics Control Bureau
- Aviation Research Centre
- Special Frontier Force
- Border Security Force, Ministry of Home Affairs
- Central Reserve Police Force, Ministry of Home Affairs
- Indo-Tibetan Border Police, Ministry of Home Affairs

- Central Industrial Security Force, Ministry of Home Affairs
- National Security Guard, Ministry of Home Affairs
- Research & Analysis Wing of The Cabinet Secretariat
- Assam Rifles, Ministry of Home Affairs
- Sashastra Seema Bal, Ministry of Home Affairs
- Special Protection Group
- Defence Research and Development Organisation, Ministry of Defence
- Border Road Development Organisation
- Financial Intelligence Unit, India
- Directorate General Income Tax (Investigation)
- National Technical Research Organisation
- National Security Council Secretariat

4.16.7 Supply of information to Associations etc.

The RTI Act gives the right to information only to the citizens of India and not to corporations, associations or companies - which have been filing RTIs in vain. They are legal entities or persons, but not citizens²⁰². However, if an application is made by an employee or office bearer of any Corporation, Association, Company, NGO etc. indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation etc.

4.16.8 Record retention schedule and the Act

The Act does not require the public authorities to retain records for indefinite period. The records need be retained as per the record retention schedule applicable to the concerned public authority. Information generated in a file may survive in the form of an OM or a letter or in any other form even after destruction of the file/record. Section 8(3) of the Act requires furnishing of information so available after the lapse of 20 years even if such information was exempt from disclosure under Sub-section(1) of Section 8.

²⁰² Aman Sharma Right to Information not for research: Government, ET 30th, Nov, 2013, <http://economictimes.indiatimes.com/news/politics-and-nation/right-to-information-not-for-research-government/articleshow/26599579.cms>

4.16.9 Publication of facts about policies and decisions

Public authorities formulate policies and take various decisions from time to time. As provided in the Act, while formulating important policies or announcing the decisions affecting the public, the public authority should publish all relevant facts about such policies and decisions for the information of public at large.

4.16.10 Compliance of the orders of the Information Commission

While deciding an appeal, the Information Commission, may require the concerned public authority to take such steps as may be necessary to secure compliance with the provisions of the Act. In this regard the Commission may pass an order to provide information to an applicant in a particular form; appoint a Public Information Officer; publish certain information or categories of information: make necessary changes to its practices in relation to the maintenance, management and destruction of records; enhance the provision of training for its officials; provide an annual report as prepared in compliance with clause (b) of Sub-section (1) of Section 4 of the Act.

The Commission has power to pass orders requiring a public authority to compensate the complainant for any loss or other detriment suffered by him. It also has power to impose penalty on the Public Information Officer as provided in the Act. It may be noted that penalty is imposed on the Public Information Officer which is to be paid by him. However, the compensation, ordered by the Commission to be paid to an applicant would have to be paid by the public authority. The decisions of the Commission are binding. The public authority should ensure that the orders passed by the Commission are implemented. If any public authority or a PIO is of the view that an order of the Commission is not in consonance with the provisions of the Act, it may approach the High Court by way of a Writ Petition.

4.16.11 Development of programmes etc.

It is expected of each public authority that it would develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities, as to how to exercise the rights contemplated under the Act; and ensure timely and effective dissemination of accurate information about their activities. Training of the Public Information Officers and other officers of a public authority is very important for meeting these expectations and effective implementation of the provisions of the Act. The public authorities should, therefore, arrange for training of their officers designated as Public Information Officer/First Appellate Authority and other officers who are directly or indirectly involved in the implementation of the provisions of the Act. I

4.16.12 Creation of central point

Sub-section (1) of Section 5 of the Right to Information Act, 2005 mandates all public authorities to designate as many Public Information Officers as necessary to provide information under the Act. Where a public authority designates more than one Public Information Officer (PIO), an applicant is likely to face difficulty in approaching the appropriate Public Information Officer. The applicants would also face problem in identifying the officer senior in rank to the Public Information Officer to whom an appeal under Sub-section (1) of Section 19 of the Act can be made²⁰³. Therefore all public authorities with more than one PIO should create a central point within the organisation where all the RTI applications and the appeals addressed to the First Appellate Authorities may be received. An officer should be made responsible to ensure that all the RTI applications/appeals received at the central point are sent to the concerned Public Information Officers/Appellate Authorities, on the same day.

4.16.13 Annual Report of the CIC

The Information Commissions, after the end of each year, are required to prepare reports on the implementation of the provisions of the Act during that year. Each Ministry or Department is required, in relation to the public authorities within its jurisdiction, to collect and provide information to the concerned Information Commission for preparation of the report. The report of the Commission, *inter-alia*, contains following information in respect of the year to which the report relates-

- (a) the number of requests made to each public authority;
- (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of the Act under which these decisions were made and the number of times such provisions were invoked;
- (c) particulars of any disciplinary action taken against any officer in respect of the administration of the Act;
- (e) the amount of charges collected by each public authority under the Act: and
- (f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of the Act.

Every public authority should send necessary material to its administrative Ministry/Department soon after the end of the year so that the Ministry/Department

²⁰³ Information Handbook Under Right to Information Act 2005, Publications Division Ministry of Information and Broadcasting, Government of India, New Delhi- 110 003

may send the information to the Commission and the Commission may incorporate the same in its report. If it appears to the Information Commission that a practice of a public authority in relation to the exercise of its functions under the Act does not conform with the provisions or spirit of the Act, it may give a recommendation to the authority specifying the steps ought to be taken for promoting such conformity. The concerned public authority should take necessary action to bring its practice in conformity with the Act.

In India, RTI Act was introduced in 2005 and since then this law has proved to be a strong weapon in the hands of people, for ensuring transparency in government departments and containing corruption. India's RTI Act is generally claimed as one of the world's best law with an excellent implementation track record. It is one of the most empowering and most progressive legislations passed in the post Independent India. From the day the Act came into force, enlightened citizenry had started using the law by making information requests in order to get the police to act or get their entitlements of food grain under public distribution system or expose the corrupt officials.

Most radical provision of the Act is that the information seeker need not to give any reason for it or prove his *locus standi*. In an effort to make the Right to Information (RTI) Act more effective, the government has issued guidelines to streamline *suo moto* disclosure by Central Government Ministries/Departments and Public Authorities under the 2005 Act. Some information seekers request PIOs to cull out information from document(s) and give such extracted information to them. A citizen has a right to get material from a public authority, however, the Act does not require the PIO to deduce some conclusion from the material and supply it to the applicant.

PIOs are not supposed to create information that is not a part of the record of the public authority. The PIO is also not required to furnish information which require drawing of inference and/or making of assumptions; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions, stressing only such information can be supplied that is available and existing. The citizens should not list out their grievances in the RTI plea and rather be more specific on what information they need to avoid ambiguity. Instead of simply asking why my area is not being cleaned, cleaning schedule of the area should be asked. Similarly, instead of asking when we will get water supply, water supply planning of the area should be asked.²⁰⁴ Section 26 of the RTI Act requires the Government to

²⁰⁴ Aman Sharma Right to Information not for research: Government, ET 30th, Nov, 2013, <http://economictimes.indiatimes.com/news/politics-and-nation/right-to-information-not-for-research-government/articleshow/26599579.cms>

compile a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in the Act. Further, it requires the Government to update the guide at regular intervals.

4.17 RTI: A Response to Paradigm Shift in Development Approach

Of the major forces which have, of late, led to a re-thinking on issues that affect economic development, at least three of them are most important. These are:

- (i) sharing of knowledge and communication strategies for dissemination of information;
- (ii) involvement of NGOs in designing of policies and implementation of schemes; and
- (iii) adoption of citizen centric approach to development.

The brief outline of the significance of these factors, particularly in the context of the emerging development scenario has been described below.

4.17.1 Democratization of information and knowledge

Information and knowledge are critical for realizing all the human aspirations, such as, improvement in quality of life. In the knowledge society, in which we live today, acquisition of information and knowledge and its application have intense and pervasive impact on productivity gains. People who have access to information and who understand how to make use of the acquired information in the processes of exercising their political, economic and legal rights become empowered, which, in turn, enable them to build their strengths and assets.

In view of this, almost every society has made endeavours for democratizing knowledge resources by way of putting in place the mechanisms for free flow of information and ideas so that people can access them without asking for it. They are thus empowered to make proper choices for participation in development process. The efforts made thus far to disseminate information and knowledge through the use of communication technologies such as radio and television, have yielded positive results. Sharing of information, for instance, about the new techniques of farming, health care facilities, hazards of environmental degradation, opportunities for learning and earning, legal remedies for combating gender biases, etc., have, overtime, made significant contributions to the wellbeing of poor people. Every individual or section of the society, whether working in farm, industrial or services sectors, requires a wide

range of information to be able to effectively function in the knowledge and technology driven economy. Democratisation of information and knowledge, by way of creating conditions for sharing among the people, who are partners in development, is critical to the task of equalising opportunities for development. In view of this, the RTI seeks to set up the facilitation process for free flow of information, which forms the basis for a healthy debate on issues of vital importance to every section of the society.

4.17.2 Increasing demand by NGOs for participation in development activities.

In the backdrop of inefficient implementation of development programmes, the NGOs/self-help groups have demanded at various forums, for creating conditions for democratic governance. It has been alleged and that not without a basis, that the implementing agencies have frequently indulged in corrupt practices leading to diversion of resources from public use to private purposes. And, that the entitlements of the poor have not been assured, mainly in respects of food grains, jobs, health care facilities, basic education, etc. Poverty of all forms has thus been perpetuated, which is a major drag on the overall development of the country. There are umpteen numbers of cases which demonstrate that the role of NGOs in exposing corruption and in providing necessary feedback for designing policies and effective implementation of the programmes has been commendable. For instance, NGOs have exposed the inclusion of fictitious names in the list of beneficiaries, under the schemes like subsidised food grains, employment guarantee scheme for poor, domestic gas (LPG), medicines, reservation of seats in private schools for the children from the poor families, etc. Prior to the implementation of RTI Act 2005, at least eight Indian States had enacted the laws on freedom of information since 1997. People, in these states took recourse to the various provisions of transparency norms to obtain information held by the public bodies. The NGOs also conducted social audits of the schemes, particularly the poverty alleviation programmes, the outcomes of which have resulted in appropriate reforms in governance of the projects. This forms the basis for replicating these experiences throughout the country. In view of commendable contributions of NGOs in carrying out the programmes in partnership with the public bodies, the RTI Act has envisaged for providing a framework for promoting interface between the citizens and the Government, such that informed decisions could be taken at all levels by the functionaries of the governments. And, the projects should be executed under the sunshine to allow for reasonable scrutiny by the citizens.

4.17.3 Citizen-centric approach to development

An equally important concern of the development planners has been to evolve Citizen Centric Approach to development, as people live in diverse socioeconomic and geographic conditions. The approach to fit for all sizes, particularly in respect of poverty alleviation programmes, has failed. Without obtaining necessary feedback from the people about their socio-economic aspirations and the manner in which the accepted goals are to be realized, it is not possible to design and implement schemes that may eradicate poverty and liquidate illiteracy. The RTI therefore empowers every citizen to take charge of his life and make proper choices, on the basis of freely available information and knowledge, for effective participation in political and economic processes or activities. Briefly, RTI has been implemented in response to the major challenges of development, mainly the urgency for democratisation of information and knowledge which are vital for equalizing opportunity for development, increasing NGOs participation in decision making and democratic governance and for evolving citizen-centric approaches for addressing the concerns of every member of the society. In the following paragraphs, an attempt is made to present the salient features of the Act and to examine the extent to which the stated objectives of the RTI Act are realized²⁰⁵.

4.18 Purposive Interpretation

Some High Courts have held that Section 8 of RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that therefore Section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore when Section 8 exempts certain information from being disclosed, it should not be

²⁰⁵ Ansari M. M. 2008, Impact of Right to Information on Development: A Perspective on India's Recent Experiences, (An invited lecture delivered at UNESCO Headquarters, Paris, France, on May 15th, 2008)

considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfillment and preservation of democratic ideals.

When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualize and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act that is Section 8 of Freedom to Information Act, 2002. The Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonizes the two objects of the Act, while interpreting Section 8 and the other provisions of the Act.

4.19 Misconceptions about RTI Act

At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of Section 3 and the definitions of 'information' and 'right to information' under Clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analyzed data or abstracts or statistics, an applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in Section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

4.20 Powers of Commission

Section 19(8) of RTI Act has entrusted the Central/State Information Commissions, with the power to require any public authority to take any such steps as may be necessary to secure the compliance with the provisions of the Act. Apart from the generality of the said power, Clause (a) of Section 19(8) refers to six specific powers, to implement the provision of the Act.

- (i) Sub-clause (i) empowers a Commission to require the public authority to provide access to information if so requested in a particular 'form' (that is either as a document, micro film, compact disc, pen drive, etc.). This is to secure compliance with Section 7(9) of the Act.
- (ii) Sub-clause (ii) empowers a Commission to require the public authority to appoint a Central Public Information Officer or State Public Information Officer. This is to secure compliance with Section 5 of the Act.
- (iii) Sub-clause (iii) empowers the Commission to require a public authority to publish certain information or categories of information. This is to secure compliance with Section 4(1) and (2) of RTI Act.
- (iv) Sub-clause (iv) empowers a Commission to require a public authority to make necessary changes to its practices relating to the maintenance, management and destruction of the records. This is to secure compliance with Clause (a) of Section 4(1) of the Act.
- (v) Sub-clause (v) empowers a Commission to require the public authority to increase the training for its officials on the right to information. This is to secure compliance with Sections 5, 6 and 7 of the Act.
- (vi) Sub-clause (vi) empowers a Commission to require the public authority to provide annual reports in regard to the compliance with Clause (b) of Section 4(1). This is to ensure compliance with the provisions of Clause (b) of Section 4(1) of the Act.

The power under Section 19(8) of the Act however does not extend to requiring a public authority to take any steps which are not required or contemplated to secure compliance with the provisions of the Act or to issue directions beyond the provisions of the Act. The power under Section 19(8) of the Act is intended to be used by the Commissions to ensure compliance with the Act, in particular ensure that every public authority maintains its records duly catalogued and indexed in the manner and in the form which facilitates the right to information and ensure that the records are computerized, as required under Clause (a) of Section 4(1) of the Act; and to ensure

that the information enumerated in Clauses (b) and (c) of Sections 4(1) of the Act are published and disseminated and are periodically updated as provided in Subsections (3) and (4) of Section 4 of the Act. If the 'information' enumerated in Clause (b) of Section 4(1) of the Act are effectively disseminated (by publications in print and on websites and other effective means), apart from providing transparency and accountability, citizens will be able to access relevant information and avoid unnecessary applications for information under the Act.

4.21 Frivolous Petitions

The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under Clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information, (that is information other than those enumerated in Section 4(1)(b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments, etc.). Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing 'information furnishing', at the cost of their normal and regular duties.

The Indian democracy is going through a new phase. It is difficult to hypothesize about a real democracy without good governance, transparency and responsibility. Right to information has made all these possible. It has brought the common citizen into a new democratic role where he can directly question the administration. The Right to Information Act 2005 has provided us the right to get information from the government. The legislation on RTI can act like an antidote to vested interests which try to conceal or misinterpret information or which try to manipulate the media directly or indirectly to plant misinformation. Through the RTI Act transparency in public, professional, social and personal sphere can be achieved²⁰⁶.

The Central Government, by notification in the Official Gazette, constituted a body to be known as the Central Information Commission to exercise the powers conferred on and to perform the functions assigned to, it under this Act. RTI Act confers right to access to information held by a Public Authority. The decision of Central and State Information Commissions have paved the way for true implementation of RTI in favour of citizen of India. In case, information seekers have been denied the access to information you may file Appeal / Complaint before the Central Information Commission (CIC). The next chapter describes in details the power and function of CIC and appeal/complaints disposed by Central Information Commission under RTI.

²⁰⁶ Dr. S. K. Tiwari Right to Information: An Important Tool of Social Development, Good Governance and Strong Democracy Global Media Journal - Indian Edition Winter Issue / December, 2010

CENTRAL INFORMATION COMMISSION

The Central Information Commission, constituted in accordance with provisions of Section 12 of the RTI Act, has the responsibility to adjudicate appeals/complaints filed by information seekers, dissatisfied with either non-response and/ or vague, misleading incorrect responses from Public Authorities. A number of landmark judgments under the ambit of RTI Act were delivered by the Central Information Commission (CIC). This is by and large the popular perception about the role of the Commission. However, the Commission is also responsible for monitoring the status of implementation of the Act by Public Authorities in its entirety. Besides, taking proactive measures towards generating awareness among stakeholders about the provisions as well as objective of the Act. It also helps Public Authorities in their endeavors relating capacity building of their functionaries; besides helping them understand nuances of the law in order to make them effective change agents in the process of governance by adopting the principles of transparency and accountability.

There are many quasi-judicial functions performed in our country. There are several institutions or officials, including the Election Commission and District Collectors who perform quasi-judicial functions. Where there is inconsistency between the law/rule and the RTI Act in terms of access to information, then Section 22 of the RTI Act shall override the said law/rule and the PIO would be required to furnish the information as per the RTI Act only. Parliament had consciously inserted this clause to ensure that the RTI Act is simple to use and can be accessed by ordinary citizens, without the trappings of a legally perfect process, which does not deliver to the poorest citizen²⁰⁷.

5.1 Decision of Central Information Commission

With a view to maximize disposal of appeals and complaints filed by information seekers, the Commission decided to fix a benchmark; and accordingly every Information Commissioner was expected to dispose approximately 3200 appeals/complaints in a year. It was envisaged that this approach would help resolve the problem of pendency regarding ever increasing number of appeals and complaints. A Statement on Receipt/

²⁰⁷ RTI Act (s) and CIC Decisions (2006) Divya Jyoti Industries

Disposal of Appeal/Complaints, by individual ICs and CIC during 2008-09 to 2011-12 is given in Table 5.1 below:

Table 5.1: Statement on Receipt/Disposal Appeal/Complaints, by individual ICs & CIC during 2008-09 to 2011-12

Year	No of Registration	No of Disposal	Pending
2008-09	15426	13322	2104
2009-10	22800	19482	3318
2010-11	28875	24071	4804
2011-12	33922	23112	10810
2015-16 estimated	62736	33000	29736

(Source: CIC website)

The important decision taken on Appeal/Complaints by Information Commission and Central Information Commission under the Right to Information Act is described below:

5.1.1 Penalisation for filing 100 RTI applications

A man from Andhra Pradesh who has been penalised by the State Information Commission for using the RTI a little too frequently. A resident of Navapala village in Anantapur district, dashed off over 100 RTI applications, all directed to the agriculture department, over the past few years seeking extensive information about its operations, schemes and benefits extended to poor farmers. The information sought is of no public interest and voluminous.

5.1.2 File notings

Many Public authorities are denying file notings on the basis of information placed on the DoPT website www.righttoinformation.gov.in despite the fact that the RTI Act, 2005 does not exempt file notings from disclosure. The commission therefore directed the Public Authorities (PAs) to furnish the file notings and the concerned ministry to remove the said portion from its website²⁰⁸.

5.1.3 Language under Section 2 (f)

Jai Kumar applied to Delhi Development Authority asking for information in Hindi as he has applied to the PIO in Hindi. The CIC directed the DDA to provide the requested information in Hindi within 25 days of the issue of its decision²⁰⁹.

²⁰⁸ CIC/OK/A/2006/00154 of 13th, July, 2006

²⁰⁹ CIC/WB/A/2006/00117 –

5.1.4 Citizen under Section 3

PIO can decline information under Section 3, if the applicant applies as a Managing Director of a company and not a citizen if India²¹⁰.

5.1.5 Address of the Requester

The Commission could not agree with the PIO's contention that the information was sought on behalf of an institution. The Appellant has applied in his own name and has only given his address and that of an NGO for the purpose of correct delivery of post. Thus merely giving the address of an NGO does not imply that the institution was asking the information²¹¹.

5.1.6 Applicant seeking opinions of the Authorities

The PIO is required to 'provide information' which is available in any form with her office rather than giving her personal opinions on the questions asked by the requester²¹².

5.1.7 Drafting an application

Appeal should be drafted in a simple and direct manner and must be brief. It must not be unnecessarily long, too details and legalese with several repetitions. No fresh grounds for information can be allowed to be urged at appellate levels unless found to be of a nature that would warrant their admittance, if the same has not been brought up at the primary level i.e. PIO level²¹³.

5.1.8 Life and liberty under Section 7(1)

Matter to be treated as one of life and liberty would require the following:

- (i) The application is accompanied with substantive evidence that a threat to life and liberty exists.
- (ii) Agitation with use of nonviolence must be recognized as a bonafied form of protest and therefore even if the claim of concern for life and liberty is not accepted, in a particular case by the public authority, the reasons for not doing so must be given in writing in disposing the application²¹⁴.

²¹⁰ CIC/OK/A/2006/00121 – 27th, June, 2006

²¹¹ CIC/OK/A/2006/00050 – 3rd, July, 2006

²¹² CIC/MA/A/2006/00150 – 19th, June, 2006

²¹³ CIC/OK/A/2006/00 069 of 18.05.2006 & CIC/AT/A/2006/00128 of 13.07.2006

²¹⁴ CIC/WB/C/2006/00066 of 19.04.2006

5.1.9 Review of a decision

A review is permissible only if

- There is a technical error in the decision
- There was an omission to consider certain material facts relevant for the decision
- Appellant was not given opportunity to be heard
- IO has not enclosed relevant supporting documents in his comments to CIC²¹⁵.

5.1.10 Order appointing the examiners

PIO of the Delhi University was directed to supply the certified copies of the orders appointing the examiners and of the files dealing with his application re-totaling of marks of the applicant²¹⁶.

5.1.11 Ministerial staff liable of penalty

It is clear from the above that the errant officials are functioning at the clerical level in the office of the PIO, Shri Meena. Whereas under Section 5(5), an officer does not himself have to be designated as a PIO/ APIO to be liable for penalty for contravention of the provisions of this Act, officials functioning even at the clerical level and above category of Class-IV will be deemed to be officers in the application of this Act. In the normal course, therefore, they would be liable to penalty under Section 5(5) if their assistance had been sought under Section 5(4) of the Act. In this case, therefore, as already held, they cannot plead exemption from application of this provision²¹⁷.

5.1.12 Reasons for rejection of requests

Through this order the commission now wants to send the message loud and clear that quoting provisions of Section 8 (1) of the RTI Act, 2005 ad-libitum to deny the information without giving any justification or grounds as to how these provisions are applicable is simply not acceptable and clearly amounts to malafied denial of legitimate information attracting penalties under Section 20(1) of the act²¹⁸.

²¹⁵ 1/2006- 16.5.06

²¹⁶ CIC/OK/A/2006/00051 of 04.07.2006

²¹⁷ Adjunct to CIC/ WB/C/2006/00018 of 28.9.2006

²¹⁸ CIC/Ok/A/2006/00163 of 07th, July, 2006

5.1.13 Personal Discussion with the Requester

If there was general confusion regarding the kind of information that has been called for and that could have been supplied, it could have been easily resolved by a personal sitting between the appellant and the respondents^{219,220}.

5.1.14 Due diligence under Section 20 (1)

If the time limit could not be adhered to by CPIO, then applicant should be taken in to confidence and periodical progress be apprised to him²²¹. It may have been lot better if the CPIO had kept the complainant periodically informed about the stages of the processing of his case and taken him into confidence about the possibility of some delay²²².

5.1.15 Answer sheets

In case of evaluated answer papers the information is available in fiduciary relationship with the PAs & is exempted under Section 8(1) (e). in addition when a candidate seeks for the copy of his /her own or others, it is purely a personal information which has no relationship with any public interest or activities and exempted under Section 8(1)(j) of the act. We, as a commission, are not satisfied that larger public interest justifies disclosure of such information. As a matter of fact, we are of the opinion that furnishing copies of the evaluated answer papers would be against the public interest and supply of them would compromise the fairness and impartiality of the selection process²²³.

5.1.16 Cut-off marks

The commission has directed the Staff Selection Commission to furnish the mark sheets (for written examination as well as interview) to the candidates along with cut-off marks for different categories of candidates²²⁴.

5.1.17 Marks secured by the candidates

A division bench has decided that the conduct of examinations are for identifying and short listing the candidates in term of technical competence, the right attitude is highly

²¹⁹ CIC/WB/A/2006/00180 – 05th, July 2006

²²⁰ Puri V. K. (2007) Digest of CIC Decisions Under The RTI Act, Volume 1 (2006-2007), A JBH Publications

²²¹ CIC/AT/A/2006/00031 of 10th, 2006.

²²² CIC/AT/A/2006/00066

²²³ ICPB/A-2/CIC/2006 of 06.02.2006.

²²⁴ 180/IC (A)/2006 of 17.08.2006

confidential activities and therefore answer sheets should not be disclosed. But the marks secured by candidates are not to be kept secret and should be disclosed²²⁵.

5.1.18 Annual Confidential Report and privacy under Section 8 (1)(j)

We are of the view that apart from being personal information, ACRs of officers and employees need not be disclosed because they do not contribute to any public interest. It is also possible that many officers may not like their assessment by their superiors to go into the hands of all and sundry. If the reports are good, these may attract envy and if these are bad, ridicule and derision Either way it affects the employee as well as the organization he/she work for. On balance, therefore, confidentiality of this information serves a larger purpose, which far outstrips the arguments for its disclosures²²⁶.

5.1.19 Investigating Officer and privacy

A citizen requested from the RBI certain information relating to the findings of an inspection of the Memon Cooperative Bank Limited, Mumbai, which was conducted on the basis of a complaint filed by him and a copy of the inspection report along with the name(s) of the investigating officers. The CIC directed the RBI to furnish a copy of the inspection report after the due application of Section 10(1) of the Act. Alternatively, the appellant should be provided a substantive response, incorporating major findings of the inspection report and indicating the action taken on the findings of the report. However, the names of the investigating officers may not be revealed as it would not serve any public interest²²⁷.

5.1.20 Bio Data and Medical Records under Section 8 (1)(j)

Bhagwan Chand Saxena asked for copies of the bio data submitted by four candidates at the time of their appointment as Assistant Directors and also copies of their medical reports submitted by the medical authorities declaring these candidates fit or unfit. The CIC held that when a candidate submits his application for appointment to a post in a public authority, the same becomes public document and he can not object to the disclosure on the ground of invasion of privacy and directed the PIO to provide copies of the bio data. As far as medical reports are concerned, they are purely personal to the individuals and furnishing of the copies of medical reports would amount to invasion of privacy of the individuals and need not be furnished. However, the PIO will disclose

²²⁵ 11/53/2006-CIC of 2.5.2006

²²⁶ CIC/AT/A/2006/00069 of 13.07.2006

²²⁷ 177/IC (A)/2006 – 17th, August, 2006

to the requester the information whether all four candidates had been declared medically fit or not²²⁸.

5.1.21 Travel expenses

Travel expenses were charged to the public account. Disclosure of information cannot be denied on the ground of this being personal information and not a public activity and serves no public interest, etc. Travel has been performed as a part and in discharge of official duties and the records related the same are public records and therefore, a citizen has the right to seek disclosure of the same²²⁹. 63/IC (A)/2006 – 30 March 2006

5.1.22 Income Tax returns

Income Tax Returns filed by an assesses are confidential information, which include details of commercial activities and that it relates to the third person. These are submitted in fiduciary capacities. There is no public action involved in the matter. Disclosure is exempted under Section 8 (1)(j).

5.1.23 Annual property returns

Information in annual property return shall be covered by Section 8(1)(j)(h) as well as under Section 11 (1) of the act in some cases and cannot be routinely disclosed. However, the PAs are advised to devise a new format so that only such transaction which may not violate the right to privacy can be separated and disclosed²³⁰.

5.1.24 Period prior to twenty years under Section 8 (3)

Section 8 (3) deals with 'exemption from disclosure of information'. Section 8 (1) specifies classes of information which are exempted from disclosure. What Section 8 (3) stipulates is that the exemption under Section 8 (1) cannot be applied if the information sought related to a period prior to 20 years except those covered in section clauses (a), (c) and (i) of Sub-section 8 (1). In other words, even if the information sought is exempt in terms of other Sub-section (1) of Section 8 and if the same relates to a period 20 years prior to the date of application, then the same shall be provided²³¹.

²²⁸ ICPB/A-9/CIC/2006

²²⁹ 22/IC (A)/2006 – 30th, March, 2006

²³⁰ CIC/AT/A/2006/00134 of 10.7.2006

5.1.25 Third party information

The RTI Act does not give a third party an automatic veto on disclosure of information. The PIO and AA are required to examine the third party's case in terms of provisions of Section 8 (1)(j) or Section 11 (1) as the case may be and arrive at the findings by properly assessing the facts and circumstances of the case. A speaking order should thereafter be passed²³².

5.1.26 Generating/ creating information

In its oft-repeated decisions, the Commission has advised the information seekers that they ought not to seek the views and comments of the CPIO on the questions asked by them. Yet, in the garb of seeking information mainly for redressal of their grievances, applications from requesters are filed. The CPIO's in turn, have also ventured to answer them. Thus, the information seekers as well as providers have erred in interpreting the definition of information. A CPIO of any public authority is not expected to create and generate a fresh, an information because it has been sought by an appellant. The appellant is, therefore, advised to specify the required information, which may be provided, if it exists, in the form in which it is sought by him²³³.

5.1.27 Seeking view/opinions of CPIO

All the concerned parties were heard and it was noted that there was no question of denial of information. The appellant was however not satisfied because he sought opinion of the CPIO through a long list of queries, which is not covered under the definition of information. However, the information, which was clearly specified, was provided to him²³⁴.

5.1.28 Seeking interpretation of rule/ law

Before parting with this appeal, it must be pointed out that this is the first time a party has come up to the Commission asking for interpretation of a given / rules as well as the interpretation of the powers of a quasi-judicial body. As stated in the first appeal, the proper Forum test the order of a Tribunal is as laid down under the appropriate Act or as provided in the Constitution. It would be wholly inappropriate to invoke the provisions of the RTI Act for the interpretation of laws and rules. It should be made

²³¹ 37/ICPB/2006 – 26th, June, 2006

²³² CIC/AT/A/2006/00014 – 22nd, May, 2006

²³³ 278/IC/(A)2006 of 18.09.2006

²³⁴ 69/IC (A)/2006 of 20.06.2006

clear that the laws and rules are themselves information and being in public domain are accessible to all citizens of the country²³⁵.

5.1.29 Form of access under Section 2(f)

If the requested information is not available in electronic form as requested by the requester, it does not have to be created for the appellant²³⁶. If the information is not available in the particular form requested, the citizen may be allowed, if he desires, to inspect the original records at the office and information specifically asked for provided in the form of printouts and photocopies of original documents and records duly certified²³⁷.

5.1.30 Information held under Section 2 (j)

In this case records of the court martial trial were destroyed after a retention period of 10 years under the Army Rule 146. Information did not exist, it was physically impossible to provide it. There is no liability under the RTI Act, 2005 on a public authority to supply non-existent information²³⁸.

5.1.31 Voluntary disclosure under Section 4 (1)(b)

A public authority, is required to make pro-active disclosure of all the relevant information as per provisions of Section 4 (1)(b) unless the same is exempt under the provisions of Section 8 (1). In fact on information regime should be create such that citizens would have easy access to information without making any formal request for it²³⁹.

5.1.32 Record Management under Section 4 (1)(a)

Record management system ought to be improved such that information which is to be disclosed could be easily provided after delineating those that is exempted²⁴⁰.

5.1.33 Consultation between the President and the Supreme Court

The CIC concluded that the entire process of consultation between the President of India and the Supreme Court under article 124(2) is exempted under Section 8(1)(e) and 11(1) of the RTI Act, 2005²⁴¹.

²³⁵ CIC/AT/A/2006/00185 of 18.09.2006

²³⁶ CIC/MA/A/2006/0002 – 27th, June, 2006

²³⁷ 10/01/2005-CIC – 25th, February, 2006

²³⁸ CIC/AT/A/2006/20 – 23rd, March, 2006

²³⁹ 24/IC (A)/2006 – 16th, April, 2006

²⁴⁰ CIC/OK/A/2006/00016- 15.6.06

5.1.34 Public interest and environmental protection

Shri Piyush Mahapatra made two applications on 5 December 2005 at the reception of the Ministry of Environment and Forests seeking information relation to research and testing of a number of GM Crops and studies and allergy/toxicity tests conducted on some GM crops. The CIC held that the Office Superintending of Ministry of Environment and Forests and Department of Biotechnology, both public authorities being part of the regulatory regime are directed to cooperate to supply information sought by the applicant. Both the Ministry of Environment and Forests and Department of Biotechnology have an informative website. Information on research, testing and studies being of public interest may be placed on these as available inconformity with Section 4 (1) to ensure ease of access²⁴².

5.1.35 Public interest and consumer protection

Appellant has made the case of public interest on the grounds of adulteration in distribution of diesel and petrol. He has however not substantiated his point as to how he would prove his allegations on the basis of disclosure of income tax returns filed by the third party. Apparently there is no direct relationship between malpractices of petrol and diesel and income tax returns, which is mainly the basis for seeking information²⁴³.

5.1.36 Compensation to the Applicants

Misbehavior with applicants approaching public authorities under the RTI is not acceptable and is violative of Section 5 (3). In this case the PIO will invite Ms. Dasharathi to visit his office and identify members of his staff who refused to provide her the information. Under Section 19 (8) (b) the public authority will pay Rs. 100 as damages suffered to the applicant Ms. Dasharathi. This may be either directly or through recovery from the erring officials, as deemed appropriate by the PIO²⁴⁴.

5.1.37 Compensation under Section 19(8)(b)

For the first time, the CIC in its decision directed the Central Government Health Scheme, Pune to pay a sum of Rs.5,000 to the appellant Ms. M. N. Trival as compensation and refund her the sum of Rs.60 paid by her as fee for non-application of mind by both the PIO and AA resulted in the appellant's having to interact with PIO and CIC repeatedly causing mental harassment to her²⁴⁵.

²⁴¹ CIC/AT/A/2006/00113 of 10.07.2006

²⁴² CIC/WB/C/2006/00063 and CIC/WB/C/2006/00064 – 30th, May, 2006

²⁴³ 37/IC (A)/2006 – 12th, May, 2006

²⁴⁴ CIC/WB/C/2006/00145 – 10th, August, 2006

²⁴⁵ Decision number 30/ICPB/2006

5.1.38 Penalty under Section 20(1)

Chief Information Commissioner imposed a penalty of Rs. 25,000 on a PIO for a complaint number CIC/WB/C/2006/00040, 5 June, 2006. PIO has failed to appear before the commission on due date and time despite a telephone reminder. Because the burden of proving that he acted reasonably and diligently is on the PIO under Provision II to Sec. 20(1), it is assumed that he has no reasonable cause to show why penalty should not be imposed. Under the aforementioned section of the Act, penalty shall be imposed on any of the following grounds, if the PIO has

- refused to receive an application
- not furnished the information within the time frame specified in Section 7 (1)
- malafidely denied the request for information or knowingly given incorrect information
- obstructed in any manner in furnishing the information

by not supplying some of the information sought by the applicant as found by us in the Decision Notice of 23rd, May, 2006, the PIO is in violation of (b) above and by evading his responsibility to provide the information sought also obstructed the complainant's. he will therefore pay a penalty of Rs. 250 for every day subject to a maximum of Rs. 25,000²⁴⁶.

5.1.39 HOD's failure to assist the Commission

The Commissioner of Municipal Corporation Delhi has failed to assist the Commission, which he was legally bound to do and he also failed to explain as to why the orders of this Commission were not executed. It also appears that he has thereby caused an interruption to the proceedings. He has, therefore, committed offences punishable under Sections 176, 187, 188 and 228 of Indian Penal Code. Now therefore, it is ordered as follows: That the commissioner, MCD shall appear in person on 18 August 2006 at 10:30 AM and show cause (a). as to why he be not prosecuted for committing the said offences and (b). as to why appropriate action be not recommended against him under Section 20(2) of the Right to information Act; and (c). as to why such further action or actions be not taken as this commission may deem fit and proper. He further directed to furnish the names and address of the concerned CPIO(s) who were responsible for not furnishing the information to the appellant so as to enable initiation of appropriate proceedings against them²⁴⁷.

²⁴⁶ CIC/WB/C/2006/00040,

²⁴⁷ CIC/WB/C/2006/00040

5.1.40 Penalty under Section 20(1)

Commission imposed a penalty of Rs. 13,750 on professor Akhtar Majeed, Registrar, Jamia Hamdard, New Delhi. The commission further authorized and requested the Vice Chancellor, Jamia Hamdard, New Delhi to cause the recovery of the amount of penalty from the salary of Professor Akhtar Majeed and remit the amount by demand draft or banker's cheque drawn in favour of Pay and Account Officer, DP&AR, payable at New Delhi, to Shri Pankaj K.P. Shreyaskar, assistant Registrar, Central information Commission, 4th Floor, Block No. IV, Old J.N.U. Campus, New Delhi-110067, by 15 September 2006²⁴⁸.

5.1.41 Penalty of Rs. 25000 imposed

In exercise of powers conferred by Sec. 20(1) of the RTI Act 2005, the Commission imposed a penalty of Rs.25,000/- (Rupees twenty five thousand only) on Shri N. Sundaram, Registrar, BHU for denial of information despite the Commission's clear directions and directs him to remit the penalty by D.D. in favour of the Pay & Accounts Officer, DP&AR, payable at New Delhi, to Shri Pankaj K P. Shreyaskar, Assistant Registrar, CIC, within 15 days of issue of this order. In case of failure, the VC has been authorized to recover the amount from the salary of Shri Sundaram and deposit the amount with CIC on or before 15.11.2006²⁴⁹.

5.1.42 Disciplinary action under Section 20(2)

The CIC recommended disciplinary action against an appellate officer. The appellate authority is not covered under the penal provisions of the Act. But in this case, he clearly failed to uphold the act in the public interest. It was observed that this decision may be sent to public authority to consider disciplinary action under their service rules. CIC/EB/C/2006/00040-24th, April 2006 Commercial Secrets Protected by Law under Section 8(1)(d) and 11(1)A request was received by the Chief Commissioner of Customs for the names of importers and exporters in daily list of import and export which are being published from the custom houses. But a notification No. 128/2004-Cus (NT) dated 19 November 2004 forbids the disclosure of the names requested. The CIC held that the notification containing rules are in the nature of subordinate legislation is appropriate under Section 8(1) (d) of the RTI Act, 2005²⁵⁰.

²⁴⁸ CIC/OK/C/2006/00042-28th, July, 2006

²⁴⁹ CIC/OK/A/2006/00163 of 19.10.2006

²⁵⁰ CIC/MA/A/2006/00012-10th, March, 2006

5.1.43 Contract under Section 8(1)(d)

Ramesh Chand applied to National Institute of Science Communication and Information and sought information on terms of the conditions and their implementation regarding a contract with another firm. The CIC held that a contract with a public authority is not confidential. Offer, completion, quotations, bid, tender, prior to conclusion of a contract can be categorized as trade secret, but once concluded, the confidentiality of such transactions can not be claimed. Any public authority claims exemption must be put to strictest proof that exemption is justifiably claimed. Therefore, this public authority was directed to disclose the list of employees²⁵¹.

5.1.44 PIO can be penalised for not complying orders

In *Krishnanand Tripathi v. Anil Palta*²⁵², the public information officer (PIO) can be penalised for not complying with the orders issued by the Information Commission under the Right to Information (RTI) Act, without obtaining a vacation or stay from a higher forum. While giving this important judgment, it was noted that just as citizens are expected to follow all orders which have the sanction of law, government agencies and their officers are equally bound to abide by the same.

5.1.45 Get information on sub-judice matters under RTI

In *Ashwani Kumar Goel v. RN Sharma*^{253, 254}, CIC states that the matter is sub-judice. The appellate authority has correctly advised that information in question could be obtained through the court, which is examining the matter.

CIC in an order said, I respectfully have to disagree with the earlier decision cited by the appellant since it is per incuriam. This Commission rules that a matter being subjudice cannot be used as a reason for denying information under the Right to Information Act.

5.1.46 PIO cannot deny information sought under RTI citing other rules or law

In *RS Misra v. Mrs. Smita Vats Sharma*²⁵⁵ CIC states that therefore, this Commission respectfully disagrees with the observations of the then Chief Information

²⁵¹ CIC/WB/C/2006/00176-18th, April, 2006

²⁵² CPIO & DIG of BS&FC Delhi Central Bureau of Investigation, New Delhi, **DecisionNo.**CIC/SM/A/2011000293/SG/12346 Adjunct and CIC/SM/C/2011/000783/SG/13313Penalty.

²⁵³ *Ashwani Kumar Goel, v. RN Sharma*, Joint Secretary (Home) & PIO, Govt. of NCT of Delhi. **Decision No.** CIC /WB/A/2008/00838/1777

²⁵⁴ Puri V. K. (2009) Digest of CIC Decisions Under The RTI Act, Volume 2 (2008-2009), A JBH Publications

²⁵⁵ *RS Misra, S- 93, New Palam Vihar, Phase- I, Gurgaon- 122017 v. Mrs. Smita Vats Sharma*, CPIO, Supreme Court of India, New Delhi, **Decision No.** CIC/SM/A/2011/000237/SG/12351

Commissioner and holds that Rule 2, Order XII of the SC Rules appears to impose a restriction on access to information held by or under the control of a public authority, which is prima facie inconsistent with the RTI Act. Therefore, in accordance with Section 22 of the RTI Act, the provisions of the RTI Act shall override the SC Rules.

The Bench further ruled that all citizens have the right to access information under Section 3 of the RTI Act and PIOs shall provide the information sought to the citizens, subject always to the provisions of the RTI Act only. It is the citizen's prerogative to decide under which mechanism i.e. under the method prescribed by the public authority or the RTI Act, she would like to obtain the information, the Commission said.

5.1.47 To get information about assets of a public servant

In *Sat Prakash Tyagi, Delhi v. Vipin Behari*²⁵⁶, the Commission said that the Supreme Court has clearly ruled that even people who aspire to be public servants by getting elected have to declare their property details. If people who aspire to be public servants must declare their property details it is only logical that the details of assets of those who are public servants must be considered to be disclosable. Hence the exemption under Section 8(1) (j) cannot be applied in the instant case. While denying the PIO and the third party's claim for exemption of the information, the CIC in its order on 23rd, July 2009, asked the PIO to provide information about assets and properties of Anil Tyagi to the applicant before 10th, August, 2009.

5.1.48 To get answers within 48 hours if it is a question of life or liberty

In *Pooran Chand v. Dr. G. Kausalya*²⁵⁷, the Commission feels that unless all officers and systems can respond in a time bound manner, governance cannot deliver to those who need it the most. Due to the failure of the PIO to provide information sought under Section 7(1) within 48 hours, the Commission asked him to pay a compensation of Rs.50,000 to Puran Chand and also provide complete information.

5.1.49 Information as sought beyond the scope and ambit of the RTI Act

In *Ram Tuenram Parsani v. CPIO*²⁵⁸, the Commission stated that, the appellant cannot expect the public authority to work as consultant or secretariat or back office for him.

²⁵⁶ *Sat Prakash Tyagi, Delhi v. Vipin Behari*, PIO, Delhi Jal Board, Govt. of N.C.T. of Delhi, O/o the Secretary, Varunalaya Ph-II, Karol Bagh, New Delhi-110005. **Decision No.** CIC/SG/A/2009/001436/4247

²⁵⁷ *Mr. Pooran Chand, New Delhi-110092 v. Dr. G. Kausalya*, Public Information Officer & Chief Medical Officer Directorate of Health Services, Govt. of NCT of Delhi, **Decision No.** CIC/SG/C/2009/001628/9090 Date 20th, August, 2010

²⁵⁸ *Ram Tuenram Parsani v. CPIO*, SEBI, Mumbai, Appeal No. 1574 of 2012, Before the Appellate Authority, Securities and Exchange Board of India, 4th, December, 2012

In view of these observations, I am, therefore, of the view that the information as sought by the appellant in his application was beyond the scope and ambit of the RTI Act.

5.1.50 To provide a compensation for the mental agony and harassment

In *Ajay Kumar Jain v. Regional Passport Office*²⁵⁹, the Commission directed the Respondents to: (i) call the Appellant, his wife and son at a time mutually convenient to all the parties; (ii) ensure that the applications are completed in full and are errorless; (iii) issue the passports as soon as possible; and (iv) as per the earlier Order of the Commission dated 15th, May 2008, provide a compensation of Rs.5,000/- to the Appellant for the mental agony and harassment that he has gone through.

5.1.51 To show marks to Civil Services aspirants

In the case of *Paramveer Singh v. Punjab University*²⁶⁰, the applicant applied for information regarding the merit list for selection of candidates to a particular post in the university. However, no proper information was provided. The Commission held that every public authority, must take all measures in pursuance of Section 4(1)(a), to implement efficient record management systems in their offices so that the requests for information can be dealt promptly and accurately.. Property statements filed by civil servants are not confidential information The CIC directed the Union Public Services Commission (UPSC) to declare individual marks scored by 2,400 candidates appeared for the Civil Services Preliminary examinations in 2006 and ordered it to declare cut-off marks for each subject.

5.1.52 To seek details of property statements filed by bureaucrats

In *Shyam Yadav v. Department of Personnel Training*²⁶¹, the applicant had sought details of property statements filed by bureaucrats. The Commission held that property statements filed by civil servants are not confidential and information can be disclosed after taking the views of concerned officials as per the provisions of the RTI Act. Set guidelines for redressing the grievances of citizens: decision given by CIC.

²⁵⁹ *Dr. Ajay Kumar Jain v. Regional Passport Office* No.CIC/OK/A/2008/00001 Dated: 31th, July, 2008

²⁶⁰ *Paramveer Singh v. Punjab University*, CIC/OK/A/2006/00016, 15/6/06, CIC/WB order, November 13th, 2006

²⁶¹ *ShyamYadav v. Department of Personnel Training*, the applicant had sought details of property statements filed by bureaucrats, CIC/WB/A/2009/000669, June, 17th, 2009

5.1.53 Guidelines by the Department of Personnel and Training regarding disposal of public grievances with a specific time frame

In *Ram Bhaj v. Delhi Government*²⁶², the appellant has sought information about whether the guidelines issued by the Department of Personnel and Training regarding disposal of public grievances with a specific time frame have been notified by the Delhi government. CIC directed the Delhi government to inform the common man about the timeframe required to redress their grievances.

5.1.54 Citizen has a right to seek information irrespective of his official position

In *S Balaji, v. Public Information Officer*²⁶³, while allowing the appeal, the Commission directed the PIO to provide all the information available with it sought by the appellant before 10th, August, 2010. If any of the information sought by the appellant is not held by the public authority, it should be stated, the CIC said.

5.1.55 CBI should provide information on corruption cases²⁶⁴

Chief information commissioner has asked the Central Bureau of Investigation to provide information on cases related to corruption after examining them under the exemption clauses of the RTI Act.

5.1.56 CIC asks BSF to disclose info of missing Kashmiri youth²⁶⁵

The Border Security Force has been directed to disclose information under the Right to Information Act about a youth who went missing from Kashmir 20 years ago. The decision is first of its kind as paramilitary forces, including BSF, are kept outside the ambit of RTI Act except for disclosing information related to corruption and human rights violation.

²⁶² *Ram Bhaj v. Delhi government*, CIC/SG/A/2010/000537+000538/7492, 19th, April, 2010.

²⁶³ *S Balaji, Deputy Manager, Bajaj Allianz General Insurance Co Ltd, No.25/26, Prince Towers, IV Floor, College Road, Chennai – 600006 v. Public Information Officer*, Regional PF Commissioner, EPFO, 31, Filtered Road, Vellore–632001, **Decision No.** CIC/SG/A/2010/001462/8540, **Appeal no.** CIC/SG/A/2010/001462

²⁶⁴ <http://www.hindustantimes.com/India-news/NewDelhi/CBI-should-provide-information-on-corruption-cases-CIC/Article1-953950.aspx>

²⁶⁵ PTI New Delhi, July, 04th, 2010, <http://www.hindustantimes.com/India-news/NewDelhi/CIC-asks-BSF-to-disclose-info-of-missing-Kashmiri-youth/Article1-567270.aspx>

5.1.57 Haryana info panel ‘trashes’ Crime Branch’s exemption under RTI Act

In *Ranjana Yadav v. Haryana state Crime Branch’s*²⁶⁶, the Haryana State Information Commission (HSIC) has trashed the state Crime Branch’s exemption from public disclosure under the Right to Information (RTI) Act. While deciding a case, HSIC had not only ordered the Crime Branch to provide sought information to the applicant under RTI within 21 days, but also made it clear that the so called exemption was not applicable in the current case.

5.1.58 File noting not exempt from disclosure

In *Satyapal v. CPIO, TCIL*²⁶⁷, the Commission examining the case held that in terms of the definition given under Section 2(i) of the Act, a record includes a file and in terms of Section 2(j), the right to information includes access to a record. Therefore an applicant under RTI has the right to access a file and file notings are an integral part of any file which cannot be exempt from disclosure.

5.1.59 Information which relates to expired records cannot be provided

In *Gurbachan Singh v. Lt. General, Army Headquarters*²⁶⁸, the CIC noted in the appeal before it held that, in this case, records of the court martial trial were destroyed after a retention period of 10 years under the Army Rules. It held that there was no obligation on the part of any public authority to provide nonexistent information in terms of Section 2(j) of the RTI Act if that information is no longer available due to the fact that the records were not available, i.e., they have been destroyed after a maximum period of preservation, as per the departmental rules for destruction of old records.

5.1.60 Information sought should be clearly specified

In *S. K. Ranga v. Container Corporation of India Ltd*²⁶⁹, the CIC noted that the information asked by the appellant from the public authority was vague. The Commission held that the applicant under the RTI Act should clearly specify the information sought in terms of Section 2(f) of the RTI Act. The appellant was directed to specify the information he seeks to inspect from the records.

²⁶⁶ <http://www.indianexpress.com/news/haryana-info-panel-trashes-crime-branches-exemption-under-rti-act/1103176/>

²⁶⁷ *Satyapal v. CPIO, TCIL* (Appeal No. ICPB/A-1/CIC/2006, dated 31/1/2006)

²⁶⁸ CIC/AT/2006/20, dated 23/3/2006

²⁶⁹ Appeal No.CIC/OK/A/2006/00260, dated 2/1/2007

5.1.61 Information can be supplied only in the form available

In *Sarabjit Roy v. Delhi Development Authority*²⁷⁰, the Commission held that if the information is not available in the particular form requested, it does not have to be created in the form sought by the applicant and information under Section 2(f) includes information in any form available with a public authority and accessible.

5.1.62 Language for providing information under RTI Act

In *Jai Kumar Jain v. Delhi Development Authority*²⁷¹, the CIC interpreting Section 2(f) of the RTI Act, directed the DDA to provide the requested information by translating it, in Hindi, within 25 days of the issue of its decision.

5.1.63 Agency substantially funded by the government to be deemed as public authority

In *Navneet Kaur v. Electronics & Computer Software Export Promotion Council*²⁷², the CIC held that since the Department of Information Technology (DIT) of the Central Government substantially funded the organisation in question and also it was under the administrative control of this department, therefore in terms of Section 2(h) of the Act, it was a public authority, which is covered by the Right to Information Act.

5.1.64 Information from a non-public authority can be obtained indirectly

The Commission held that a cooperative society is not a public authority, but because the information sought by the applicant/appellant is available to the Registrar under the Delhi Cooperative Societies Act, such information can be provided to the applicant, under Sections 2(f) and 2(g) of the RTI Act. It was also ordered by the Commission that the applicant will be provided the required information from the office records of the cooperative society under the supervision of a competent officer of the RCS.

5.1.65 Persons only in individual capacity can apply for information under RTI Act

In *Inder Grover v. Ministry of Railways*²⁷³, the CIC interpreted Section 3 of the RTI Act to hold that persons applying for information under the Act should apply as natural and individual persons (citizens). Corporate bodies and juristic persons cannot apply for information under the Act.

²⁷⁰ 10/01/2005-CIC, dated 25/2/2006

²⁷¹ Appeal No.CIC/WB/A/2006/00117, dated 7/3/2006

²⁷² Appeal No.ICPB/A-8/CIC/2006, dated 22/3/2006

²⁷³ CIC/OK/A/2006/00121, dated 27/06/2006

5.1.66 Firm cannot be an applicant under the RTI Act

In *D.C. Dhareva & Co. v. Institute of Chartered Accountants of India*²⁷⁴, it was held by the Commission in this case that since the appellant organisation is a corporate body and not an individual it is not eligible to seek information under Section 3 of the RTI Act. It was also decided by the Commission that the information asked could not be supplied as it was a third-party confidential information exempted under Section 8(1)(d) of the RTI Act .

5.1.67 Inappropriate information sought can be rejected

In *Madan Lal Mirg v. Dinesh Singh*²⁷⁵, CIC dismissed the appeal on the grounds that the information sought by the appellant does not qualify for disclosure as per Section 4(1)(d) of the RTI Act and it is not the intention of this provision to provide an applicant with opinions or suggestions, which can be used to build case in a court of law, for an applicant. The Commission held that the information sought should be clearly information within the scope of Section 4(1)(d) of the RTI Act, 2005

5.1.68 Pro-active disclosure information to be provided free

In *Seema Bhattacharya v. Deputy Commissioner, Shahdara, MCD*²⁷⁶, It was held by the Commission that the nature of information sought by the appellant was such that it was required to be furnished as *suomoto* information by a public authority, under pro-active disclosure requirements of Section 4(1)(b) of the Act. The Commission ordered that such information should be provided free of any costs as mandated under Section 7(6) of the Act.

5.1.69 Record Management to be improved by all public authorities

In *Paramveer Singh v. Panjab University*²⁷⁷, the Commission held that every public authority, particularly after the implementation of the Right to Information Act, must take all measures in pursuance of Section 4(1)(a), to implement efficient record management systems in their offices so that the requests for information can be dealt with promptly and accurately. In the above case, the Commission further held, that the university should streamline its university record management system in such a manner that information can be provided to the citizens without any delay.

²⁷⁴ Decision No.560/IC/2007, dated 22/2/2007

²⁷⁵ F.No.CIC/AT/2006/00105, dated 30/6/06

²⁷⁶ Appeal No.CIC/WB/A/2006/00377, dated 20/11/2006

²⁷⁷ CIC/OK/A/2006/00016, dated 15/6/06

5.1.70 All public authorities to make pro-active disclosures²⁷⁸

In the Appeal No. 24/IC (A)/2006, dated 16 April 2006, before the Central Information Commission, it was held by the Commission that every public authority is required to make pro-active disclosures of all the information required to be given as per the provisions of Section 4(1)(b), unless the same is exempt under the provisions of Section 8(1). In fact, an information system should be created so that citizens would have easy access to information without making any formal request for it. This judgment re-emphasised the mandatory nature of disclosure of information on 17 points by every public authority according to the RTI Act.

5.1.71 PIO can take all help to provide information to an applicant

In *Cdr. B.S. Rekhi v. PIO and Director DDA*²⁷⁹, it was held by the Commission that if there is a general confusion regarding the exact nature of information that has been requested by the applicant from a public authority under the Act and which is available with the public authority, it can be easily resolved by a personal sitting between the PIO and the applicant. The Commission also held that in future, no information asked for is delayed and the PIO could seek the help of any other officer in terms of Sections 5(4) and 5(5) of the Act, within the organisation to obtain information, wherever necessary.

5.1.72 PIOs to provide all reasonable assistance to the RTI applicants

In *Dasharathi v. Food & Civil Supplies Department, Delhi*²⁸⁰, the Commission in its order held that misbehavior with the applicants approaching public authorities under the RTI is not acceptable and is violative of Section 5(3) of the Act. Further, the Commission held that the public authority would pay compensation stipulated under the Act, to the applicant.

5.1.73 No particular application format necessary/no reasoning required for seeking information

In *Madhu Bhaduri v. Director, DDA*²⁸¹, the Commission, interpreting Section 6(1) of the RTI Act, held that any direction to prescribe a particular format for seeking information cannot be mandatory and override the requirement of a simple application, as laid down in this section. The Commission ordered the public authority to provide

²⁷⁸ CIC, Appeal No. 24/IC (A)/2006, dated 16th, April 2006

²⁷⁹ CIC/WB/A/2006/00180, dated 5/7/2006

²⁸⁰ Complaint No. CIC/WB/C/2006/00145, dated 10/8/2006

²⁸¹ Complaint No. CIC/C/1/2006, dated 16/1/06

her with the information asked. It was also held that asking the reasons for filing the applications is a clear violation of the principle embodied in Section 6(2) of the Act. It was, however, observed by the Commission, that retention of a clause in the rules of the public authority for asking reasons may be permitted if such a clause is necessary to ensure privacy under Section 8(j), as also the interest of a third party under Section 11(1) of the Act.

5.1.74 RTI application to be transferred to the appropriate public authority

In *Shyam Singh Thakur v. Deptt. of Science & Technology*²⁸², the Central Information Commission (CIC), in the appeal, held that the PIO and the AA in the DST were justified in informing the applicant that the information asked did not relate to their department. The CIC further ruled that the DST was duty bound to transfer the application to the appropriate public authority within five days of the receipt of the application, as per the provisions of Section 6(3) of the RTI Act.

5.1.75 Information to be provided free if there is delay/reimbursement to be provided in cases of Delay

In *Gita DewanVerma v. Urban Development Department, Delhi*²⁸³, the CIC held that since there was a delay in replying to the information sought, the appellant should be provided information without costs as per the stipulation under Section 7(6), as there was delay in providing the information. In the above case, the appellant was held entitled to reimbursement under Section 19(8)(b) of the Act. The CIC in this case also issued a show cause notice to the State Public Information Officer (SPIO) as to why the penalties prescribed under Section 20(1) of the Act be not imposed on him.

5.1.76 Information concerning life and liberty

In *Shekhar Singh and others v. Prime Minister's Office*²⁸⁴, the report of the ministers which was made public was supplied to the applicants. The Commission, however, held that for an application to be treated as one concerning life and liberty under Section 7(1), it must be accompanied with substantive evidence that a threat to life and liberty exists. In the present case, the Commission rejected the application under Section 7(1). However, the Commission held that agitation with the use of ahimsa must be recognised as a bonafide form of protest and therefore even if the claim of concern for

²⁸² Appeal No.CIC/WB/A/2006/00365, dated 22/1/2007,

²⁸³ Appeal No.CIC/WB/C/2006/00182, dated 29/6/2006

²⁸⁴ Decision No.CIC/WB/C/2006/00066, dated 19/4/2006

life and liberty is not accepted, in a particular case by the public authority, the reasons for not doing so must be given in writing in disposing the application.

5.1.77 Period between asking for further fees and its payment is excluded for calculating the 30-day limit

In *Ram Chander Singh v. Delhi Jal Board*²⁸⁵, the CIC in the appeal before it, held that in counting the 30 days time limit for providing the information under the RTI Act, the period between asking for the additional/further fees by the PIO and its final payment by the applicant is excluded in calculating the period of thirty days stipulated in Section 7(1) of the RTI Act as per Section 7(3)(a). The appeal was therefore rejected.

5.1.78 Information to be provided free to BPL applicants under RTI Act

In *Shama Parveen v. National Human Rights Commission*²⁸⁶, the Commission referred to the Proviso to Section 7(5) of the Act and held that when as per the RTI Act, the applicant was not required to pay the application fees of Rs. 10, she cannot be expected to pay Rs. 444 and therefore she should be provided information free of charge. The Commission, however, laid down an important condition, that any public authority which provides information sought by a BPL applicant must ensure that such an applicant is a genuine seeker of information and is not working as a proxy for someone who merely wants to save money to obtain information.

5.1.79 Information on ongoing investigation

In *Ravinder Kumar v. B.S. Bassi, Jt. Commissioner, Police*²⁸⁷, the CIC dismissed the appeal relating to the disclosure of information. It ruled that the disclosure of information, in cases under investigation by the police was exempted, according to the provisions of Sections 8(1)(g) and 8(1)(h), of the RTI Act. It is justified not to disclose information in cases of ongoing police investigations (which have not yet been completed), because such a disclosure could hamper the investigation process, the Commission held.

5.1.80 Answer scripts cannot be disclosed

In *Teresa Irish v. CPIO, Postal Circle, Trivandrum*²⁸⁸, the Commission held that access to answer scripts could not be provided to the candidates, as per Section 8(1)(e) of the

²⁸⁵ Appeal No.CIC/2006/WB/C/2006/00301, dated 30/12/2006

²⁸⁶ Appeal No.CIC/OK/2006/00717, dated 18/4/2007

²⁸⁷ F.No.CIC/AT/A/2006/00004, dated 30/6/2006

²⁸⁸ Appeal No.ICPB/A-2/CIC/2006, dated 6/2/2006

RTI Act, which relates to a fiduciary relationship. The Commission held that there is a fiduciary relationship, which exists between the examiner and the authority conducting the examination and information regarding persons in a fiduciary relationship cannot be disclosed. It must be submitted that the Central Information Commission has not made a proper interpretation of the law relating to fiduciary relationships in this case. Persons are said to be in a fiduciary relationship when there is a special relationship of trust between them, as for instance, the relationship between a doctor and his patients or a lawyer and his clients. There is no fiduciary relationship which exists, between an examiner and the examinees; therefore, there is no valid justification for not disclosing the answer scripts of candidates of an examination by referring to Section 8(1)(e) of the RTI Act.

5.1.81 Disclosure of answer scripts

In *George Paul v. B.S.N.L.*²⁸⁹, the CIC held that the information in nature of disclosure of the evaluated answer sheets/scripts of examinees cannot be provided to the candidates, as there is a fiduciary relationship which exists between the examiner and examinee. The Commission held that this information falls under the exemptions from disclosure provided in Sections 8(1)(e) and 8(1)(j) of the RTI Act, 2005. However, the Commission ordered the public authority to disclose the list and marks secured of the other candidates to the applicant.

5.1.82 Disclosure of marks secured

In *Neeraj Kumar Singhal v. North West Railway, Jaipur*²⁹⁰, the CIC held that in case of competitive examinations, conducted by public authorities, the answer sheets could not be provided to the candidates as per Sections 8(1)(e) and (8)(1)(j) of the RTI Act.²⁷ The Commission, however, held that the marks secured by the candidates are not to be kept secret and should be furnished to the candidate.

5.1.83 Information no longer available in records cannot be given

In *T.V. Varghese v. B.S.N.L.*²⁹¹, the CIC held that when the records are not available due to the expiry of the period of preservation according to the departmental rules for destruction of old records, there is no question of providing such information even if the disclosure of such information is not prohibited under Section 8 (1)(j) of the RTI Act.

²⁸⁹ Appeal No.38/ICPB/2006, dated 29/6/2006

²⁹⁰ Appeal No.11/53/2006- CIC, dated 2/5/2006

²⁹¹ Appeal No.251/ICPB/2006, dated 2/1/2007

5.1.84 No disclosure in case of pending trial

In *Ashok Agarwal, Jt. Commissioner of Income Tax v. Department of Revenue*²⁹², the Commission said that since the matter is *subjudice* (in trial before a court of law), there is a due process of law under which the appellant may obtain the documents to defend himself in his case before the trial court. The Commission rejected his appeal to obtain the documents from the public authority and held that since the matter is under investigation, the exemption under Section 8(1)(h) would apply.

5.1.85 Information on an ongoing investigation can be given in special circumstances

In *Mangto Ram v. Addl. Commissioner & PIO, Delhi Police*²⁹³, the CIC examining the case held that this case was an exception to the general rule laid down in Section 8(1)(h) of the Act, which prohibits the disclosure of information, as the supply of information to the victim's family would not put any obstacles or impede the process of investigation. The Commission further noted that, "Far from impeding the investigation, taking the appellant into confidence will give a positive direction to the investigation and enable the authorities to swiftly reach the truth. The Commission ordered the police to provide the status of the investigation to the appellant within three weeks.

5.1.86 Vigilance report findings can be disclosed Case

In *P.P.K. Rana v. CPIO, Delhi Police and AA, Delhi Police*²⁹⁴, the Commission held that Section 8(1)(h) of the Act does not prohibit the sharing of information in the form of the concluding part of the Vigilance report and only the gist (the confidential part) could be kept confidential. The CIC ordered that the concluding part of the vigilance report be disclosed to the appellant.

5.1.87 No disclosure in case of pending departmental enquiry

In *Sarvesh Kaushal v. F.C.I. and others*²⁹⁵, the CIC, rejecting the appeal, held that the departmental enquiry, which was in progress against him, was a pending investigation under law and the same attracted the provisions of Section 8(1)(h). Therefore, there is no question of disclosing any information relating to his prosecution, the CIC noted.

²⁹² Appeal No.01/IC (A)/2006, dated 16/02/2006

²⁹³ Appeal No.CIC/AT/A/2006/00355, dated 26/12/2006

²⁹⁴ Appeal No.CIC/AT/A/2006/00322, dated 11/12/2006

²⁹⁵ Appeal Nos. 243/ICPB/2006 and 244/ICPB/2006, dated 27/12/2006

5.1.88 Public authority to disclose information if public interest outweighs the harm to the protected interests

In *S. R. Goyal v. PIO, Services Department, Delhi*²⁹⁶, the Commission, rejecting the appeal of the applicant, held that the exemptions from disclosing information, under Section 8(1)(h) of the RTI Act as well as under the relevant provisions of the Official Secrets Act, would apply. The Commission further said that if the public authority, decides that public interest in the disclosure would outweigh the harm to the protected interests, it can disclose the information, which was not the position in this case.

5.1.89 Contents of a departmental enquiry can be disclosed, if no bar from the Court

In *N.B.S. Manian v. Deptt. of Post*²⁹⁷, the Commission held that if a matter is sub-judice the same is not prohibited from disclosure as per the law in Section 8(1)(b), which prohibits the disclosure of any information which has been banned from disclosure by a court of law. As it is applicable only in cases where there is an express order from the court that information sought should not be disclosed, which was not the position in the present case, therefore such information should be supplied to the appellant. However, the Commission upheld the decision of the public authority, for not disclosing the Confidential Report (CR) of the appellant and held that Section 8(1)(h) permits such a prohibition.

5.1.90 No disclosure of third-party confidential information

In *A.P. Singh v. Punjab National Bank*²⁹⁸, the CIC held that a bank is under duty to maintain the secrecy of accounts of its customers, who are also third party. The CIC further held in this case that since the applicant had not established any bonafide public interest in having access to the information sought nor did he have any association or business relationship with the company (bank), his appeal cannot be accepted in terms of the law as provided in Section 8(1)(j) of the Act.

5.1.91 Frivolous applications not to be entertained

In *S.K. Lal v. Ministry of Railways*²⁹⁹, the Central Information Commission observed that though the RTI Act allows citizens to seek any information other than the 10 categories exempted under Section 8, it does not mean that the public authorities are

²⁹⁶ Appeal No.CIC/WB/A/20060523, dated 26/3/2007,

²⁹⁷ Appeal No.267/ICPB/2006, dated 10/1/2007

²⁹⁸ Appeal No.12/IC (A)/2006, dated 14/3/2006

²⁹⁹ Appeal No.CIC/OK/A/2006/00268-272, dated 29/12/2006

required to entertain to all sorts of frivolous applications. The CIC held that asking for all the records regarding various services and categories of staff in the railways, only amounts to making a mockery of the Act. While dismissing the appeal, the CIC recorded its appreciation of the efforts made by the Railways to provide the applicant with the information sought. It must be submitted that a PIO cannot refuse to accept an RTI application or provide information in most of the cases and the RTI Act makes it compulsory that every public authority is duty bound to accept all RTI applications. The public authorities are also not supposed to question the applicant under the RTI Act about the reasons for filing an application and asking for particular information. Only in the rarest of rare circumstances, where it is clearly established that an applicant has filed an RTI application just to harass the public authority, an application can be termed frivolous.

5.1.92 Report of departmental enquiry can be disclosed with conditions

In *Nahar Singh v. Deputy Commissioner of Police & PIO, Delhi Police*³⁰⁰, the CIC held that the report of lower public officers to their seniors can be shared with an employee and is not barred for disclosure under any of the exemptions provided in Section 8(1) of the RTI Act. The CIC further ruled that the information held in the nature of a report is clearly *information* in terms of Section 2(j) of the Act. The Commission further held that the public authority can protect the interests of witnesses or other persons whose names appear in the report by not providing them to the appellant and ordered the concerned public authority to provide the applicant with the relevant information.

5.1.93 Information in respect of a period, prior to twenty years

In *S.R. Pershad v. Directorate General of Supplies & Disposals*³⁰¹, the CIC ruled that Section 8(3) is part of Section 8, which deals with exemption from disclosure of information. Section 8(1) specifies classes of information which are exempted from disclosure. Section 8(3) stipulates that the exemption under Section 8(1) cannot be applied if the information sought is older than 20 years. In other words, even if the information sought is exempted in terms of Sub-section (1) of Section 8, but the same relates to a period 20 years prior to the date of application, then the same shall be provided to an applicant, if the same is available with the concerned public authority.

³⁰⁰ Appeal No.CIC/AT/C/2006/00452, dated 28/12/2006

³⁰¹ 37/ICPB/2006, dated 26/6/2006

5.1.94 Consultation between the President and the Supreme Court cannot be disclosed

In *Mukesh Kumar v. Addl. Registrar of the Supreme Court*³⁰², the CIC held in the appeal that the entire process of consultation between the President of India and the Supreme Court of India cannot be disclosed. The CIC held that such a process of consultation is exempted under Sections 8(1)(e) and 11(1) of the RTI Act, 2005. Moreover, under Article 124(2) of the Constitution of India, this is barred from disclosure.

5.1.95 Reasons for rejection of requests for information must be clearly provided

In *Dhananjay Tripathi v. Banaras Hindu University*³⁰³, the Commission held that quoting the provisions of Section 8(1) of the RTI Act to deny the information without giving any justification or grounds as to how these provisions are applicable is simply not acceptable and clearly amount to malafide denial of legitimate information. The public authority must provide reasons for rejecting the particular application. The Commission further held that not providing the reasons of how the application for information was rejected according to a particular provision of the Act would attract penalties under Section 20(1) of the Act.

5.1.96 Results of field trials of genetically modified crops to be disclosed

In *Divya Raghunandan v. Deptt. of Biotechnology*³⁰⁴, the Commission, in its order, held that the information sought concerned the interests of a large number of farmers and other communities, therefore such information has to be disclosed in public interest. The Commission further held that the information sought does not concern commercial secrets as per the terms of Section 8(1)(d) of the RTI Act and is therefore not exempted from disclosure.

5.1.97 Information can be severed and supplied

In *Paramveer Singh v. Punjab University*³⁰⁵, the Commission held, that the university should streamline its university record management system in such a manner that information, which is to be disclosed, could be easily provided after separating those that is exempted as per Sec.10 (1) of the RTI Act. The Commission held that every public authority, particularly after the implementation of the Right to Information Act

³⁰² Decision No.CIC/AT/A/2006/00113, dated 10/7/2006

³⁰³ DecisionNo.CIC/OK/A/00163, dated 7/7/2006

³⁰⁴ 13/4/2007

³⁰⁵ AppealNo.CIC/OK/A/2006/00016 dated 15.6.06

must take all measures in pursuance of pro-active disclosure requirements, to implement efficient record management systems in their offices so that the requests for information can be dealt with promptly and efficiently.

5.1.98 Third Party has no absolute right to refuse information disclosure about it

In *K.K. Mahajan v. Cantonment Executive Office*³⁰⁶, the CIC held that the RTI Act does not give a third party an automatic right to order the public information officer (PIO) of a public authority, not to disclose information pertaining to it. The CIC further held that the public authority is required to evaluate the third party's case in terms of the provisions of Section 8(1)(j) and Section 11(1) of the RTI Act, 2005 and find out that the information asked is not barred from disclosure. Even if the information is barred from disclosure then the public authority is to examine if it would be in the public interest to disclose the information sought and its disclosure will outweigh harm if any to the individual third party. The public authority has to arrive at the findings by properly assessing the facts and circumstances of the case. A speaking order should thereafter be passed accordingly.

5.1.99 Commission not a forum for execution of a court decree

In *Ajay Goel v. D.C.P.*³⁰⁷, the Commission (CIC) dismissed the complaint filed by the complainant. The CIC held that it was not the appropriate forum to hear complaints under Section 18(1)(e) of the RTI Act, for execution of a decree passed by the High Court and dismissed the appeal.

5.1.100 No additional information can be sought at the appellate level

In *Mahadeo Barik and others v. General Manager South Eastern Railway, Kolkata*,³⁰⁸ It was held by the CIC that an appeal should be drafted in a simple and direct manner and must be brief. It must not be unnecessarily long, too detailed and contain technical language with several repetitions. The CIC further held that no fresh grounds for seeking additional information can be allowed to be urged at the appellate level under Section 19 of the RTI Act, unless found to be of a nature that would require their admittance, if the same has not been brought up in the application to the public authority.

³⁰⁶ CIC/AT/A/2006/00014, dated 22/5/2006

³⁰⁷ Appeal No.CIC/AT/C/2006/00035, dated 28/6/2006

³⁰⁸ CIC/OK/A/2006/00069, dated 18/5/2006

5.1.101 Reasonable cause justified for the delay in providing information

In *Amal Das v. Arun Mishra, PIO, UT Admn. Daman*³⁰⁹, it was held by the CIC that in cases of delay in providing information, the reasonable cause as laid down in Section 20, due to which the information asked from a public authority could not be provided in time, should be considered. The CIC ruled that if the delay in providing information is due to some urgent official work, in which the employees of a public authority are engaged, e.g., preparation of the departmental budget, which could not be postponed, then in such cases, the delay can be condoned under the Act.

5.1.102 Disciplinary action against Appellate Authority

In *Anand Akhila v. Council of Scientific and Industrial Research*³¹⁰, the CIC recommended disciplinary action against an Appellate Officer by extending the meaning of Section 20(2) of the RTI Act. The Commission held that though an appellate authority is not covered under the penal provisions of the Act but in this case, it clearly failed to uphold the Act in the public interest. It was observed that this decision might be sent to the public authority to consider disciplinary action against the Appellate Authority, under their service rules.

5.1.103 Address of the applicant need not be personal

In *Bibhav Kumar v. University of Delhi*³¹¹, the Commission noted that the appellant has applied in his own name as a citizen as per the requirement of Section 3 of the RTI Act and had only given the address of an NGO for the purpose of correct delivery by post. It was accordingly held that merely giving the address of some organisation does not imply that the institution was asking the information and an RTI application could not be rejected on this ground alone, therefore the concerned public authority was directed to immediately provide the information sought and the PIO was penalised according to provisions of Sections 7 & 20 of the RTI Act.

5.1.104 Decisions by single member CIC benches are valid

In *Pyare Lal Verma v. Ministry of Railways*³¹², the CIC held that there is no provision in the RTI Act, requiring that every case that comes before the Commission should be disposed by a full bench comprising all the Members of the Central Information Commission (CIC). The Commission referred to the Section 12(4) of the RTI Act

³⁰⁹ Appeal No.CIC/PB/A/2006/00074, dated 28/6/2006

³¹⁰ CIC/EB/C/2006/00040, dated 24/4/2006

³¹¹ CIC/OK/A/2006/00050, dated 3/7/2006

³¹² Appeal No.CIC/OK/A/2006/00154, dated 29/1/2007

and its Preamble and Statement of Objects and Reasons to rule that the single-member benches of the Commission can hear appeals and deliver the orders of the Commission.

5.1.105 No misuse of the provisions of the Act to settle personal scores

In *Sabu Kuriakose v. N.C.E.R.T.*³¹³, the Commission held that the applicant was trying to misuse the provisions of the RTI Act and warned that the Commission would not tolerate the provisions of this progressive Act, to be subverted by individuals for vested interests.

5.1.106 Public authorities to observe due diligence in applying the RTI Act

In *Girdhari Lal v. Municipal Corporation of Delhi*³¹⁴, the Commission held that there is no clause 8(d) of the Act, but the clause referred to is in fact Section 8(1)(d) of the Act. The Commission also held that those dealing with the RTI Act are advised to be more careful in dealing with the Act and are advised to understand the law correctly before dispensing the orders under it. The Commission also held that the public authority should examine the case afresh on merits.

5.1.107 Review of a decision delivered by a public authority³¹⁵

In the Review Application No.1/2006, dated 16/5/2006, before the Central Information Commission, the CIC laid down the following important conditions, which must be satisfied, for review of a decision delivered by the PIO of a public authority:

- (i) There is a technical error in the decision
- (ii) There was an omission to consider certain material facts relevant for the decision
- (iii) The appellant was not given an opportunity of being heard
- (iv) The PIO has not given enclosed relevant supporting documents in his comments furnished to the Central Information Commission (CIC)

5.1.108 Political parties fall under the RTI Act

In *Subhash Chandra Aggarwal and Shri Anil Bairwal v. 1. Indian National Congress/ All India Congress Committee (AICC); 2. Bhartiya Janata Party (BJP); 3. Communist Party of India (Marxist) (CPM); 4. Communist Party of India (CPI); 5. Nationalist Congress Party (NCP); and 6. Bahujan Samaj Party (BSP)*³¹⁶, CIC hold that INC, BJP,

³¹³ Decision No.CIC/OK/A/2006/00485, dated 21/2/2007

³¹⁴ Decision No.CIC/WB. /2006/00472

³¹⁵ Review Application No.1/2006, dated 16/5/2006, before the CIC,

³¹⁶ File No. CIC/SM/C/2011/001386 File No.CIC/SM/C/2011/000838 Date of Decision: 3rd June, 2013

CPI(M), CPIO, NCP and BSP have been substantially financed by the Central Government under Section 2(h)(ii) of the RTI Act. The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of Section 2(h). The constitutional and legal provisions discussed herein above also point towards their character as public authorities. The order of the Single Bench of this Commission in Complaint No. CIC/MISC/2009/0001 and CIC/MISC/2009/0002 is hereby set aside and it is held that AICC/INC, BJP, CPI(M), CPI, NCP and BSP are public authorities under Section 2(h) of the RTI Act. The Presidents, General/Secretaries of these Political Parties are hereby directed to designate CPIOs and the Appellate Authorities at their headquarters in 06 weeks time. The CPIOs so appointed will respond to the RTI applications extracted in this order in 04 weeks time. Besides, the Presidents/General Secretaries of the above mentioned Political Parties are also directed to comply with the provisions of Section 4(1) (b) of the RTI Act by way of making voluntary disclosures on the subjects mentioned in the said clause.

Parliament's standing committee related to the department of personnel, public grievances, law and justice has opined that political parties are not public authorities and hence they do not come within the ambit of Right to Information (RTI) act. 'The Right to Information (Amendment) Bill, 2013' rightly seeks to amend the Right to Information Act, 2005 in order to nullify order of full bench of central information commission (CIC) of June, 3rd, 2013. The Committee agreed with the government that political parties are not public authorities since they are neither established nor constituted by or under the Constitution or any other law made by Parliament. The committee noted that provisions of Representation of People Act, 1951 as well as Income Tax Act, 1961 deal with transparency in the financial aspects relating to the parties and their candidates. Declaring political parties as public authority under RTI Act would hamper their smooth internal functioning; party rivals may misuse the provisions of RTI Act adversely affecting the functioning of political parties³¹⁷.

5.1.109 PIO provided information after severing part that could have affected prosecution

In *Jitendra Joshi v. Nilabh Kishore*³¹⁸, the CIC upheld the decision of the PIO and FAA

³¹⁷ Vijay Desouza, TNN | Dec. 17th, 2013 <http://timesofindia.indiatimes.com/india/Political-parties-do-not-come-under-RTI-act-Parliamentary-panel/articleshow/27525303.cms>

³¹⁸ *Jitendra Joshi, Post- Badi Mukhani Haldwani (Nainital), Uttarakhand v. Nilabh Kishore, Public Information Officer & SP CBI, Special Police Establishment CBI Complex, Indira Nagar, Dehradun.* Decision No. CIC/SM/A/2011/000316/SG/13161 http://www.rti.india.gov.in/cic_decisions/CIC_SM_A_2011_000316_SG_13161_M_59547, Appeal No. CIC/SM/A/2011/000316/SG

to provide information after severing part under Section 10 of the RTI Act at Central Bureau of Investigation (CBI), Dehradun, to provide the information after severing parts related with details of accused persons related with Uttarakh and police sub-inspectors (PI) recruitment scam.

5.1.110 Citizens have the right to know about irregularities in banks

In *Kishanlal Mittal, v. P Satish, CPIO & Chief General Manager*³¹⁹, the Central Information Commission (CIC), while allowing an appeal, directed the Central Public Information Officer (CPIO) and chief general manager (CGM) of National Bank for Agriculture and Rural Development (NABARD) to provide copies of inspection reports of apex co-operative banks. The CPIO had denied the information citing exemption under Section 8(1)(a) of the Right to Information (RTI) Act. The idea that citizens are not mature enough to understand and will panic is repugnant to democracy. The exemptions under Sections 8 and 9 of the RTI Act are the constraints put by Parliament and adjudicating bodies have to carefully consider whether the exemptions apply before denying any information under the RTI framework.

5.1.111 Citizens have right to know about functioning of bank, including regulatory lapses

In *Dr Mohan K Patil, v. A Udgata, CPIO & Chief General Manager*³²⁰, if there are irregularities in the functioning of the bank, citizens certainly have a right to know about the same and the larger public interest would be served by disclosing this information, the CIC ruled. The Central Information Commission (CIC), while allowing an appeal, directed the Public Information Officer (PIO) of Reserve Bank of India (RBI) to provide complete information regarding working of Deendayal Nagri Sahakari Bank Ltd as well as inspection reports, file notings of RBI to the appellant the Right to Information (RTI) Act.

³¹⁹ Central Information Commission, Decision No. CIC/SG/A/2011/002793/15661, http://www.rti.india.gov.in/cic_decisions/CIC_SG_A_2011_002793_15661_M_70346.pdf, Appeal No. CIC/SG/A/2011/002793, *Kishanlal Mittal, Mumbai – 400066 v. P Satish, CPIO & Chief General Manager, Nabard, Head Office, Plot:C-24/'G', Bandra-Kurla Complex, Post Box-8121, Bandra (East), Mumbai-400051*

³²⁰ *Dr Mohan K Patil, Bandra (East), Mumbai – 400051 v. A Udgata, CPIO & Chief General Manager, Reserve Bank of India, Urban Banks Department, Garment House, 1st Floor, Worli, Mumbai – 400018, Moneylife Digital Team | 20/09/2013, Decision No. CIC/SG/A/2011/002069/16018* http://www.rti.india.gov.in/cic_decisions/CIC_SG_A_2011_002069_16018_M_71376. **Appeal No. CIC/SG/A/2011/002069**

5.2 Appointment of Chief Information Commissioner

The chief information commissioner would be appointed from the existing commissioners and may not be senior-most information commission. The PMO in a note to department of personnel and training (DoPT), the nodal ministry for RTI matters, said that a selection committee headed by Cabinet Secretary will decide on who would be the next chief information commission from the commissioners. The PMO has given sanction for appointment of four information commissioners and CIC and the selection committee would short-list the candidates from a list of about 300 applicants. The short-listed candidates would be considered by a committee headed by Prime Minister and having finance minister and leader of opposition, Lok Sabha as members.

A key change in this year's selection process is that the committee would examine whether the person has basic degree in his or her area of expertise. The decision is result of a Supreme Court order stating that the expression knowledge and experience in the RTI Act means basic degree in the respective field and the experience thereafter. The search and selection committee should consider the requirement of basic degree in the respective field and the experience gained thereafter, while short-listing and finally selecting the information commissioners. The appointment of commissioners had been mired in the controversy as the government had admitted before the commission that there are no rules and guidelines for appointment of information commissioners.

Even the person who has not applied for the job can be considered by the committee headed by PM for the appointment. It had happened last when women rights activist Ranjana Kumari was considered even though she had not applied³²¹. Holding that central and state information commissions perform quasi-judicial functions, the Supreme Court on 12th September, 2012 asked the government to appoint people from judicial background also as its members. However, government had opposed the order contending that it could not be made mandatory that the members should have judicial background³²².

Reviewing its earlier decision on the appointment of state and central Chief Information Commissioners, the Supreme Court on 3rd September, 2013 said that even people with non-judicial background can be appointed as members of CIC. It was a mistake of law, SC said while withdrawing its order on the appointment of information

³²¹ Chetan Chauhan, PMO rejects proposal on CIC appointment, Hindustan Times New Delhi, July 10th, 2013, <http://www.hindustantimes.com/india-news/newdelhi/pmo-rejects-proposal-on-cic-appointment/article1-1090447.aspx>

³²² Appoint people with judicial background to CIC: Supreme Court, PTI Sep 13th, 2012,

commissioners. In the appointment of members, primacy should be given to people from Science and Technology, Media and other fields and in cases where intricate cases of law are involved matter could be referred to legal experts. In a rare instance, the Supreme Court recalled its earlier order saying it had committed a mistake of law by directing that only sitting or retired high court chief justices or an apex court judge could head the central and state information commissions.

As the judgment under review suffers from mistake of law, recall the directions and declarations in the judgment under review. Legislature confers discretion on the rule making authority to make rules. In the judgment under review, therefore, this court made a patent error in directing the rule making authority to make rules within a period of six months, the apex court said and recalled the verdict³²³.

5.3 Contribution of Central Information Commission

A number of landmark judgments under the ambit of RTI Act were delivered by the Central Information Commission (CIC). The Central and the State Information Commissions have played a critical role in enforcing the provisions of the Act as well as educating the information seekers and providers. Without their statutory interventions, including use of penal provisions against the public authorities, the benefits of RTI could not have been reaped by the citizens and the society. The implementation of the law on right to know for setting up information regime, therefore, augurs well for strengthening the knowledge society as well as for increasing the accountability of public bodies.

The role of judiciary has been assigned as the custodian of the Constitution and the other laws and for that purpose to ensure and encourage the transparency and accountability of public institutions. The RTI Act was enacted to enable the people and the media to keep watch over the corrupt practices of the government institutions and its officials and the judiciary is supposed to assist in it by upholding the right of the people to ask for the information from any of the government organs and officials. In next chapter describes in details about judgments pronounced under RTI by different courts i.e. Hon' ble High Courts of various states and Supreme Court of India.

³²³ Ridhima Malhotra, SC recalls order on appointment of CIC, Sep 04th, 2013 - | Age Correspondent | New Delhi

JUDICIAL CONSPECTUS

This chapter describes in details about judgments pronounced under RTI by different courts i.e. Hon' ble High Courts of various states and Supreme Court of India. The office of Chief Justice of India is an important constitutional office and the Indian judiciary has been made an independent institution under the Constitution. The role of judiciary has been assigned as the custodian of the Constitution and the other laws and for that purpose to ensure and encourage the transparency and accountability of public institutions. The RTI Act was enacted to enable the people and the media to keep watch over the corrupt practices of the government institutions and its officials and the judiciary is supposed to assist in it by upholding the right of the people to ask for the information from any of the government organs and officials. It covers recognition of the 'Right to know', judgment of Supreme Court on the Right to Information Act and Right to Information and judiciary.

6.1 Recognition of the Right to Know

The Supreme Court has interpreted Article 19(1)(a) and Article 21 of the Constitution, which enforce freedom of speech and expression and the right to life and liberty respectively, as including the 'right to know'. If the public does not have access to information about the functioning of the government and other public institutions, the above rights become merely ornamental, with no real power attached to it. In other words, the right to speech cannot be exercised in the absence of the right to know. In *State of UP v. Raj Narain*³²⁴, the Supreme Court held that, in a government of responsibility like ours, where all 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 to cover with veil of secrecy the common routine business is not in the interest of public.

Thus, it is clear that the judiciary of the country recognized the citizen's right to information a long time ago. Under the RTI, Act, where a citizen has exhausted the remedy of appeal or second appeal, the finality given to the orders of the commissioners

³²⁴ (1975) 4 SCC 428

and appellate authorities is only for the purposes of the Act and the citizen as a right to approach the High Court under Article 226 of the Constitution of India or where it refers to a fundamental right, he may even approach the Supreme Court under Article 32 of the Constitution of India³²⁵

6.2 Decisions of High Courts on the Right to Information Act

The important decision taken by High Courts under Article 226 of the Constitution of India on the Right to Information Act is described below:

6.2.1 Stay on the CIC's Decision

For the first time after the enactment of the RTI Act, Delhi High Court issued stay on a decision taken by the CIC. Delhi High Court on 22 August 2006 stayed the CIC decision directing the government to make available to it copies of the late President K. R. Narayanan's letters written to the then Prime Minister Atal Bihari Vajpayee relating to 2002 communal violence in Gujarat. Justice Anil Kumar stayed 8th, August, 2006 order till 11 January 2007 on an application moved by the Union Government saying that the letters could not be made available to the CIC as it would impinge on the national security and integrity³²⁶.

6.2.2 The information sought for Indian Institute of Science at Bangalore

In petition the *Board of Management of the Bombay Properties of the Indian Institute of Science v. The CIO and others*³²⁷ filed under Articles 226 and 227 of the Constitution of India impugns the order dated 15th February, 2010 passed by the Central Information Commissioner holding that the petitioner is a public authority as defined under Section 2(h)(d) of the Right to Information Act, 2005 and directing the petitioner to provide the complete information to the present respondent before 5th March, 2010. This petition was filed on 4th March, 2010 and appeared before the Court for the first time on 17th March, 2010 and the Court had not granted stay to the impugned order.

6.2.3 Declaration as to personal assets of judges of the Supreme Court

In *CPIO, Supreme Court of India v. Subhash Chandra Agarwal & Anr*³²⁸, the proceeding,

³²⁵ Justice Y. K. Sabharwal, Right to Information and Good Governance, Vol. VII, Issue 4, Nyayadeep, 23.

³²⁶ CIC/MA/A/2006/00121 – 8th, August, 2006

³²⁷ *The Board of Management of the Bombay Properties of the Indian Institute of Science, v. The Central Information Commission and others*, High Court Mumbai. Writ Petition No. 1887 of 2010

³²⁸ *The CPIO, Supreme Court of India, v. Subhash Chandra Agarwal & Anr*: High Court of Delhi, W.P. (C) 288/2009

under Article 226 of the Constitution of India, requires the examination of questions and issues involving declaration as to personal assets of judges of the Supreme Court, made to the Chief Justice of India, pursuant to a Full Court resolution of the Supreme Court of India, made in 1997. The petitioners challenge an order of the Central Information Commission, dated 6th, January, 2009, upholding the request of the respondent who had applied for disclosure of certain information concerning such declaration of personal assets, by the judges (of the Supreme Court). The court, which upheld the Central Information Commission's order directing the SC to disclose whether judges are declaring their assets to the CJI or not, said the holders of power are expected to live by the standards they set and the judiciary is no exception. It said the Parliamentary intention in enacting this law was to arm citizens with the mechanism to scrutinize government and public processes and ensure transparency. The transparency law is the most important piece of legislation in the post-independence era to effectuate democracy, it said. The verdict was lauded by noted jurists K.K. Venugopal, Shanti Bhushan and P.P. Rao, who not only described it as bold on a highly sensitive issue but also said that it was legally and constitutionally correct where for the first time a decision has been given against the superior court.

6.2.4 Supply of information concerning declaration of personal assets by the Judges of the Supreme Court

In *Secretary General, Supreme Court of India v. Subhash Chandra Agarwal*³²⁹, the appeal is directed against the judgment dated 2nd September, 2009 of the learned single Judge in the writ petition filed by the Central Public Information Officer, Supreme Court of India nominated under the Right to Information Act, 2005 questioning correctness and legality of the order dated 6th January, 2009 of the Central Information Commission whereby the request of the respondent No.1 (a public person) for supply of information concerning declaration of personal assets by the Judges of the Supreme Court was upheld. We are satisfied that the impugned order of the learned single Judge is both proper and valid and needs no interference. The appeal is accordingly dismissed.

6.2.5 To issue passports on the basis of the old applications

In petition, *U.O.I v. Central Information Commission & Ors*³³⁰, the Union of India claims to be aggrieved by an order of the Central Information Commission whereby it directed payment of Rs. 5,000/- as compensation to the second respondent, who had

³²⁹ High Court of Delhi At New Delhi Judgment pronounced on: 12th January, 2010, LPA No.501/2009

³³⁰ *U.O.I v. Central Information Commission & Ors.* HC Delhi W.P. (C) 6661/2008 Decided on: 16.04.2009

applied for information. It is well settled that the jurisdiction under Article 226 is both discretionary and equitable. The existence of technical question and error of jurisdiction need not persuade the Court to exercise such jurisdiction unless it is satisfied that the ends of justice required it to do so. By filing the present Petition, the Union of India has not only disclosed utter insensitivity to its duty as an authority under the Passport Act but also aggrieved the agony to a citizen who sought for a passport and was kept completely in the dark. It suggested unreasonably that a fresh application had to be made without, disclosing the fate of the previous application or why such fresh application was necessary. It has not questioned, in this proceeding, the direction by CIC to issue passports on the basis of the old applications – this establishes that its requirement to the applicant to move afresh was unjustified. In the circumstances, even while allowing the Writ Petition to the extent that award of compensation of Rs.5000/- is set aside, the Union of WP (C) India is hereby directed to pay costs to the second respondent to the extent of Rs.55,000/-. The same shall be paid within four weeks.

6.2.6 Cooperative societies under RTI³³¹

The Bombay high court has recommended central government to bring cooperative societies under the ambit of the RTI act. Vidarbha AMPC had appealed against the ruling of the single bench of high court directed it to reveal information under RTI act. Before parting with the judgment, looking at the increase in number of scams in the co-operative credit societies and banks due to frauds by the persons within the society or the bank causing severe losses to the poor depositors...it would be far better to cover all the co-operative credit societies/banks etc. under the RTI Act, the court noted, said the ruling. While the Gujarat High Court has stayed an order of the state government and Chief Information Commissioner for bringing all Cooperative societies under the right to information (RTI) act³³².

6.2.7 RIL as party to case on CIC order³³³

The Bombay High Court has directed that Reliance Industries should be made a party in a case relating to the Securities and Exchange Board of India and Central Information Commission (CIC). On November 22, 2012 the market regulator had filed a petition against CIC, the country's apex body monitoring the enforcement of the Right to Information (RTI) Act, after CIC directed SEBI to disclose all the details

³³¹ GN Bureau, November 13 2010 <http://www.governancenow.com/news/regularstory/bombay-hc-wants-cooperative-societies-under-rti>,

³³² <http://www.indlaw.com/guest/DisplayNews.aspx?8935CDB1-60C7-4EE4-852A-5F6970488614>,

³³³ The Business line 4th Dec., 12

following an RTI application filed by a Bangalore-based lawyer, to which the latter refused. The court directed the lawyers of SEBI to take instructions from the regulator if it could disclose the file notings and the underlying process of the consent route circular to the RTI applicant. The court further questioned SEBI's intentions behind not disclosing the file notings, on the basis of which it released a circular. It observed that as the notings are not confidential, the regulator should not have any problem revealing them.

6.2.8 Stays CIC order on Golf Club³³⁴

In a relief for Chandigarh Golf Club, the Punjab and Haryana High Court on stayed the operation of an order passed by the Central Information Commission (CIC) whereby the club had been brought under the purview of the Right to Information (RTI) Act.

6.2.9 No personal info under RTI³³⁵

The Bombay high court recently ruled that under the Right To Information (RTI) Act, disclosure of personal information with respect to service record, Income-Tax returns and assets of an individual is illegal — unless it is necessary in larger public interest. The judge further said that under Section 8(1)J of the RTI Act, there is no obligation on the information officer to give personal information, the disclosure of which has no relationship with any public activity or interest or which would cause unwarranted invasion on the privacy of the individual unless the authority is satisfied that it is justified in larger public interest.

6.2.10 Personal info can't be disclosed under RTI³³⁶

Giving privilege to the right to privacy, the Nagpur bench of Bombay High Court ruled that personal information, which serves no public interest, can't be disclosed under the Right to Information (RTI) Act, 2005. Allowing the writ petition (WP NO. 2157/2012) filed by Maharashtra State Electricity Transmission Company (Mahatransco) Limited, which challenged the order of state information commissioner, Justice held that such non-disclosure of personal information is protected by the exception provided in one of the provisions of the RTI Act itself.

³³⁴ The Indian Express, 06th, Nov., 2012

³³⁵ <http://www.asianage.com/mumbai/no-personal-info-under-rti-484>, Sep 09th, 2013

³³⁶ Vaibhav Ganjapure, TOI, TNN Nov 9th, 2012

6.2.11 Nature of mandamus commanding the State Information Commission

In *Brahm Singh v. State Information Commissioner & Others*³³⁷, it was held that the Right to information Act, 2005 is an Act to provide for 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 countability in the working of every public authority and the same provides for constitution of Central Information Commission and State information Commission. The Act in question is a self-contained Act, wherein Section 20 deals with penalties, when without reasonable cause information is not furnished and same also deals with disciplinary action. Once the Act in question is self-contained Act and penal clause is there with further authority to undertake disciplinary action and punish such an incumbent, then there is no occasion for this Court to proceed to issue any direction visa- vis under the Right to Information Act. Consequently, writ petition is dismissed.

6.2.12 Contempt application

In *Ram Sakha Singh v. Sunil Kumar Chaudhary, State Chief Information Commissioner*³³⁸, in order to sustain and maintain sanctity and solemnity of the proceedings in law courts, it is necessary that the parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the Court, when a Court is considered as a place where truth and justice are the solemn pursuits. If any party pollutes or attempts to pollute the purity of the fountain of justice and thus commits a serious wrong to the court and to the society as a whole of which it is not desirable and indeed is dangerous to take a lenient view. In view of what has been discussed above and considering the submissions made by the learned counsel for the parties and perusing the materials available on the record, in order to meet the ends of justice, I am of the opinion that imposition of costs would meet the ends of justice which I quantify to be Rs. 50,000.

6.2.13 Information sought without any useful purpose

In *Divakar S. Natarajan v. State Information Commissioner*³³⁹, the RTI, Act is an effective device; which, if utilized judiciously and properly, would help the citizens to become more informed. It no doubt relieves an applicant from the obligation to disclose

³³⁷ Writ - C No. - 14198 of 2010, Allahabad HC, Order dated. 22-3-2010

³³⁸ Contempt Application (Civil) No. - 3671 of 2010, Allahabad HC, Order dt 12-11-10

³³⁹ Writ Petition No.20182 of 2008, 27-01-2009, AP HC,

the reason as to why he wants the information. However, indiscriminate efforts to secure information just for the sake of it and without there being any useful purpose to serve, would only put enormous pressure on the limited human resources, that are available. Diversion of such resources, for this task would obviously, be, at the cost of ordinary functioning. Beyond a point, it may even become harassment, for the concerned agencies. Much needs to be done in this direction to impart a sense of responsibility on those, who want to derive benefit under the Act; to be more practical and realistic. This Court does not find any legal or factual infirmity in the orders passed by the respondents and the writ petition is accordingly dismissed.

6.2.14 Reasons for Judicial Decisions not information

In *Khanapuram Gandaiah v. The Administrative Officer*³⁴⁰, even on merits, we do not find any error in the orders passed by respondent Nos.1 to 3. Respondent No.1 has rightly rejected the application of the petitioner and advised him to avail appropriate legal remedies available to him to challenge the order passed in C.M.A. No.67 of 2005 on judicial side. If the petitioner is aggrieved by the order passed in C.M.A.No.67 of 2005, the remedy lies elsewhere, but not the one which he has chosen to avail under the provisions of the Act. The first and second appeals filed by the petitioner before respondent Nos.2 and 3 respectively have been rightly rejected by confirming the order of respondent No.1. In view of the above discussion, we do not find any merit in the petition and, therefore, the petition is rejected.

6.2.15 Implied Bar cannot be beyond Section 8

In *The Public Information Officer/ Joint Secretary v. A.P. Information Commissioner*³⁴¹, even if a Muntakhab is considered as privileged document under Section 74 read with 123 of Evidence Act, still public authority as defined under Section 2(h) of RTI Act cannot refuse. By reason of Section 22 of RTI Act, provisions of RTI Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. It only means that even if there is a question of privilege involved, RTI Act compels furnishing of information unless and until furnishing of information is barred under Section 8(1) of RTI Act. It is not permissible to read implied prohibitions or invisible mandates in RTI Act. In the result, for the above reasons, writ petition fails and is accordingly dismissed.

³⁴⁰ Petition No.28810 of 2008, on 24th, April, 2009, AP HC

³⁴¹ Writ Petition No.16717 OF 2008, 04-12-2008, AP HC

6.2.16 Appointment of Information Commissioner

In *K. Padmanabhaiah v. Government of Andhra Pradesh*³⁴², at the time of delivery of the judgment, learned counsel for the State has submitted that the judgment of the Supreme Court in the case of *Namit Sharma*³⁴³, as noted above in our judgment, has been reviewed and the same was brought to our attention. Accordingly, we direct that fresh selection process has to be undertaken taking note of the judgment passed in the Review Petition. The entire selection process shall be completed within a period of six weeks from the date of communication of this order. Copy of the judgment of the Supreme Court passed in the Review Petition may be kept in the record.

6.2.17 Unwarranted invasion of privacy

In *Union Public Service Commission v. R.K. Jain*³⁴⁴, the High Court held that we therefore, following the dicta in *Girish Ramchandra Deshpande*³⁴⁵, set aside the judgment dated 13th July, 2012 of the learned Single Judge and allow the writ petition preferred by the appellant UPSC, consequently setting aside the order dated 12th, January, 2011 of the CIC.

6.2.18 Disclose donations made to President's Fund

In *President's Secretariat v. Nitish Kumar Tripathi*³⁴⁶, the court held that the relevant extract from the order of the CIC reads as follows: The donations given by the President of India out of the public funds cannot be treated differently from the subsidy given by the government given to the citizens under various welfare schemes. The people of India have a right to know about such donations. Some minimum details, such as, the names of the receivers of the donations, their address and the amount of donation in each case should be published from time to time in the website of the President Secretariat itself. For all the aforesaid reasons, I find no merit in this petition and dismiss the same. The interim order stands vacated.

6.2.19 Third party information

In *Bharat Sanchar Nigam Ltd. v. Shri Chander Sekhar*³⁴⁷ the court held that we however do not deem it necessary to adjudicate on the proviso after Section 8(1)(j) of the Act

³⁴² P.I.L.Nos.28 and 38 of 2013, AP HC, Order dated 12-9-13

³⁴³ 2013 (1) SCC 745

³⁴⁴ In The High Court of Delhi at New Delhi , Date of decision: 6th, November, 2012

³⁴⁵ *Girish Ramchandra Deshpande v. Central Information Commissioner* reported as MANU/SC/0816/2012

³⁴⁶ In The High Court Of Delhi At New Delhi, Judgment delivered on: 14.06.2012, W.P.(C) 3382/2012

³⁴⁷ In The High Court of Delhi at New Delhi Date of decision: 23rd March, 2012, LPA No. 900/2010

and leave the same to be adjudicated in an appropriate proceedings. We may however notice that a Division Bench of the Bombay High Court in *Surupsingh Hrya Naik v. State of Maharashtra* AIR 2007 Bombay 121 has held that the proviso has been placed after Section 8(1)(j) and would have to be so interpreted in that context and the proviso applies only to Section 8(1)(j) and not to other Sub-sections. The appeal is therefore partly allowed. The matter is remanded back to the CIC. If the respondent is still desirous of the information sought, the CIC shall issue notice to the parties whose bids are evaluated in the evaluation process information qua which is sought by the respondent and decide the request of the respondent after following the procedure under Section 11 of the Act.

6.2.20 Disclosure of Cabinet Papers

In *Union of India v. Central Information Commission & Anr*³⁴⁸, the writ petition is allowed and the order dated 8th August, 2006 passed by Central Information Commission in Appeal No.CIC/MA/A/2006/00121 being *C. Ramesh v. Minister of Personnel & Grievance & Pension* is set aside. The application of the respondent No.2 under Section 6 of the Right to Information Act, 2005 dated 7th November, 2005 is also dismissed, holding that the respondent No.2 is not entitled for the correspondence sought by him which was exchanged between the President and the Prime Minister relating to the Gujarat riots.

6.2.21 Powers of Information Commission to inquire into complaints

In *Delhi Development Authority v. Central Information Commission and Another*³⁴⁹, the impugned order dated 22.09.2009 is set aside to the extent the Central Information Commission appointed an enquiry committee' when it was incumbent upon the Commission to conduct the inquiry itself. It is also set aside to the extent that it draws an adverse inference with regard to the absence of the Vice-Chairman, DDA in one of its sittings. The impugned Regulations are quashed as being *ultravires* the Right to Information Act, 2005.

6.2.22 Disclosure of reports

In *Union of India v. G Krishnan*³⁵⁰, the scientific, strategic and economic interests of the State cannot be at cross purposes with the requirement to protect the environment

³⁴⁸ In The High Court of Delhi at New Delhi, Date of Decision: 11.07.2012, W.P.(C) No.13090 of 2006

³⁴⁹ The High Court of Delhi at New Delhi, Judgment delivered on: 21.05.2010 WP (C) 12714/2009

³⁵⁰ In The High Court of Delhi At New Delhi, Judgment delivered on: 17.05.2012 W.P.(C) 2651/2012

in accordance with the Environment Protection Act, which is a legislation framed to protect the larger public interest and for promotion of public good. Policies framed with the sole object of advancing the scientific and economic interests of the State, but in breach of the State's obligations under the Environment Protection Act and other such like legislations, such as the Water (Prevention and Control of Pollution) Act, Air (Prevention and Control of Pollution) Act etc. would be vulnerable to challenge and may eventually not serve the purpose for which such a policy is framed. Therefore, while formulating its policies, the State is obliged to take into account all the relevant laws and the statutory obligations which the State is obliged to fulfill, lest the policy of the State which becomes one sided and imbalanced. A policy evolved in the largest public interest and public good can certainly not be said to be against the strategic, scientific or economic interest of the State. For the aforesaid reasons, I find no merit in this petition and no reason to interfere with the impugned order passed by the learned CIC. Accordingly, the present petition is dismissed.

6.2.23 Applicant need not be party when Penalty Proceeding is tried

In *Ankur Mutreja v. Delhi University*³⁵¹, the penalty proceedings are akin to contempt proceedings, the settled position with respect whereto is that after bringing the facts to the notice of the Court, it becomes a matter between the Court and the contemnor and the informant or the relator who has brought the factum of contempt having been committed to the notice of the Court does not become a complainant or petitioner in the contempt proceedings. His duty ends with the facts being placed before the Court though the Court may in appropriate cases seek his assistance. Reference in this regard may be made to *Om Prakash Jaiswal v. D.K. Mittal* (2000) 3 SCC 171, *Muthu Karuppan, Commr. of Police, Chennai v. Parithi Ilamvazhuthi* (2011) 5 SCC 496 and Division Bench judgment of this Court in *Madan Mohan Sethi v. Nirmal Sham Kumari* MANU/DE/0423/2011. The said principle applies equally to proceedings under Order XXXIX, Rule 2A of the Civil Procedure Code, 1908 which proceedings are also penal in nature.

Notice may also be taken of Section 18 of the RTI Act which provides for the CIC to receive and inquire into complaints against the Information Officer. The legislature having made a special provision for addressing the complaints of aggrieved information seekers is indicative of the remedy of such aggrieved information seekers being not in the penalty proceedings under Section 20. We therefore do not find any

³⁵¹ In The High Court of Delhi at New Delhi, date of Decision: 9th, January, 2012, LPA 764/2011

error in the procedure adopted by the CIC. Moreover, the appellant did not approach the CIC in this regard and preferred to file this petition directly. We therefore do not find any merit in this appeal and the same is accordingly dismissed.

6.2.24 Agreements, Settlements cannot be personal information

In *Jamia Millia Islamia v. Sh. Ikramuddin*³⁵², the court held that the information directed to be disclosed by the CIC in its impugned order is the copies of the Agreement/settlement arrived at between the petitioner and one Abdul Sattar pertaining to Gaffar Manzil land. The petitioner University is a statutory body and a public authority. The act of entering into an agreement with any other person/entity by a public authority would be a public activity and as it would involve giving or taking of consideration, which would entail involvement of public funds, the agreement would also involve public interest. Every citizen is entitled to know on what terms the Agreement/settlement has been reached by the petitioner public authority with any other entity or individual. The petitioner cannot be permitted to keep the said information under wraps. In the light of the aforesaid discussion, I do not find any merit in this petition and dismiss the same as such.

6.2.25 Wife's Personal Information denied to husband

In *Vijay Prakash v. UOI*³⁵³, the public interest argument of the Petitioner is premised on the plea that his wife is a public servant; he is in litigation with her and requires information, in the course of a private dispute to establish the truth of his allegations. The CIC has held that there is no public interest element in the disclosure of such personal information, in the possession of the information provider, i.e. the Indian Air Force. This court concurs with the view, on an application of the principles discussed. The petitioner has, not been able to justify how such disclosure would be in public interest, the litigation is, pure and simple, a private one. The basic protection afforded by virtue of the exemption (from disclosure) enacted under Section 8(1)(j) cannot be lifted or disturbed. In view of the above discussion, the writ petition fails and is dismissed.

6.2.26 Copies of answer sheets cannot be denied

In *Indian Institute of Technology, Delhi v. Navin Talwar*³⁵⁴, the court held that the right of a candidate, sitting for JEE or GATE, to obtain information under the RTI Act is

³⁵² In The High Court of Delhi at New Delhi, Judgment: 22.11.2011, W.P.(C.) No. 5677/2011

³⁵³ In The High Court of Delhi at New Delhi Judgment: 01.07.2009, W.P. (C) 803/2009

³⁵⁴ In The High Court of Delhi at New Delhi W.P. (C) 747 of 2011 & CM APPL 1568/2011

a statutory one. It cannot be said to have been waived by such candidate only because of a clause in the information brochure for the JEE or GATE. In other words, a candidate does not lose his or her right under the RTI Act only because he or she has agreed to sit for JEE or GATE. The condition in the brochure that no photocopy of the ORS sheet will be provided, is subject to the RTI Act. It cannot override the RTI Act. 16. For the above reasons, this Court finds no reason to interfere with the impugned orders dated 23rd November 2010 and 23rd, December, 2010 passed by the CIC. The writ petitions and the pending applications are dismissed.

6.2.27 Information regarding one's own criminal case

In *Deputy Commissioner of Police v. D.K. Sharma*³⁵⁵, the court held that the right of an applicant to seek such information pertaining to his own criminal case, after the conclusion of the trial, by taking recourse of the RTI Act, cannot be said to be barred by any provision of the CrPC. It is required to be noticed that Section 22 of the RTI Act states that the RTI Act would prevail notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force. Consequently, this Court is not inclined to interfere with the impugned order dated 25th September 2009 passed by the CIC. The petition and the pending application are dismissed.

6.2.28 Information Commission power to give direction, advice & recommendation

In *Praveen Kumar Jha v. BHEL Educational Management Board and Ors*³⁵⁶, the court held that for the purposes of inquiring into a matter the CIC will have the same powers as vested in a civil court. This does not mean that the CIC has been vested with all the inherent powers of a civil court including, for instance, the powers under Section 151 CPC. In the absence of any specific provision in the RTI Act permitting the CIC to levy costs on a complainant, it is not possible to countenance the impugned order dated 28th July 2010 of the CIC directing deduction from the salary of the Petitioner the expenses incurred by the PIO of Respondent No. 1 in travel for attending the hearings before the CIC. There is absolutely no legal basis for such a direction.

Further, while Section 20 of the RTI Act empowers the CIC to levy costs on PIOs who are found to have obstructed the furnishing of information to an applicant, there is no corresponding provision for levy of penalties or costs on a complainant if the

³⁵⁵ In The High Court of Delhi W.P.(C) 12428/2009 & CM APPL 12874/2009, Order dt. 15.12.2010

³⁵⁶ In The High Court of Delhi, W.P.(C) 5688/2010 and CM No. 11183/2010, Order dt. 12.01.2011

complaint is found to be vexatious. Likewise, Section 20(2) RTI Act permits the CIC to recommend disciplinary action against an errant CPIO. There is no provision concerning the complainant. It is not possible to accept the submission of learned counsel for the Respondent that the CIC has inherent powers to issue directions, in the interests of justice, to even give an 'advice' on deduction of costs from the complainant's salary or to 'recommend' disciplinary action against a complainant. None of the decisions cited by the learned counsel for the Respondents support his contentions. Consequently, paras 8 and 9 to the impugned order dated 28th July 2010 of the CIC are hereby set aside.

6.2.29 Ignorance of law is no excuse

In *the Public Information Officer, Commercial Taxes Ernakulam v. The State Information Commission*³⁵⁷, the court held that there is no specific finding that the petitioner delayed furnishing of the information without reasonable cause. But, still the explanation offered by the petitioner would only be sufficient to reduce the penalty and not to absolve the petitioner from liability. Ignorance of law is no excuse. The petitioner had sufficient time to get himself acquainted with the law and get clarification within the time stipulated. There was delay in doing the same for which judge of opinion that a nominal penalty has to be imposed on the petitioner, which is necessary to ensure strict compliance with the provisions of the Right to Information Act, by the petitioner and others in future.

6.2.30 Third Party information cannot be provided without following procedure

In *Reliance Industries Limited v. Gujarat State Information Commission*³⁵⁸, the court held that the order dated 31st January, 2007 passed by respondent No.1 i.e. Gujarat State Information Commission as well as the order dated 9th March,2007 passed by respondent No.2 i.e. Labour Commissioner and Appellate Authority as well as the communication dated 9th March,2007 issued by respondent No.4 i.e. Public Information Officer are hereby quashed and set aside. The original applicant Rasiklal Mardia is hereby directed not to make use of said information for any purpose whatsoever. The request made by learned counsel for the original applicant is not accepted by this Court

³⁵⁷ *Ernakula v The State Information Commission* WP(C).No. 27210 of 2007 (L)High Court of Kerala at Ernakulam, The 28th, February 2012/9th Phalgun 1933

³⁵⁸ In The High Court of Gujarat at Ahmedabad Special Civil Application No. 16073 of 2007 with Special Civil Application No. 17067 of 2007, Order dt. 16/08/2007

6.2.31 SIC cannot order demolition but only order disclosure of information

In *Gokalbhai Nanabhai Patel v. Chief Information Commissioner And Ors.*³⁵⁹, the court held that the impugned order dated 14th June, 2007 passed by the Chief Information Commissioner in Second Appeal No. 730/2006-07 is hereby quashed and set aside. This Court is not entering into the question as to whether there is encroachment by the petitioner or not. This question is kept open. Rule made absolute to the aforesaid extent.

6.2.32 Penalty on PIO reduced because there was no malafide denial of information

In *Urmish M Patel v. State of Gujarat*³⁶⁰, it is found that the penalty could not have been imposed by the Commissioner, on the ground that the petitioner's understanding of the law was flawed, in the peculiar facts of the case, since the petitioner failed to comply with the order of the appellate authority, penalty imposed by the Chief Information Commissioner is reduced to Rs.10,000/-. The order of the Chief Information Commissioner, dated 26.05.2010, stands modified to the aforesaid extent. This petition is disposed of, accordingly.

6.2.33 Asking for a long information for no reason is misuse of RTI

In *Ketan Pradyumna Bhatt v. Board of Governors*³⁶¹, the court held that we find that learned single Judge has not committed any error in passing the order impugned in the appeal. We find no merits in the appeal and, therefore, the appeal is dismissed. At this juncture, the Court would like to add that the present case is one of the cases wherein the benevolent legislation of RTI is misused and information in the nature of Minutes of Computer Committee right from 1991 are sought in the year 2010. We restrain ourselves from commenting anything further in this matter, but it is really surprising that the person remains in job right from 1991 till 2010 and then on one fine morning in 2010 he demands information starting from 1991 from his employer under the RTI Act .

³⁵⁹ *Gokalbhai Nanabhai Patel v. Chief Information Commissioner and Ors.* on 31st, August, 2007, Gujarat High Court

³⁶⁰ In The High Court of Gujarat at Ahmedabad Special Civil Application No. 8376 of 2010

³⁶¹ In The High Court of Gujarat at Ahmedabad Civil Application No. 3469 Of 2013 in Letters Patent Appeal No. 799 of 2013 in Special Civil Application No. 4150 Of 2012 with Letters Patent Appeal No. 799 of 2013 in Special Civil Application No. 4150 of 2012

6.2.34 State Information Commission should consist of one Chief State Information Commissioner and at least one State Information Commissioner

In *Virender Kumar v. P.S. Rana And Anr.*³⁶², the court held that we, therefore, allow this Writ petition and direct the respondent No. 2 State of Himachal Pradesh to appoint at least one State Information Commissioner in accordance with Section 15(2)(b) of the Right to Information Act, 2005. This may be positively done within 8 weeks from today. In case the State fails to appoint a State Information Commissioner in terms of this order in the time so stipulated, the State Information Commission being an improperly constituted body shall cease to exist or function and all consequences shall follow. The writ petition is disposed of in the aforesaid terms.

6.2.35 Record to be reconstituted and then information be given

In the *Commissioner (Appeal) of Central Excise and Service Tax, Ranchi v. Information Commissioner, Central Information Commission, New Delhi & Anr.*³⁶³, the learned Single Judge was right in dismissing the writ petition preferred by the appellant. We do not find any illegality in the said order and hence, we do not find any merit in this L.P.A., which is accordingly, dismissed.

6.2.36 The members of the interview Board cannot be disclosed

In *Jharkhand Public Service Commission, Ranchi v. The State of Jharkhand & Ors.*³⁶⁴, the court held that the claim of the petitioner that the information sought for in respect of the names of the members of the Interview Board cannot be furnished since it would violate the confidentiality, appears to be a reasonable objection. The refusal to disclose the information related to Item Nos. 4 and 5 raised by Respondent No. 3, on the ground that such informations are redundant in view of the cancellation of entire selection process earlier advertised for, is also reasonable and legitimate. From the impugned orders, I find that the Information Commission has not considered the above objections of the petitioner in proper perspective and has not applied its judicial mind to the issues involved. In the aforesaid circumstances, the impugned orders passed by the State Information Commission, are hereby quashed.

³⁶² Himachal Pradesh High Court , 17/5/2007

³⁶³ In The High Court of Jharkhand at Ranchi, L.P.A. No. 543 of 2009

³⁶⁴ In The High Court of Jharkhand at Ranchi W.P. (C) No. 6079 of 2007, dt. 19-5-2010

6.2.37 ACRs not personal documents

In *Centre of Earth Science Studies v. Dr. Mrs. Anson Sebastian, Scientist and State Information Commission Punnen Road*³⁶⁵, the court held that we do not think the Confidential Reports of the employees maintained by the appellant can WA 2781 & 2798 & 2799/09 7 be treated as records pertaining to personal information of an employee, the publication of which is prohibited under Section 8(1)(j) of the Act. We, therefore, concur with the findings of the learned Single Judge on this issue as well. Consequently Writ Appeals are dismissed.

6.2.38 Information of Bank as requested to be disclosed

In *Canara Bank, represented by its Assistant Regional Manager v. Central Information Commission and others*³⁶⁶, the court held that a nationalised bank, viz., Canara Bank, challenges the order of the Central Information Commission directing the bank to furnish the information requested for by the 2nd respondent employee of the bank. Ext.P-8 is the said order. I do not find any merit in the contentions of the petitioner in this writ petition and accordingly the same is dismissed.

6.2.39 The quantum of reward

In *Basudeb Batabyal v. Central Information Commission and Ors.*³⁶⁷, the court held that the Customs authorities will not be permitted to deny the information on the ground that the information is available with the Directorate of S Revenue Intelligence since the information relating to quantum of reward must be available with the Customs authorities for the duration that the petitioner served in the Special Investigation Branch with the Customs in Calcutta.

6.2.40 Inspection of Answer Papers

In *Pritam Rooj v. The University of Calcutta*³⁶⁸, the court held that whether it is on the anvil of the legal holy trinity of justice, equity and good conscience or on the test of openness and transparency being inherent in human rights or by the myriad tools of construction or even by the Wednesbury yardstick of reasonableness, the State Public Information Officer's rejection of the writ petitioner's request to obtain his answer script cannot be sustained. The University will proceed to immediately offer inspection

³⁶⁵ In The High Court of Kerala at Ernakulam WA.No. 2781 of 2009,dt 17/2/2010

³⁶⁶ High Court of Kerala, Kochhi Bench,

³⁶⁷ Calcutta High Court W.P.No.121 of 2009 on 30 July, 2009, *The Commissioner Of Customs (Port) v. The Information Commissioner, Central Information Commission & Ors.* W.P.No.310 of 2009

³⁶⁸ In The High Court at Calcutta, W.P. No. 22176 (W) of 2007, on 28th, March, 2008

of the paper that the petitioner seeks. A Writ of Mandamus in that regard must issue. The order of September 17, 2007 is set aside.

6.2.41 Manufacturing cost of 'Nano'

In *Tata Motors Limited & anr. v. State of West Bengal & ors*³⁶⁹, the court held that I had directed the Chief Commissioner to proceed in the light of the observations made therein. The State Information Commission not being validly constituted, the direction to the Chief Commissioner, for all practical purposes, was not proper. Whatever proceedings were initiated by him in pursuance of such order being illegal are inoperative. The impugned order by which the petitioners were directed to furnish the annexures to the MOA cannot sustain and, therefore, stands set aside.

6.2.42 Vighnagar Co-operative Sugar Factory not Public Authority

In *Vighnagar Sahakari Sakhar Karkhana Ltd. v. The State of Maharashtra and ors*³⁷⁰, the court held that we find from the record that on behalf of the petitioners, it was specifically raised before the authorities that they have not received any substantial finance from the State Government and whatever finance received by them were by way of loans which have been repaid but we find from the order of the Second Appellate Authority that it has not dealt with this aspect of the matter raised by the petitioners. In our opinion, the orders passed by the authorities which are impugned in this petition cannot be sustained and have to be set aside.

6.2.43 RTI Misuse

In *State Information Commissioner and others v. Tushar Dhananjay Mandlekar*³⁷¹, the court held that we find that the information sought by the respondent and reproduced in this judgment was so general and extensive that it could not have been found out within a couple of days or even within a fortnight in spite of the best efforts of half a dozen persons working in that direction. Hence, we feel that the imposition of costs of Rs.2,000/- on the appellant no.2 was not proper.

6.2.44 Unaided Schools not Public Authority

In *Nagar Yuwak Shikshan Sansthaand Yeshwantrao Chavan College of Engineering, v. Maharashtra State Information Commission*,³⁷², the court is of the opinion that none

³⁶⁹ Calcutta High Court, G.A. No. 3876 of 2008, W.P. No. 1773 of 2008, on 12th, January, 2010

³⁷⁰ In The High Court Of Judicature at Bombay, Writ Petition No.8382 of 2008, 8th, December, 2009

³⁷¹ In The High Court of Judicature at Bombay Nagpur Bench Letters Patent Appeal No.276/2012 in Writ Petition No.3818/2010 (D)

³⁷² In HC, Bombay ,Nagpur Bench. Writ Petition No. 5132 of 2008

of the petitioners are covered by the definition of public authority within the meaning of Section 2(h) of the Right to Information Act. Consequently, the impugned order will have to be quashed and set aside.

6.2.45 Penalty cannot be without justified reasons

In *Registrar of Companies & Ors v. Dharmendra Kumar Garg & Anr*³⁷³, the court held that if the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the RTI Act seeks to bring in and may lead to skewed and imbalanced decisions by the PIOs Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the RTI Act in disrepute. For all the aforesaid reasons, I allow the present petition and quash the impugned orders passed by Sh. Shailesh Gandhi, Central Information Commissioner.

6.2.46 File Noting is not exempted information

In *State of Punjab v. State Information Officer and others*³⁷⁴, the court held that the facts have not been disclosed to show that how financial interest of the State will suffer, in case the demanded information is supplied to respondent No.2. Copies of the documents, which respondent No.2 wants to be supplied to him, are the official notings etc. This Court feels that in view of the provisions of Section 8 of the Act, no exemption can be granted to the petitioner unless it is disclosed as to how economic interest of the State will suffer. No explanation has been furnished in that regards. No case is made out for interference. Hence petition has been dismissed.

6.2.47 Court cannot take over the powers of the Info Commission

In *C. Selvaraj and Alwarnagar v. Chief Secretary to Government of Tamil Nadu and oths*³⁷⁵, the court held that no information seeker can be allowed to insinuate or defame the Commissioners in the guise of prosecuting their cases. Under such circumstances,

³⁷³ In The High Court of Delhi at New Delhi , Judgment dt.01.06.2012, W.P.(C) 11271/2009

³⁷⁴ In The High Court of Punjab and Haryana at Chandigarh Civil Writ Petition No.7289 of 2009(O&M), date of Decision: 14.07.2009

³⁷⁵ Madras High Court, W.P.Nos.3776 to 3778 of 2013, 18.02.2013

when specific power is vested on the Commissioner and the Commission had proceeded against the information seeker, who had abused the Chief Information Commissioner in the course of his proceedings, it will be open to the said authority to disqualify a particular information seeker by passing a speaking order. This Court is not inclined to entertain the Writ Petitions, especially in the context that the petitioner makes series of allegations against the Chief Information Commissioner, who has also not been made as party in these Writ Petitions. There is no case made out. Hence, all the Writ Petitions stand dismissed.

6.2.48 Citizen is entitled to have that information which can be provided to parliament

In *Kashinath J. Shetye, Major, Indian National v. PIO, Electricity Department, Goa and others*³⁷⁶, the court held that in fact, the Parliament has a right to know the ground for which a public servant has taken leave since his salary is paid from the public exchequer. In the circumstances, I do not find that the Information Commission committed any error in directing such information to be supplied. There is no substance in the writ petition. It is dismissed.

6.2.49 Direct complaint without filing first appeal is not permissible

In *M/s Bangalore Electricity Supply Company Ltd. and others v. State Information Commission, Bangalore and others*³⁷⁷, the court held that direct complaint under Section 18 without filing first appeal under Section 19(1) is not permissible. The procedure adopted by first respondent is clearly not permissible in law.

6.2.50 Public Information Officer

In *Y.N. Chandramma v. Sri A.R. Viswanatha*³⁷⁸, the court held that every officer designated as State of Assistant State Public Information Officer is a Public Information Officer within meaning Section 5 of the RTI Act. Hence the petitions are dismissed.

6.3 Decisions of Supreme Court on the Right to Information Act

The important decision taken by Supreme Court under Article 32 of the Constitution of India on the Right to Information Act is described below:

³⁷⁶ In The High Court of Bombay at Goa Writ Petition No. 1 of 2009.

³⁷⁷ In The High Court of Karnataka at Bangalore Writ Petition No. 1944 of 2012 WP 22981-22982/2012

³⁷⁸ In The High Court of Karnataka at Bangalore Writ Petition No. 4280 of 2012 WP 14953/2012dt.3-1-13

6.3.1 Filing a frivolous petition, saddled with cost

In *Karnataka Information Commissioner v. State Public Information Officer & Another*.³⁷⁹, the court held that every officer designated as State of Assistant State Public Information Officer is a Public Information Officer within meaning Section 5 of the RTI Act. Hence the petitions are dismissed. The entire exercises undertaken by the Commission and the Karnataka Information Commissioner to challenge the orders of the learned Single Judge and the Division Bench of the High Court shows that the concerned officers have wasted public money for satisfying their ego. If respondent No.2 felt aggrieved by the order of the learned Single Judge, nothing prevented him from challenging the same by filing writ appeal. However, the fact of the matter is that he did not question the order of the learned Single Judge. The Commission and the Karnataka Information Commissioner had no legitimate cause to challenge the order passed by the learned Single Judge and the Division Bench of the High Court. Therefore, the writ appeal filed by the commission was totally unwarranted and misconceived and the Division Bench of the High Court did not commit any error by dismissing the same. With the above observations, the special leave petition is dismissed. For filing a frivolous petition, the petitioner is saddled with cost of Rs.1,00,000/-.

6.3.2 Information on IT returns can't be disclosed under RTI

In *Girish Ramchandra Deshpande v. Central Information Commissioner & Ors.*³⁸⁰, the Supreme Court has ruled that the details of a person's income tax (IT) returns and job performance cannot be disclosed under the Right to Information (RTI) Act unless larger public interest is involved. Otherwise, making public those information would amount to unwarranted invasion into privacy, the court added. The petitioner in the instant case has not made a bona fide public interest in seeking information, the disclosure of such information would cause unwarranted invasion of privacy of the individual under Section 8(1)(j) of the RTI Act.16. We are, therefore, of the view that the petitioner has not succeeded in establishing that the information sought for is for the larger public interest. That being the fact, we are not inclined to entertain this special leave petition. Hence, the same is dismissed.

6.3.3 RTI does not apply to court judgments³⁸¹

The Supreme Court stated that under an RTI Act, a person is entitled to ask for

³⁷⁹ Petition(s) for Special Leave to Appeal (Civil)...../2013 CC 1853/2013, (From the judgment and order dated 15/06/2012 in WA No.3255/2010, of The High Court Of Karnataka at Bangalore)

³⁸⁰ SC,[Special Leave Petition (Civil) No. 27734 of 2012 (@ CC 14781/2012)]

³⁸¹ <http://legalperspectives.blogspot.in/2010/01/rti-does-not-apply-to-court-judgments.html>

opinions, orders, etc but not allowed to ask for the reasons of the same, especially during judgments of the court. A judge is not responsible to give reasons apart from those mentioned in the judgment and is free to make independent decisions. Of course, under the RTI Act an applicant is entitled to get copy of the opinions, advices, circulars, orders, etc., but he cannot ask for any information as to why such opinions, advices, circulars, orders, etc. have been passed, especially in matters pertaining to judicial decisions. A judge speaks through his judgments or orders passed by him. If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion.

A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is per se illegal and unwarranted. A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions.

6.3.4 Disclosure of the names, designation and addresses of the subject expert present in the Interview Board

In *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi & Anr*³⁸², the Hon'ble Supreme Court held that the disclosure of names and addresses of the members of the Interview Board would ex facie endanger their lives or physical safety. The possibility of a failed candidate attempting to take revenge from such persons cannot be ruled out. On the one hand, it is likely to expose the members of the Interview Board to harm and, on the other, such disclosure would serve no fruitful much less any public purpose. Furthermore, the view of the High Court in the judgment under appeal that element of bias can be traced and would be crystallized only if the names and addresses of the examiners/interviewers are furnished is without any substance. The Hon'ble

³⁸² Judgment dated 13/12/2012 of Hon'ble Supreme Court of India in Civil Appeal No.9052 of 2012 (Arising out of SLP(C) No.20217 of 2011), filed by *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi & Anr*

Supreme Court set aside the judgment of the Division Bench of the Patna High Court and held that the Bihar Public Service Commission is not bound to disclose the names, designation and addresses of the subject expert present in the Interview Board.

6.3.5 Information in matters pertaining to judicial decisions

In *Khanapuram Gandaiah v. Administrative Officer and Ors.*³⁸³, the petitioner submitted his application under Section 6 of the RTI Act before the Administrative Officer-cum-Assistant State Public Information Officer seeking information in respect of the questions raised in his application. However, the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the public authority under any other law for the time being in force. The answers sought by the petitioner in the application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him.

If any party feels aggrieved by the order/judgment passed by a judge, the remedy available to such a party is either to challenge the same by way of appeal or by revision or any other legally permissible mode. No litigant can be allowed to seek information as to why and for what reasons the judge had come to a particular decision or conclusion. A judge is not bound to explain later on for what reasons he had come to such a conclusion. A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is *per se* illegal and unwarranted.

6.3.6 Whether CJI is a Public Authority

In *Central Public Information Officer, Supreme Court of India v. Subhash Chandra Agrawal*³⁸⁴, Right to Information - Interpretation - Right to Information Act, 2005 - Central Information Commission allowed appeal preferred by Respondent and directed Central Public Information Officer, Supreme Court of India to furnish information as

³⁸³ (AIR2010SC615, 2010 1 AWC(Supp)703SC, 2010(2)BomCR258, 109(2010)CLT858, 2010(1)CTC342, JT2010(1)SC66, 2010(3)MhLJ6(SC), (2010)1MLJ1319(SC), 2010(1)PLJR194, RLW2010(1)SC651, 2010(1)SCALE124, (2010)2SCC1, (2010)1SCC(L&S)551, [2010]1SCR1, 2010(1)UC632 A) decided on: 04.01.2010

³⁸⁴ Along with Civil Appeal No. 10045 of 2010 (Arising out of Special Leave Petition (C) No. 32856 of 2009) and Civil Appeal No. 2683 of 2010] (2011 3 AWC2405SC, (SCSuppl)2011(1)CHN221, 2011(1)CTC369, (2011)3MLJ194(SC), 2011(1)RCR(Civil)231, 2010(12)SCALE496, (2011)1UPLBEC47) decided on: 26.11.2010

sought by him - Hence, this Appeal - Whether, information sought by Respondent involved interpretation of Constitution - Held, information sought by Respondent raised questions of constitutional importance relating to position of Hon'ble Chief Justice of India under Constitution and independence of Judiciary in scheme of Constitution and fundamental right to freedom of speech and expression - Both questions were of great value and were required to be balanced - This debate on Constitution involved great and fundamental issues - Thus, substantial question of law as to interpretation of Constitution was involved which was required to be heard by Constitution Bench - Therefore, Registry was directed to place matter before Hon'ble Chief Justice of India for constitution of Bench of appropriate strength - Appeal disposed of. The *ratio decidendi* of the case was thus, 'matter shall be referred to constitutional bench when question involved interpretation of constitution.'

6.3.7 Right to privacy is an integral part of right to life,

In *Ram Jethmalani and Ors. v. Union of India (UOI) and Ors.*³⁸⁵, Right to Information, Unaccounted monies issue, Disclosure of documents referenced by Union of India (UOI), Denial of information on the ground of infringing Right to privacy on individuals concerned. Held, right to privacy is an integral part of right to life, a cherished constitutional value, Revelation of bank account details of individuals, without establishment of prima facie grounds to accuse them of wrong doing, would be a violation of their rights to privacy. Mere fact that a citizen has a bank account in a bank located in a particular jurisdiction cannot be a ground for revelation of details of his or her account that the State has acquired. State cannot compel citizens to reveal or itself reveal details of their bank accounts to the public at large, either to receive benefits from the State or to facilitate investigations and prosecutions of such individuals, unless the State itself has, through properly conducted investigations, within the four corners of constitutional permissibility, been able to establish prima facie grounds to accuse the individuals of wrong doing. It is only after the State has been able to arrive at a prima facie conclusion of wrong doing, based on material evidence, would the rights of others in the nation to be informed comes into play and proceedings initiated may be disclosed.

The *ratio decidendi* of the case was thus *Right to privacy is an integral part of right to life, a cherished constitutional value and it is important that human beings be allowed*

³⁸⁵ Writ Petition (Civil) No. 176 of 2009 and I.A. No. 1 of 2009 [Under Article 32 of the Constitution of India] (JT2011(7)SC104, 2011 (3) KLT(SN) 47, 2011(3)RCR(Civil)643, 2011(3)RCR(Criminal)480, 2011(6)SCALE691, (2011)8SCC1, 2011(4)UJ2237(SC)) decided on: 04.07.2011

domains of freedom that are free of public scrutiny unless they act in an unlawful manner. Revelation of bank account details of individuals, without establishment of prima facie grounds to accuse them of wrong doing, would be a violation of their rights to privacy. State cannot compel citizens to reveal or itself reveal details of their bank accounts to the public at large, either to receive benefits from the State or to facilitate investigations and prosecutions of such individuals, unless the State itself has, through properly conducted investigations, within the four corners of constitutional permissibility.

6.3.8 To permit examinees to have inspection of their answer books

In *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors*³⁸⁶, the first Respondent appeared for the Secondary School Examination, 2008 conducted by the Central Board of Secondary Education (for short 'CBSE' or the 'Appellant'). When he got the mark sheet he was disappointed with his marks. He thought that he had done well in the examination but his answer-books were not properly valued and that improper valuation had resulted in low marks. Therefore he made an application for inspection and re-evaluation of his answer-books. CBSE rejected the said request by letter dated 12.7.2008. Issues under RTI Act

- (i) Whether the information sought was exempted under Section 8(1)(e) of RTI Act since CBSE shared fiduciary relationship with its evaluators and maintain confidentiality of both manner and method of evaluation.
- (ii) Whether the information sought was exempted under Section 8(1)(g) of RTI Act.
- (iii) Whether the Public Authority is supposed to keep the answer books for twenty years or more.

It will also be useful to refer to a few decisions of this Court which considered the importance and scope of the right to information. In *State of Uttar Pradesh v. Raj Narain*³⁸⁷, 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 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

³⁸⁶ *Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors* Civil Appeal No.6454 of 2011SC

³⁸⁷ (1975) 4 SCC 428

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.

In *Dinesh Trivedi v. Union of India*³⁸⁸, Supreme Court held:

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. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute.....Implicit in this assertion is the proposition that in transaction which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated.

In *People's Union for Civil Liberties v. Union of India*³⁸⁹, Supreme Court held that right of information is a facet of the freedom of speech and expression as contained in Article 19(1)(a) of the Constitution of India and such a right is subject to any reasonable restriction in the interest of the security of the state and subject to exemptions and exceptions. The examining bodies (Universities, Examination Boards, CBSC etc.) are neither security nor intelligence organizations and therefore the exemption under Section 24 will not apply to them. The disclosure of information with reference to answer-books does not also involve infringement of any copyright and therefore Section 9 will not apply. The examining bodies contend that the evaluated answer-books are exempted from disclosure under Section 8(1)(e) of the RTI Act, as they are 'information' held in its fiduciary relationship. The term 'fiduciary' and 'fiduciary relationship' refer to different capacities and relationship, involving a common duty or obligation.

Supreme Court does not find that kind of fiduciary relationship between the examining body and the examinee, with reference to the evaluated answer-books, that come into the custody of the examining body. The Supreme Court further held that even assuming that it is in a fiduciary relationship with the examinee. That section provides that notwithstanding anything contained in the Act, there shall be no obligation to give any citizen information available to a person in his fiduciary relationship. This would only mean that even if the relationship is fiduciary, the exemption would operate in regard to giving access to the information held in fiduciary relationship, to third parties. There is no question of the fiduciary withholding information relating to the beneficiary, from the beneficiary himself. One of the duties of the fiduciary is to make thorough disclosure of all relevant facts of all transactions

³⁸⁸ (1997) 4 SCC 306

³⁸⁹ (2004) 2 SCC 476

between them to the beneficiary, in a fiduciary relationship. By that logic, the examining body, if it is in a fiduciary relationship with an examinee, will be liable to make a full disclosure of the evaluated answer-books to the examinee and at the same time, owe a duty to the examinee not to disclose the answer-books to anyone else. If A entrusts a document or an article to B to be processed, on completion of processing, B is not expected to give the document or article to anyone else but is bound to give the same to A who entrusted the document or article to B for processing. Therefore, if a relationship of fiduciary and beneficiary is assumed between the examining body and the examinee with reference to the answer-book, Section 8(1)(e) would operate as an exemption to prevent access to any third party and will not operate as a bar for the very person who wrote the answer-book, seeking inspection or disclosure of it.

An evaluated answer book of an examinee is a combination of two different information's. The first is the answers written by the examinee and second is the marks/assessment by the examiner. When an examinee seeks inspection of his evaluated answer-books or seeks a certified copy of the evaluated answer-book, the information sought by him is not really the answers he has written in the answer-books (which he already knows), nor the total marks assigned for the answers (which has been declared). What he really seeks is the information relating to the break-up of marks, that is, the specific marks assigned to each of his answers. When an examinee seeks 'information' by inspection/certified copies of his answer-books, he knows the contents thereof being the author thereof. When an examinee is permitted to examine an answer-book or obtain a certified copy, the examining body is not really giving him some information which is held by it in trust or confidence, but is only giving him an opportunity to read what he had written at the time of examination or to have a copy of his answers. Therefore, in furnishing the copy of an answer-book, there is no question of breach of confidentiality, privacy, secrecy or trust. The real issue therefore is not in regard to the answer-book but in regard to the marks awarded on evaluation of the answer-book. Even here the total marks given to the examinee in regard to his answer-book are already declared and known to the examinee. What the examinee actually wants to know is the break-up of marks given to him, that is how many marks were given by the examiner to each of his answers so that he can assess how his performance has been evaluated and whether the evaluation is proper as per his hopes and expectations. Therefore, the test for finding out whether the information is exempted or not, is not in regard to the answer book but in regard to the evaluation by the examiner.

Supreme Court, therefore, hold that an examining body does not hold the evaluated answer-books in a fiduciary relationship. Not being information available to an

examining body in its fiduciary relationship, the exemption under Section 8(1)(e) is not available to the examining bodies with reference to evaluated answer-books. As no other exemption under Section 8 is available in respect of evaluated answer books, the examining bodies will have to permit inspection sought by the examinees.

The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are therefore exempted from disclosure under Section 8(1)(g) of RTI Act, on the ground that if such information is disclosed, it may endanger their physical safety. Therefore, if the examinees are to be given access to evaluated answer-books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer-book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8(1)(g) of RTI Act. Those portions of the answer-books which contain information regarding the examiners/co-ordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered or otherwise severed from the non-exempted part of the answer-books, under Section 10 of RTI Act.

Where any record or information is required to be destroyed under the rules and regulations of a public authority prior to twenty years, Section 8(3) will not prevent destruction in accordance with the Rules. Section 8(3) of RTI Act is not therefore a provision requiring all 'information' to be preserved and maintained for twenty years or more, nor does it override any rules or regulations governing the period for which the record, document or information is required to be preserved by any public authority.

The apex court has ruled that evaluated answer-sheets are covered under the definition of *information* under the RTI Act. This judgment applies to all examinations including the Public Service Commissions, Universities, CBSE and other boards, professional bodies like ICAI, in fact, every examination conducted by any agency in India. The respondent appeared for the Secondary School Examination, 2008 conducted by the Central Board of Secondary Education (for short 'CBSE' or the 'appellant'). When he got the mark sheet he was disappointed with his marks. He thought that he had done well in the examination but his answer-books were not properly valued and that improper valuation had resulted in low marks. Therefore he made an application for inspection and re-evaluation of his answer-books. CBSE rejected the said request.

In a landmark judgment, the Supreme Court affirmed the order of High Court and allowed disclosure of the answer-sheets to the examinee, subject to the clarifications regarding the scope of the RTI Act and the safeguards and conditions subject to which 'information' should be furnished. The appeals are disposed of accordingly.

6.3.8.1 Purposive Interpretation

Some High Courts have held that Section 8 of RTI Act is in the nature of an exception to Section 3 which empowers the citizens with the right to information, which is a derivative from the freedom of speech; and that therefore Section 8 should be construed strictly, literally and narrowly. This may not be the correct approach. The Act seeks to bring about a balance between two conflicting interests, as harmony between them is essential for preserving democracy. One is to bring about transparency and accountability by providing access to information under the control of public authorities. The other is to ensure that the revelation of information, in actual practice, does not conflict with other public interests which include efficient operation of the governments, optimum use of limited fiscal resources and preservation of confidentiality of sensitive information. The preamble to the Act specifically states that the object of the Act is to harmonise these two conflicting interests. While Sections 3 and 4 seek to achieve the first objective, Sections 8, 9, 10 and 11 seek to achieve the second objective. Therefore when Section 8 exempts certain information from being disclosed, it should not be considered to be a fetter on the right to information, but as an equally important provision protecting other public interests essential for the fulfillment and preservation of democratic ideals.

When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualize and enumerate all types of information which require to be exempted from disclosure in public interest. The legislature has however made an attempt to do so. The enumeration of exemptions is more exhaustive than the enumeration of exemptions attempted in the earlier Act that is Section 8 of Freedom to Information Act, 2002. The Courts and Information Commissions enforcing the provisions of RTI Act have to adopt a purposive construction, involving a reasonable and balanced approach which harmonizes the two objects of the Act, while interpreting Section 8 and the other provisions of the Act.

6.3.8.2 Misconceptions about RTI Act

At this juncture, it is necessary to clear some misconceptions about the RTI Act. The RTI Act provides access to all information that is available and existing. This is clear from a combined reading of Section 3 and the definitions of 'information' and 'right to information' under Clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analyzed data or abstracts or statistics, an

applicant may access such information, subject to the exemptions in Section 8 of the Act. But where the information sought is not a part of the record of a public authority and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Act does not cast an obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant. The reference to 'opinion' or 'advice' in the definition of 'information' in Section 2(f) of the Act, only refers to such material available in the records of the public authority. Many public authorities have, as a public relation exercise, provide advice, guidance and opinion to the citizens. But that is purely voluntary and should not be confused with any obligation under the RTI Act.

6.3.8.3 On Powers of Commission

Section 19(8) of RTI Act has entrusted the Central/State Information Commissions, with the power to require any public authority to take any such steps as may be necessary to secure the compliance with the provisions of the Act. Apart from the generality of the said power, Clause (a) of Section 19(8) refers to six specific powers, to implement the provision of the Act.

- (i) Sub-clause (i) empowers a Commission to require the public authority to provide access to information if so requested in a particular 'form' (that is either as a document, micro film, compact disc, pen drive, etc.). This is to secure compliance with Section 7(9) of the Act.
- (ii) Sub-clause (ii) empowers a Commission to require the public authority to appoint a Central Public Information Officer or State Public Information Officer. This is to secure compliance with Section 5 of the Act.
- (iii) Sub-clause (iii) empowers the Commission to require a public authority to publish certain information or categories of information. This is to secure compliance with Section 4(1) and (2) of RTI Act.
- (iv) Sub-clause (iv) empowers a Commission to require a public authority to make necessary changes to its practices relating to the maintenance, management and destruction of the records. This is to secure compliance with Clause (a) of Section 4(1) of the Act.
- (v) Sub-clause (v) empowers a Commission to require the public authority to

increase the training for its officials on the right to information. This is to secure compliance with Sections 5, 6 and 7 of the Act.

- (vi) Sub-clause (vi) empowers a Commission to require the public authority to provide annual reports in regard to the compliance with Clause (b) of Section 4(1). This is to ensure compliance with the provisions of Clause (b) of Section 4(1) of the Act.

The power under Section 19(8) of the Act however does not extend to requiring a public authority to take any steps which are not required or contemplated to secure compliance with the provisions of the Act or to issue directions beyond the provisions of the Act. The power under Section 19(8) of the Act is intended to be used by the Commissions to ensure compliance with the Act, in particular ensure that every public authority maintains its records duly catalogued and indexed in the manner and in the form which facilitates the right to information and ensure that the records are computerized, as required under Clause (a) of Section 4(1) of the Act; and to ensure that the information enumerated in Clauses (b) and (c) of Sections 4(1) of the Act are published and disseminated and are periodically updated as provided in Sub-sections (3) and (4) of Section 4 of the Act. If the 'information' enumerated in Clause (b) of Section 4(1) of the Act are effectively disseminated (by publications in print and on websites and other effective means), apart from providing transparency and accountability, citizens will be able to access relevant information and avoid unnecessary applications for information under the Act.

6.3.8.4 Frivolous Petitions

The right to information is a cherished right. Information and right to information are intended to be formidable tools in the hands of responsible citizens to fight corruption and to bring in transparency and accountability. The provisions of RTI Act should be enforced strictly and all efforts should be made to bring to light the necessary information under Clause (b) of Section 4(1) of the Act which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. But in regard to other information, (that is information other than those enumerated in Section 4(1)(b) and (c) of the Act), equal importance and emphasis are given to other public interests (like confidentiality of sensitive information, fidelity and fiduciary relationships, efficient operation of governments, etc.). Indiscriminate and impractical demands or directions under RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counter-

productive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritizing 'information furnishing', at the cost of their normal and regular duties.

6.3.9 To disclose to the standard criteria, if any, relating to moderation

In the *Institute of Chartered Accountants of India v. Shaunak H. Satya and Ors.*³⁹⁰, Right to Information, Exemption Section 8(1)(e) of the Right to Information Act, 2005 Held, Appellant examining body was not liable to give to any citizen any information relating to question papers solutions/model answers and instructions relating to particular examination before date of such examination Disclosure of question papers, model answers and instructions in regard to any particular examination, would not harm competitive position of any third party once examination was held that Appellant voluntarily publishes suggested answers in regard to question papers in form of book for sale every year after examination. Therefore, Section 8(1)(d) of RTI Act did not bar or prohibit disclosure of question papers model answers solutions to questions and instructions if any given to examiners and moderators after examination and after evaluation of answer scripts was completed as at that stage they would not harm competitive position of any third party.

The Appellant Institute of Chartered Accountants of India (for short 'ICAI') is a body corporate established under Section 3 of the Chartered Accountants Act, 1949. One of the functions of the Appellant council is to conduct the examination of candidates for enrolment as Chartered Accountants. The first Respondent appeared in the Chartered Accountants' final examination conducted by ICAI in November, 2007. The results were declared in January 2008. The first Respondent who was not

³⁹⁰ *The Institute of Chartered Accountants of India v. Shaunak H.Satya & Ors.* Civil Appeal No. 7571 of 2011, arising out of SLP (C) No.2040/2011, SC

successful in the examination applied for verification of marks. The Appellant carried out the verification in accordance with the provisions of the Chartered Accountants Regulations, 1988 and found that there was no discrepancy in evaluation of answer scripts. The Appellant informed the first Respondent accordingly. On 18.1.2008 the Appellant submitted an application seeking the following information under 13 heads, under the Right to Information Act, 2005. The Appellant by its reply dated 22.2.2008 gave the responses/information in response to the 13 queries. Not being satisfied with the same, the Respondent filed an appeal before the appellate authority. The appellate authority dismissed the appeal, by order dated 10.4.2008, concurring with the order of the Chief Public Information Officer of the Appellant. The first Respondent thereafter filed a second appeal before the Central Information Commission in regard to queries (1) to (5) and (7) to (13). CIC by order dated 23.12.2008 rejected the appeal in regard to queries 3, 5 and 13 (as also Query 2) while directing the disclosure of information in regard to the other questions.

Supreme Court however agree that it is necessary to make a distinction in regard to information intended to bring transparency, to improve accountability and to reduce corruption, falling under Section 4(1)(b) and (c) and other information which may not have a bearing on accountability or reducing corruption. The competent authorities under the RTI Act will have to maintain a proper balance so that while achieving transparency, the demand for information does not reach unmanageable proportions affecting other public interests, which include efficient operation of public authorities and government, preservation of confidentiality of sensitive information and optimum use of limited fiscal resources. In view of the above, this appeal is allowed in part and the order of the High Court is set aside and the order of the CIC is restored, subject to one modification in regard to query (13): ICAI to disclose to the first Respondent, the standard criteria, if any, relating to moderation, employed by it, for the purpose of making revisions under Regulation 39(2).

6.3.10 Eligibility criteria for appointment to the post of Chief Information Commissioner and Central Information Commissioners

In *Namita Sharma v. Union of India*³⁹¹, the constitutional validity of provisions dealing with the eligibility criteria for Information Commissioners at both the Central and State level, was challenged. The Act provides that members of the State and Central Information Commission should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management,

³⁹¹ *Namita Sharma v. Union of India*, 13th, September, 2012 in WP(C) 210 of 2012

journalism, mass media or administration and governance. It was the contention of the petitioner that the Information Commission performs duties of judicial and quasi-judicial nature; however, the qualifications prescribed for the same are vague, general and *ultravires* to Constitution.

The Supreme Court upheld the validity of the sections but ruled that the Information Commissions are quasi-judicial authorities or tribunals performing judicial functions and that they will have to work in a bench of two members, one judicial member and the other a qualified person from a specific field. The judicial members will be appointed in consultation with the Chief Justice of India and Chief Justices of the High Courts of the respective States, as the case may be. At present, a review petition against this judgment has been filed by the Union government and is pending before the Supreme Court.

6.3.11 Supreme Court reviews Namita Sharma judgment

In *Union of India v. Namita Sharma*³⁹², the Supreme Court make it clear that as the judgment under review suffers from mistake of law, we allow the Review Petitions, recall the directions and declarations in the judgment under review and dispose of Writ Petition (C) No. 210 of 2012 with the following declarations and directions:

- (i) SC declare that Sections 12(5) and 15(5) of the Act are not *ultravires* the Constitution.
- (ii) SC declare that Sections 12(6) and 15(6) of the Act do not debar a Member of Parliament or Member of the Legislature of any State or Union Territory, as the case may be or a person holding any other office of profit or connected with any political party or carrying on any business or pursuing any profession from being considered for appointment as Chief Information Commissioner or Information Commissioner, but after such person is appointed as Chief Information Commissioner or Information Commissioner, he has to discontinue as Member of Parliament or Member of the Legislature of any State or Union Territory or discontinue to hold any other office of profit or remain connected with any political party or carry on any business or pursue any profession during the period he functions as Chief Information Commissioner or Information Commissioner.
- (iii) SC direct that only persons of eminence in public life with wide knowledge and experience in the fields mentioned in Sections 12(5) and 15(5) of the Act be

³⁹² Review Petition (C) NO(s). 2309 OF 2012 IN W.P(C) 210/2012, R.P.(C) NO. 2675/2012 IN W.P.(C) NO. 210/2012 SLP(C) NO. 27347/2012, Order dt 3.9.2013

considered for appointment as Information Commissioner and Chief Information Commissioner.

- (iv) SC further direct that persons of eminence in public life with wide knowledge and experience in all the fields mentioned in Sections 12(5) and 15(5) of the Act, namely, law, science and technology, social service, management, journalism, mass media or administration and governance, be considered by the Committees under Sections 12(3) and 15(3) of the Act for appointment as Chief Information Commissioner or Information Commissioners.
- (v) SC further direct that the Committees under Sections 12(3) and 15(3) of the Act while making recommendations to the President or to the Governor, as the case may be, for appointment of Chief Information Commissioner and Information Commissioners must mention against the name of each candidate recommended, the facts to indicate his eminence in public life, his knowledge in the particular field and his experience in the particular field and these facts must be accessible to the citizens as part of their right to information under the Act after the appointment is made.
- (vi) SC also direct that wherever Chief Information Commissioner is of the opinion that intricate questions of law will have to be decided in a matter coming up before the Information Commission, he will ensure that the matter is heard by an Information Commissioner who has wide knowledge and experience in the field of law.

6.3.12 Cooperatives out of bounds to RTI, rules Supreme Court³⁹³

In *Thalappalam Service Coop. Bank Ltd. and others v. Kerala High Court* judgment, Cooperative societies will not come under public authority as defined under Section 2(h) of the Right to Information Act and hence are not liable to provide information to the general public under this law, the Supreme Court has held. The powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or supervisory and will not amount to dominating or interfering with the management or affairs of the society so as to control it. Supervisory or general regulation, under the statute, of cooperative societies, which are body corporate, does not render [the] activities of the body so regulated subject to such control of the state so as to bring it within the meaning of state or instrumentality of the state.

³⁹³ Civil Appeal No. 9017 of 2013 (arising out of SLP (C) No.24290 of 2012)with Civil Appeal Nos. 9020, 9029 & 9023 of 2013(arising out of SLP (C) No.24291 of 2012, 13796 and 13797 of 2013)

Recognising that the right to privacy was a sacrosanct facet of Article 21 of the Constitution, the law put in a lot of safeguards to protect the right under Section 8(j) of the RTI Act, the Bench said. If the information sought for is personal and has no relationship with any public activity or interest or it will not sub-serve the larger public interest, the public authority or the officer concerned is not legally obliged to provide that information.

6.3.13 Killing of whistle-blowers, RTI activists ‘tragic’³⁹⁴

The Supreme Court expressed concern over the incidents of killings and attacks on RTI activists and whistle-blowers in the country but refused to issue direction to the Centre for their security, saying the law and order is a state subject. A bench also turned down the plea for allowing RTI activists to get information under the Right to Information Act through e-mails to keep their identities secret.

6.3.14 The Commissioner has no power to direct the respondent to furnish the information

In *Chief Information Commr. and Another v. State of Manipur and Another*³⁹⁵, it is pertaining to Power of Information Commissioner under Sec 18 of RTI Act. The Supreme Court, therefore, directs the appellants to file appeals under Section 19 of the Act in respect of two requests by them for obtaining information vide applications dated 9.2.2007 and 19.5.2007 within a period of four weeks from today. If such an appeal is filed following the statutory procedure by the appellants, the same should be considered on merits by the appellate authority without insisting on the period of limitation.

6.3.15 Misuse the provisions of the RTI Act

In *Khanapuram Gandaiah v. Administrative Officer & Ors.*³⁹⁶, the petitioner submitted his application under Section 6 of the RTI Act before the Administrative Officer-cum-Assistant State Public Information Officer seeking information in respect of the questions raised in his application. However, the Public Information Officer is not supposed to have any material which is not before him; or any information he could have obtained under law. Under Section 6 of the RTI Act, an applicant is entitled to get only such information which can be accessed by the public authority under any other law for the time being in force. The answers sought by the petitioner in the

³⁹⁴ Business Standard, PTI, November 19th, 2012

³⁹⁵ Civil Appeal NOs.10787-10788 of 2011 (Arising out of S.L.P(C) No.32768-32769/2010) SC

³⁹⁶ Special Leave Petition (Civil) No.34868 of 2009, SC

application could not have been with the public authority nor could he have had access to this information and Respondent No. 4 was not obliged to give any reasons as to why he had taken such a decision in the matter which was before him. A judge cannot be expected to give reasons other than those that have been enumerated in the judgment or order. The application filed by the petitioner before the public authority is *per se* illegal and unwarranted. A judicial officer is entitled to get protection and the object of the same is not to protect malicious or corrupt judges, but to protect the public from the dangers to which the administration of justice would be exposed if the concerned judicial officers were subject to inquiry as to malice or to litigation with those whom their decisions might offend. If anything is done contrary to this, it would certainly affect the independence of the judiciary. A judge should be free to make independent decisions. As the petitioner has misused the provisions of the RTI Act, the High Court had rightly dismissed the writ petition. In view of the above, the Special Leave Petition is dismissed accordingly.

6.3.16 Burden of forming opinion about penalty is on Information Commission

In *Manohar s/o Manikrao Anchule v. State of Maharashtra & Anr*³⁹⁷, the Supreme Court is unable to sustain the order passed by the State Information Commission dated 26th February, 2008 and the judgment of the High Court under appeal. Both the judgments are set aside and the appeal is allowed. Supreme Court further direct that the disciplinary action, if any, initiated by the department against the appellant shall be withdrawn forthwith. Further, Supreme Court direct the State Information Commission to decide the appeal filed by respondent No.2 before it on merits and in accordance with law. It will also be open to the Commission to hear the appellant and pass any orders as contemplated under Section 20(2), in furtherance to the notice issued to the appellant.

6.3.17 No bona fide public interest in seeking information,

In *R.K. Jain v. Union of India & Anr*.³⁹⁸, the court held that in view of the discussion made in this case and the decision in this Court in *Girish Ramchandra Deshpande v. Central Information Commissioner and others* as the appellant sought for inspection of documents relating to the ACR of the Member, CESTAT, inter alia, relating to adverse entries in the ACR and the 'follow up action' taken therein on the question of integrity, we find no reason to interfere with the impugned judgment passed by the Division Bench whereby the order passed by the learned Single Judge was affirmed. In absence of any merit, the appeal is dismissed.

³⁹⁷ Civil Appeal No. 9095 of 2012, (arising out of SLP(C) No.7529 of 2009), SC

³⁹⁸ Civil Appeal No. of 2013, (arising out of SLP(C)No.22609 of 2012), SC

6.4 Right to Information and Judiciary

There was a time when the Courts in India, particularly the Supreme Court waxed eloquent about the Right to Information, being a part of the Constitutionally enshrined right to speech and expression. Thus, while rejecting the government's claim of privilege on the Blue book containing the security instructions for the Prime Minister in Indira Gandhi's case, the Court said, 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.

Thereafter, while rejecting the government's claim of privilege on the correspondence between the Chief Justice and the Law Minister on the appointment and transfer of judges, the Court said, 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 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 people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy.

It was on the basis that the Right to Information is a fundamental right of people that the Court ordered that even candidates contesting elections would be obligated to publicly disclose information about their criminal antecedents and their income and assets etc. Yet, though the courts general pronouncements on the right to information have been very liberal, its practices have often not been in conformity with the declared right. Thus, for example, the courts often follow the practice of asking the government and public authorities to file reports in sealed covers in court. These reports are then perused only by judges and often not given to the opposite parties or their lawyers. Often the orders and judgments of courts are based on their perception formed on the basis of these confidential reports, which is not only a violation of the right to information of the opposite party, but also in violation of the principles of Natural Justice, considered to be sacrosanct.

The double standards of the Courts on Right to Information have become even more obvious after the Right to Information Act has come into force. Though the Act clearly applies to Courts which are obviously included in the definition of Public

Authorities, most High Courts did not even appoint Public Information Officers (PIOs) even months after the Act came into force. Some have still not appointed them, thus effectively denying the right to information to the people about the courts. Moreover, many of even those which appointed PIOs have framed their own rules which effectively deny information about administrative or financial matters. Thus, the Delhi High Court Rules provide that: exemption from disclosure of information - the information specified under Section 8 of the Act shall not be disclosed and made available and in particular the following information shall not be disclosed: (a) Such information which is not in the public domain or does not relate to judicial functions and duties of the Court and matters incidental and ancillary thereto.

Thus, information sought regarding the appointment of Class 3 and 4 employees by the High Court, who is reported to have been appointed on extraneous considerations, without any public advertisement or selection, was denied by the High Court, citing this rule. This rule means that no information will be given about the expenditures incurred by the High Court (from public funds) or about any appointments or transfers. This is in total violation of the RTI Act which allows exemption from disclosure only on certain grounds specified in Section 8 of the Act and on no other ground. No public authority can refuse to disclose information which does not fall under the exemptions permissible under Section 8 of the Act. Rule 5 of the Delhi High Court rules clearly violates the Act and is thus liable to be struck down. Not only this, the High Court rules have increased the application fees from the normal Rs. 10 to upto Rs. 500. And the penalty for non disclosure has been reduced from the Maximum of Rs. 25,000 as provided in the Act to Rs. 500, which is hardly likely to deter any information officer from wantonly denying information. Thus every attempt has been made to dilute the Act and make it as difficult as possible for citizens to access information about the courts. They have been emboldened to do all this in the secure knowledge that to challenge such illegal rules, the citizen would have to approach the same courts.

The Supreme Court has recommended to the government that so far as the Supreme Court is concerned, the decision of the Registrar General of the Court should be final and not subject to any independent appeal to the Central Information Commission. They have further recommended that the Chief Justice should have the unfettered right to interdict the disclosure of any information, which in his opinion, might compromise the independence of the Judiciary. The Chief Justice has already gone on record to say that even the disclosure of income and assets by judges or the formation of any independent disciplinary authority over judges, would compromise

the independence of the judiciary. Going by this, it is obvious that no information about complaints against judges or about their incomes and assets would be available under the Right to Information. Thus while the Supreme Court decrees that even candidates aspiring to become public servants (MLAs or MPs), would be required to disclose their assets, when it comes to sitting judges, such disclosure would violate the independence of the judiciary! There cannot be a more glaring case of double standards.

The track record of the courts on cases arising out of the RTI Act is also not very inspiring. Even the occasional progressive orders of the Central Information Commission ordering various public authorities to disclose information have been stayed by the Delhi High Court and the matter remains pending for months and years thereafter. Thus, even the order of the CIC to merely peruse the correspondence between the then President and the Prime Minister on the Gujarat genocide of 2002 has been stayed by the High Court, though the Act specifically provides that no information will be withheld from the CIC. Similarly, the order of the CIC asking the UPSC to disclose the marks obtained by candidates in the preliminary examination has also been stayed by the High Court, as have various other orders of the CIC. All this shows that while the courts have been liberal in making pronouncements about the citizen's right to information in a democracy and have also in cases implemented it with regards to others, they have been very reluctant to practice what they preach. The dictum appears to be that transparency and accountability is good for others, but the courts and judges are *sui generis* and in their case transparency would compromise their independence. The wand of Independence of the Judiciary has always been waived by the judiciary to shield themselves from accountability, going to the extent of saying that not even an FIR can be registered against judges for any offence without the prior written permission of the Chief Justice of India. On top of all this, they enjoy the power of Contempt, where they can send any person who accuses any judge to jail³⁹⁹.

³⁹⁹ Right to Information and The Judiciary by Prashant Bhushan - <http://www.judicialreforms.org/judicial-accountability>

CONCLUSION & SUGGESTIONS

Democracy requires well informed citizen and transparency of information which are vital to its functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed, says the preamble of the Indian Right to Information (RTI) Act. The act provides effective access to information for citizens of India, which is under the control of the public authorities. It promotes transparency and accountability in the working of every public authority. Right to information has been seen as the key to strengthening participatory democracy and ushering in people centered governance. Access to information can empower the poor and the weaker sections of society to demand and get information about public policies and actions, thereby leading to their welfare. In recognition of the need for transparency in public affairs, the Indian Parliament enacted the Right to Information Act in 2005. The Act applies to all States and Union Territories of India except the State of Jammu and Kashmir which has its own Act called Jammu & Kashmir Right to Information Act, 2009. While right to information is implicitly guaranteed by the Constitution, the Act sets out the practical regime for citizens to secure access to information on all matters of governance.

The Right to Information Act (RTI), 2005, is truly a path breaking legislation, which can enable achievement of transparent and accountable governance. The Act opens pathways to governmental policies and decisions to ensure that these are consistent with the principles of public interest, probity and justice. It is also an instrument to usher in participative governance and help citizens to influence policy formulation and programme implementation by securing the legally enforceable right to know⁴⁰⁰.

Citizens Access to Information (ATI) is an essential step in ensuring transparency and accountability in government systems and processes. The Chapter –I is dedicated to describing importance of information and its legal prospects. It is divided into two parts. Part A theoretical background covers background, historical background, RTI –

⁴⁰⁰ Analysis of Judgments of the Central Information Commission on the Right to Information Act, 2005, October 2007, PRIA, New Delhi

a worldwide occurrence, freedom of information/RTI in international covenant, RTI and good governance, constitutional provisions, role of Supreme Court of India and other key development in the evaluation of RTI in India. Part B research methodology deals with title, problem, rationale, objectives of the study, scope of the present work, research design, nature and type of study, approach to the work, hypothesis, variables, concepts, review of literature, future contribution, limitation of study and time schedule.

The Chapter –II deals with evolution of legislation on freedom of information in different countries. It covers the Freedom of information laws by country, RTI – a worldwide occurrence, Freedom of Information/ RTI in international export covenant, legislation by country, pending legislation by country and RTI legislation – a comparison of RTI legislation in India vs. Developed Nations and RTI legislation in India vs. South Asia. The RTI rankings threw up surprising results for developed countries, which fared poorly compared to developing ones. The developing countries have better legal framework because they have taken views of the experts and law makers as the Act has evolved. The RTI Act of India has been lauded by democracy advocates all over the world, since it is at par (or even better) than similar laws enacted in countries in the West. For instance, in the US and UK, the respective information disclosure acts require the applicant to disclose his personal details, whereas in India, no such details are required. The RTI Act is one legislation that is indeed the pride of Indian democracy.

The Chapter-III explores various constitutional provisions for enactment of RTI Act in India. The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only messiahs that can ensure freedom of all sorts. It covers colonial acts and denial of the information, constitutional provisions of various countries recognizing RTI, statutory provisions of various countries enabling RTI, constitutional perspective of Right to Information in India, RTI in constitution except Article 19 (1) (a), movement for Right to Information in India and court judgments to protect Article 19(1) (a) of Constitution of India. Constitutional recognition stands paramount specially when relating to the fundamental human rights such as RTI. Rights are the interests which are recognized and protected by law. The sanctity of right enhances if it is adopted by the Constitution of a country. In Indian context, where the common people were subject of negligence for centuries, constitutional principles are the only messiahs that can ensure freedom of all sorts. Information has a pivotal role in strengthening public by making them knowledgeable.

In order to promote transparency and accountability in administration, Parliament passed Right to Information Bill, 2004 on 15th June, 2005. The Chapter –IV describes RTI Act, 2005 and guideline for the Public Authority, First Appellate Authority, Central Public Information Officers, information seekers, exempted organization, Central Information Commission, RTI Complaint and Appeal. It covers historical background, the need for the Right to Information, framework, Freedom of Information Act 2002, State Level Laws, Right to Know, RTI, 2005, salient features of Right to Information Act, 2005, impact of the new law, guideline for Public Information Officers, Assistance Available to PIO under the Right to Information Act, 2005, disposal of the request, RTI: a response to Paradigm Shift in development approach, rational interpretation, misconceptions about RTI Act, on powers of Commission and on frivolous petitions. The Indian democracy is going through a new phase. It is difficult to hypothesize about a real democracy without good governance, transparency and responsibility. Right to information has made all these possible. It has brought the common citizen into a new democratic role where he can directly question the administration. The legislation on RTI can act like an antidote to vested interests which try to conceal or misinterpret information or which try to manipulate the media directly or indirectly to plant misinformation. Through the RTI Act transparency in public, professional, social and personal sphere can be achieved.

The Central Information Commission, constituted in accordance with provisions of Section 12 of the RTI Act, has the responsibility to adjudicate appeals/complaints filed by information seekers, dissatisfied with either non-response and/ or vague, misleading incorrect responses from Public Authorities. A number of landmark judgments under the ambit of RTI Act were delivered by the Central Information Commission (CIC). The Chapter-V describes in details about penalties imposed by CIC and constitution of CIC. It covers Appeal/Complaints in the Commission Appointment of Chief Information Commissioner and Contribution of Central Information Commission. A number of landmark judgments under the ambit of RTI Act were delivered by the Central Information Commission (CIC). The Central and the State Information Commissions have played a critical role in enforcing the provisions of the Act as well as educating the information seekers and providers. Without their statutory interventions, including use of penal provisions against the public authorities, the benefits of RTI could not have been reaped by the citizens and the society. The implementation of the law on right to know for setting up information regime, therefore, augurs well for strengthening the knowledge society as well as for increasing the accountability of public bodies.

The Chapter-VI describes in detail about judgments pronounced under RTI by different courts i.e. Hon' ble High Courts of various states and Supreme Court of India. The office of Chief Justice of India is an important constitutional office and the Indian judiciary has been made an independent institution under the Constitution. The role of judiciary has been assigned as the custodian of the Constitution and the other laws and for that purpose to ensure and encourage the transparency and accountability of public institutions. The RTI Act was enacted to enable the people and the media to keep watch over the corrupt practices of the government institutions and its officials and the judiciary is supposed to assist in it by upholding the right of the people to ask for the information from any of the government organs and officials. It covers recognition of the 'Right to know', judgment of Supreme Court on the Right to Information Act and Right to Information and judiciary. Supreme Court held that, in a government of responsibility like ours, where all agents of the public must be responsible for their conduct, there can be but a 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....to cover with veil of secrecy the common routine business is not in the interest of public.

The last Chapter-VII of the thesis contains conclusion and suggestions on the findings. It covers analysis, conclusion which includes lacunae in the Right to Information Act, 2005, criticisms, more RTI applications filed may not necessarily mean more information and overview of the impact, suggestions, for effective implementation of RTI Act.

7.1 Analysis

An analysis of applications filed under RTI Act indicates that applications (over 75 percent) mostly have been (1) by men as if women are left out or untouched. (most Commissions have no women Commissioners), (2) mostly by those in power or system and (3) by those in the metros (in fact most disappointing is that applications from villages were hardly around 10 percent – even in Andhra Pradesh where application fees is only half of what it is in the urban areas, (4) over 60 percent are for personal or individual reasons or advantage, (5) pertain to service matters and (6) most of the applications are by the same people (who had filed more applications). Equally disappointing is the lack of efforts by the Commission to reach out. For example in the case of one important State having multiple Information Commissioners and having a relatively better budget, about 40 percent of the departments having PIOs have not received any application in the year and in the case of another 50 percent of the

departments under RTI Act, the number of applications received during the year for the entire State was hardly 10 percent. And the concentration was on just a couple of departments. This is despite claims that PIOs of all these departments were trained. The number of applications from women was too few, unbelievably. This needs to be looked into⁴⁰¹.

The RTI Act has done really well compared with other acts we have enacted in so many other spheres. To begin with, this act has been owned up by the people in a manner no other act has been owned up. You can imagine that any attempt to amend this act even marginally has been resisted so stoutly by the people that recently the government had to drop the proposed amendments. So to that extent the RTI Act has found a place in the heart and mind of the people. Many people have used it, in fact last year a million people applied for information only to the Central Government of India. If you add the people in the states then it would be 2 million people who used the RTI act.⁴⁰²

RTI is the defensive strategy, Lokpal is an offensive strategy. Lokpal or the CVC or the CBI, all those instruments of the state are meant to catch hold of the wrong doer and then punish him. RTI works towards stopping the wrong-doing in the mid-stream itself. So if RTI is implemented, well then we won't have occasions for Lokpal to catch hold of a corrupt government servant. It strikes at very root of corruption by bringing in transparency and accountability.⁴⁰³ The RTI Act is like a 'sanjeevani' for the poor. It is the active role of NGOs and civil society that the RTI Act could become effective, it is essential to select appropriate questions to get required information. We should be cautioned against the misuse of the Act.⁴⁰⁴

7.2 Conclusion

The passage of RTI Act has up to a certain extent infused transparency and accountability in the working of public departments. This has increased the efficiency of decision making process. This has led to reduction in corruption in the country as evident from the following:

- (i) The Transparency International (TI) has reported that perceived corruption

⁴⁰¹ Dr. N. Bhaskara Rao, 2006, founder Chairman of independent Centre for Media Studies, Research Needed on RTI Implementation

⁴⁰² Chief Information Commissioner speaks to NDTV, NDTV.com | November 13th, 2012

⁴⁰³ Ibid, footnote 383

⁴⁰⁴ Seminar on RTI at MGKVTTN Apr 13, 2013, http://articles.timesofindia.indiatimes.com/2013-04-13/varanasi/38510579_1_rozgar-mela-information-commissioner-job-fair

in India (a score of 3.5 out of 10) has declined at the rate of about 15-20 per cent per year, due mainly to the implementation of the RTI Act.

- (ii) The Centre for Media Studies in collaboration with TI has recently accomplished an all India survey study (un-published) of the poor below the poverty line. The views of the poor have been elicited in respect of all the flagship programmes that have been implemented for alleviation of poverty. At least 40 per cent of the respondents have reported that corruption has declined.
- (iii) It has also been observed that wherever NGOs are actively involved in the development activities, the perceived corruption is abysmally low. The progress of RTI Act has been studied by PRIA (Society for Participatory Research in Asia) in August 2006. In order to track the progress of RTI Act in 12 states (Himachal Pradesh, Haryana Rajasthan, Jharkhand, Madhya Pradesh, Uttar Pradesh, Uttaranchal, Chhattisgarh, Andhra Pradesh, Kerala, Gujarat and Bihar), PRIA decided to conduct a study on a set of indicators namely the constitution of State Information Commission and its role, role of Nodal agencies, appointment of PIOs, experience of seeking information from PIOs, mandatory disclosure under Section IV of RTI Act and role of government in educating people under Section 26 of the Act.

The study indicates the following observations, which are discussed as following:-

- (a) The constitution of SIC in some states like Bihar, Jharkhand, Uttar Pradesh, Himachal Pradesh, Haryana and Rajasthan, the constitution of SIC was delayed by several months.
- (b) Inadequate infrastructure and working staff has been provided to the SIC.
- (c) There has been a general tendency of non-imposition of penalties on the PIOs who have indulged in dereliction of duty.
- (d) People belonging to rural areas feel that appeal process is very expensive.
- (e) Public Information Officers have been appointed in most public authorities in the states. The process of accessing information by people has started slowly through Right to Information Act. However, there exists great confusion in definition of public authority.
- (f) Most of the PIOs at state level and district level are not co-operative and they sometimes threaten applicants to withdraw applications. PIOs should be given more training so that they are sensitive to needs of people and PIOs who are guilty of deliberate denial of information should be penalized.

- (g) Most of the ministries and directorate level offices in Madhya Pradesh, Uttar Pradesh, Uttaranchal and Andhra Pradesh have disclosed information about their activities on their website, while some are still lagging. Department of Agriculture (Rajasthan, UP, Uttaranchal, AP) has done well in self-disclosure, have covered most of the items of Section 4 of RTI Act.
- (h) It is surprising to find that self-disclosure at district, block and panchayat level have not started in the twelve states, so the departments, which are closer to the people are still lagging behind in the implementation of Section 4 of the Act.
- (i) It is quite striking that unawareness about RTI in rural areas is very high. The applications under the Act are mostly filed by the educated classes and urban people. The percentage of people still oblivious about provisions of the Act and more importantly about their right is very high.

A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both said James Madison, an American political theorist and its fourth President. If this quote is put in perspective, then until 2005, India should have been considered as being on the peril of such farce. Prior to 2005, neither was there any provision mandating the disclosure of all public information, nor was there any means to access such information⁴⁰⁵. It is the pro-active citizenry, with the help of the weapon called RTI, who have been at the helm of disclosures of several scams involving MPs and civil servants. If not for that one person who filed an RTI application regarding allotment of flats at the now infamous Adarsh building in Colaba, we would have never known the extent to which environmental norms were flouted and quid pro quo existed between politicians and builders to allot homes in a building meant to house Kargil widows. It is important to trace the journey of the Act in order to understand how governance in India has undergone changes from functioning in a closed and secretive manner to now being under the public glare.

RTI Act has been successful in much more ways than was aimed to achieve. RTI Act of India is perhaps the best drafted Act of its kind in the global world. First Chief Information Commissioner who despite all teething problems in implementing the RTI act and facing criticism at times, played his role smartly in a manner to fulfill purpose of India's most wonderful post-independence Act giving commoners power of being a Parliamentarian to grill government and its functionaries. Rather than just

⁴⁰⁵ Saumya Ramakrishnan, Submitted by B&B on November 14th, 2012, <http://barandbench.com/brief/3/2945/the-rti-act-a-seven-year-retrospect>

providing 'Information' as defined technically, RTI Act has served to be an effective watchdog to make all those coming in purview of the Act to be extremely cautious to do their work only in accordance with rules and without any irregularities⁴⁰⁶. Most of the Central Public Information Officers (CPIOs) are practically under pressure to reply to the petitions in normal bureaucratic style. What more, though public-authorities at Supreme Court resisted on aspects like Chief Justice of India being under purview of the Act on queries related to implementation of resolution on wealth-declaration by judges of higher courts, public-awareness generated through several RTI petitions supplemented by our ever-vigilant media, shook concerned ones in governance-system to work towards judicial accountability and acting effectively on cases of corruption even in higher judiciary. Positive role of media in regularly highlighting important decisions of Central Information Commission has also been of great help in achieving success of RTI Act as at present. Press-agencies and newspapers have deputed special correspondents to cover news related to RTI Act. A private news-channel of repute (NDTV) should be lauded for being the champion amongst electronic media to make effectiveness of RTI Act reaching to masses. Timely campaign of this channel prevented diluting of the Act by a tactic move to remove essential 'file-notings' from 'Information' as defined under the RTI Act. But the above highlighted achievements are a very small fraction of what can be really achieved.

Chief Information Commissioner should have frequent informal interaction with all the Information Commissioners so that approach of all Information Commissioners may be similar in dealing with appeals/complaints before them. Presently some of the Information Commissioners are seen as appellant-friendly, while some others do not exhibit such sensitivity to plight of petitioners. It is not that such appellant-friendly Information Commissioners always talk against public-authorities. Dr. OP Kejriwal in his verdict 'SK Lal against Indian Railways' passed most strict comments against the petitioner for his irrelevant petition aimed to make mockery of RTI Act. This query gained significance when serious charges were leveled against a former Chief Justice of India. It will be interesting to note views of Shri Satyanand Mishra Ex-Information Commissioner on aspect of 'file-notings' since DoPT in his regime as its Secretary resisted and disobeyed various CIC rulings on file-notings. Better is to have a second-stage review of Commission's orders by a bigger bench at the Commission itself. It will also give public-authorities a chance of appeal at the Commission itself rather than dragging the Commission and the petitioner to the Courts. Public-authorities must compulsory file written rejoinders to appeals.

⁴⁰⁶ Subhash Chandra Agrawal <http://cic.gov.in/CIC-Views of RTI Activists/Subhash-15092008.pdf>

It is against natural justice that Government may depute lawyers for the Commission to contest cases filed by government-functionaries against Commission's orders. Union Ministry of Law & Justice can only provide lawyers to the Commission to file court-cases against its own (Department of Justice) where government-lawyers obtain ex-party stay not only on Commission's orders but now even Commission's proceedings. Regrettably, government after obtaining ex-party court-stays is seeking regular adjournments on one excuse or other thus killing real essence of RTI Act aimed for an early resolution. Misuse of Section 28 RTI Act like public-authorities at Delhi High Court in a virtual 're-writing' of the Act as passed by the Parliament and assented by the President of India should not be allowed. Central Information Commissioner should be given powers to act against those responsible to defy its orders like DoPT on 'file-notings'. It is shocking that just about 20-percent of total penalties imposed by the Commission are recovered. Public-authorities should not be allowed to take Central Information Commissioner as 'paper-tiger'.

Right to Information laws or sunshine laws as they are commonly called, grant citizens the legal right to access information held by their governments, bringing much-needed transparency in the otherwise opaque functioning of government. Globally, more than 80 countries have now enacted such laws, with the list growing each year. India's RTI Act is internationally recognized as a strong and effective law. Over the last so many years, the RTI has been used extensively by ordinary Indian citizens to demand a vast range of information from their government⁴⁰⁷. Unlike many countries where RTI laws have been used primarily by journalists and the media, in India the law has a broad base of users. Case studies and media reports show that RTI is being used to redress individual grievances, access entitlements such as ration cards and pensions, investigate government policies and decisions and expose corruption and misuse of government resources.

For many, particularly India's poor and disadvantaged, the simple act of filing an RTI application is empowering and often leads to tangible results. In 2010, K.S. Sagaria, a resident of Kushmal village in rural Orissa, filed an RTI application seeking information on the number of ponds constructed in his village under the government's national wage employment scheme. The information he received was revealing: the ponds had never been constructed even though money had been allocated and spent. Following complaints from villagers, the local administration was forced to take action

⁴⁰⁷ Mandakini Devasher Surie, September 28, 2011, Right to Information in India: An Effective Tool to Tackle Corruption <http://asiafoundation.org/in-asia/2011/09/28/right-to-information-in-india-an-effective-tool-to-tackle-corruption/>

and suspend the officials involved in the pond scam. In addition, a recent experiment by students at Yale University found that India's RTI Act can be effective in helping the poor access their entitlements. As part of the experiment, slum dwellers in Delhi were divided into four groups and asked to submit applications for ration cards. While the first group submitted their application and did not follow up, the second group attached a recommendation letter from an NGO to their application, the third group paid a bribe and the fourth group filed an RTI request to follow up on their application. Yale Ph.D. students Leonid Peisakhin and Paul Pinto found that while the group that paid a bribe was the most successful, those that filed RTIs had their applications processed nearly as fast. According to Peisakhin, 'Access to information appears to empower the poor to the point where they receive almost the same treatment as middle-class individuals at the hands of civil servants. This is something that payment of a bribe cannot do'.

Civil society organizations here have played an important role in raising public awareness about RTI and assisting citizens in filing requests for information. For example, Delhi-based NGO Satark Nagarik Sangathan (SNS) runs an information center in South Delhi to assist local residents and slum dwellers to file RTI applications. Using RTI, SNS has successfully campaigned for improvements in the quality of public services including water, sanitation, the public distribution system and even the performance of local elected representatives. In addition to such initiatives, the law is increasingly being used to tackle high profile corruption. Much of the information regarding corruption in the allocation of tenders and contracts for last year's Commonwealth Games was unearthed using RTI. In 2010, a series of RTI applications filed by the Housing and Land Rights Network, a Delhi-based NGO, revealed that the Delhi government had diverted funds from its social welfare programs for infrastructure development under the Commonwealth Games.

Using India's RTI is not without its risks, however. RTI activists have increasingly come under threat and attack, with many suffering fatal injuries. Over the last year, a number of RTI activists were murdered in different parts of the country, causing widespread alarm among civil society groups. Most of those killed were investigating irregularities in sectors such as mining, land and local elections where corruption is rampant. Civil society organizations are now demanding that the government take concrete measures to protect the lives of such individuals. Despite these risks, the RTI Act has continued to grow in popularity among citizens and activists alike.

Speaking to *The New York Times*, RTI activist Shri Shekhar Singh said that the main objective of India's RTI movement was to empower people, concluding that this

law has done that – given the people the power to challenge their government. That is no small thing. ‘Right to information Act is meant for the weaker sections of the society especially Dalits, minorities and the backward classes of the country. It is very beneficial for them and due to this Act the poor and backward sections of the society are in a position to get more and more information and become aware of their status in the society. India is a democratic country and in democracy every citizen has a right to know that how and where the public money is being spent by public representatives and government officers. Whether this money is being used properly or misused by them? By just spending Rs 10, a citizen can obtain information worth millions of rupees. This is a revolutionary Act of 21st Century and it should be used and respected by everyone living in this country. Due to this Act many scams are being unearthed and corrupt persons are being exposed. The days are not far away when the corrupt people will be exposed fully⁴⁰⁸,

7.2.1 Lacunae in the Right to Information Act, 2005

A former Central Information Commissioner, Mr. Shailesh Gandhi, warned the country that the government and the judiciary together pose a serious threat to the RTI. Gandhi argued that the government’s infrastructure - training, resources - for the implementation of the RTI is woefully inadequate. He also highlighted the role of the courts in weakening the Act. The judiciary has been granting stays on orders of the information commission – which he noted is a very dangerous trend⁴⁰⁹. Gandhi’s concerns resonate with some of the findings of a recently completed country-wide assessment of the RTI conducted by the Right to Information Assessment and Analysis Group’s (RAAG). The study surveyed 27 information commissions to find that nearly 60% of the commissions reported inadequate infrastructure as their biggest problem. Inadequate staff and low budgets were the most commonly cited problems. Perhaps because of inadequate infrastructure, there is a wide variance in the speed and efficiency with which Information Commissions dispose of cases and some states (Gujarat, Maharashtra and Chhattisgarh) have an estimated waiting period of over one and a half years!

The problem of poor infrastructure is not restricted to the ICs. Majority of Public Information officers (PIOs) across rural and urban India were never having received any basic training in the RTI. As a result there is a lot of confusion about the Act

⁴⁰⁸ Shakeel Samdani, 6th, April 2013, Workshop on RTI at AMU, http://twocircles.net/2013_apr06/workshop_rti_amu.html

⁴⁰⁹ YaminiAiyar <http://www.accountabilityindia.in/accountabilityblog/1102-how-effective-indias-right-information-act-rti>

particularly about the kinds of information that ought to be made public. Another serious lacuna in the government's infrastructure for the RTI is that of poor record maintenance. Across the system, no effort has been made to collect, analyze and store information in a manner that is accessible and relevant to the public. Poor record keeping results in delays in the provision of information and is often used as an excuse not to furnish information sought. Moreover, governments departments are not making any effort to disseminate information pro-actively. Worse still of the information reported, most of it tends to be out of date and unusable.

The steps may be taken urgently to address infrastructure weaknesses. Perhaps the greatest threat the RTI faces comes from the prevalent mind-set – one that runs deep through all our public institutions - that is fundamentally resistant to the idea of open government. The judiciary's opposition to the RTI application seeking information on judge's assets and the recent trend that Shri Shaliesh Gandhi alludes to of courts issuing stays on IC orders points to this problem point to how this mind-set manifests itself. The obvious irony of the Courts, the key institutional mechanism for enforcing accountability of the executive and legislatures, refusing to hold itself up to legally set standards of accountability and transparency, has not escaped most commentators. Crucial for the future of the RTI is the urgent need to take steps towards initiating this mind-set change. Civil society needs to rise to this challenge. The government is considering changes to the Right To Information Act (RTI) that activists feel could dilute the power of the Act. Former Chief Justice of India K.G. Balakrishnan has recommended protecting the judiciary from RTI queries apparently on grounds that the move would erode the independence of the judiciary. India's bureaucracy is already choking the RTI Act to a slow death. According to a forecast by Mr. Gandhi, the Central Information Commission (CIC) is likely to be saddled with over 90,000 pending complaints by 2015.

The Act is losing steam because there are not enough people to handle the number of pending complaints. If Gandhi's forecast is accurate, a waiting period of at least three years is to be expected before a complaint can be taken up. This is because all the commissioners together can at best solve just about 30,000 cases in a year. Considering that appeals reach the CIC only after an RTI applicant is dissatisfied by the response from lower levels — the departmental information officer and the first appellate authority, who is generally the department head — the overall pendency is likely to be huge. Who is going to wait so long for a piece of information? asks Gandhi. Instead of a total strength of 11 commissioners, the country just has six. Information Commissions (IC) resolve cases at different rates. For 2010, the average number of cases resolved

per IC was about 2,700. If we remove the resourceful Shri Shailesh Gandhi from the list, this number falls below 2,000 per IC. Shri S. Gandhi was among the most prolific and resolves close to 5,000 cases a year on his own. At 2,000 per IC and at full strength of CIC, the maximum cases resolved would fall to roughly 22,000, almost a third of Shri Gandhi's forecast of 90,000 cases for 2015. So by 2015 an RTI applicant wanting to appeal would have to wait for six years before being addressed by the IC. The issue of growing pendency is not limited to the CIC. According to the findings of a recent nationwide study conducted by Public Cause Research Foundation (PCRF), of 76,813 cases analysed, there was a delay in providing information in 59,631 cases. Number of RTI Applications received and their disposal, by Public Authorities, during 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12 are given in Table 7.1 below:

The survey states that, at the current rate of disposal, 20 ICs had a pendency of over one year. Of these decision of Orissa was the worst; at his current rate of disposing cases (304 a year) he will take 10.7 years to clear everything currently on his table. This is not including the cases that will be filed in the next 10 years. Shri S.K. Sarkar of West Bengal will take 10.2 years and Shri D.N. Padhi, also of Orissa, will take a little over five years. Ordinarily, we would expect that the disposal of any case should not take more than three months, observes the survey.

Table 7.1: Number of RTI Applications received and their disposal, by Public Authorities, during 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12

Key Aspects	2007-08	2008-09	2009-10	2010-11	2011-12
Opening balance of RTI requests (as on 1st April of the reporting year)	23,926	32,792	97,474	1,37,771	76,016
Number of requests received during the year	2,63,261	3,29,728	5,29,274	4,17,955	6,29,960
Total number of requests at the end of the reporting year	2,87,187	3,62,520	6,26,748	5,55,726	7,05,976
Number of requests transferred to other PAs	29,404	34,036	98,663	50,444@	78,153
Number of requests for information rejected	18,966	23,954	34,057	21,621	52,313
Percentage of rejection vis a vis number of applications received during the reporting year	7.20%	7.26%	6.43%	5.2%	8.3%

(Source: Annual Report 2011-12 of CIC)

What is the reason for the growing pendency and why doesn't the government do something about it? Gandhi and other RTI activists blame the lack of a real commitment on the part of the government. The each IC gets seven staff members to help resolve the cases if this number is doubled, one could solve a lot more cases straight

away. However, the ICs are not allowed to hire more employees right now. At present, the government spends roughly Rs. 25 to Rs. 30 lakh per year on one IC and about Rs. 12 lakhs per year, in total, on the seven staff members. This includes the salary, incentives and any other facilities that they might use.

The reason why Shri Gandhi was ahead of all the ICs in the country is because he employed extra staff, especially young lawyers, to help him process more complaints and he paid for their salaries from his pocket. However, a different opinion is that it is not the lack of staff but the lack of penalties which should have been imposed on erring officials that is the real reason why complaints are growing.

Under RTI Act, a commissioner should impose a penalty for delay in providing information unless the basis of delay was held to be reasonable by the Commissioner. Shri Kejriwal points that the survey by PCRf found that penalties were imposed on just 3.17 percent of the 59,631 cases of delay⁴¹⁰. Moreover, there is no clear criteria to ensure that only a deserving individual becomes an IC. It has often highlighted that the CIC is being used as a parking spot for those close to the government. The process of appointment of IC should be made more participative. There should be some basic criteria that a candidate must satisfy to be a competent IC. Knowledge of law, management skills and a demonstrated commitment to transparency, could be some benchmarks.⁴¹¹

It is regrettable to notice that government public information officers of the state do not respond to the RTI enquiry within 30 days and only reply hurriedly when the first appeal is filed with the department head who is the first appellate authority. Once the appeal is sent, these PIOs immediately respond by a back dated letter dated within the stipulated 30 day period. This is because the first appellate authority is their department head whom they do not fear. Therefore, first appellate authority must be made a third party with quasi-judicial powers. Then only the RTI act can be effectively implemented and also reply given beyond the date also must be made a punishable offence.

If we were to see information as a product, government information is indeed a property of the sovereign. In a democracy, the sovereign rests with the people. Therefore, this right must be established naturally. Such a right enjoyed by the citizens was consolidated with the enactment of the Right to Information Act, 2005. But, however important the enactment of the Act is to the civil society movement, it must

⁴¹⁰ Kejriwal Alok, apathy?, <http://www.rtiformedia.com/tag/alok-kejriwal/>

⁴¹¹ MisraUdit 2011, The slow Death of the RTI Act, <http://forbesindia.com/printcontent/22182>

also been seen that law is freed of its lacunae in order to realize its ultimate objectives. This chapter deals with such shortcomings in the Act, as well as its practical implementation. Certain Private Entities to Disclose Information, Sec. 2(f) of RTI Act, 2005 provides that information includes those of private parties which can be accessed by a public authority under any law. However, as is apparent this is very limited. Given recent developments, like performance of functions that were earlier carried out by public sector, the scope of RTI needs to be extended to bring within itself private entities. In deciding which such entities should be included, reliance can be placed on the objectives of RTI. For instance, functioning of private bodies to the extent to which it affects public interest could be subject to the Act. Self-Disclosure of Information, although Sec. 4 of the Act clearly requires the public authorities to declare and publish information, it is a veritable fact that the same has been done in a poor and superficial manner. It is deplorable that even though the citizens have been guaranteed *suo moto* disclosure by public authorities, no instrumentality under the act can enforce such disclosure.

The Act does not provide for any penalty for non-compliance with Sec. 4. The provisions for penalty under Sec. 20 target only the failure to adhere to responsive duties, that is, the duty to provide the information when it is sought by the way of filing an application. It must be realized that the future of the RTI regime lies in progressively strengthening the pro-active disclosure of information so that there is little need for applicants to apply for information and for officials to process and respond to, these. In light of the problems relating to self disclosure, it is suggested that the State Governments must evolve elaborate norms for *suo moto* publication of the information. Also, the CIC and the SICs must be authorized to take cognizance of non disclosure of information under Sec. 4 of the Act and similarly Sec. 20 be amended to impose penalties for the same. Where an appeal or complaint comes before an IC relating to information that should rightly have been made available *suo moto* under Section 4 of the RTI Act, but was not, the IC should exercise its powers under Sec. 19(8) (b) and compensate the appellant/complainant for the time and energy wasted in seeking information that should have been provided proactively. This will not only encourage applicants to complain against PAs not complying with Sec.4, but also encourage PAs to fully observe the same. Moreover, all the information which has previously been sought by filing applications under Sec. 6 of the Act must be necessarily disclosed under Sec. 4. This would result in a reduction in the number of applications reduced as much of the information sought may be readily available to the public. Sec. 4 and other provisions of the Act must suitably be amended to incorporate all the aforementioned changes.

Working of the Commissions According to a number of reports, the working of the CIC and the SICs has been found out to be slow and lax with huge and growing backlogs of cases. This problem may further intensify post the Supreme Court's decision in *Namit Sharma v. Union of India*, decided in September, 2012. According to this all appeals and complaints have to be heard by two member benches of which one has to be a judicial member and the other an expert. Given that, there is a paucity of commissioners, the number of benched would further be reduced. About the consequence of such a move, Shri Shailesh Gandhi, former Central Information Commissioner, opined that, Effectively the disposal of pending cases will drop to about 50% of the current disposals. This will lead to Commissions deciding cases after five years or more in the next few years. Also, some activists opine that the inclusion of a judicial member will deprive the Act of the personal touch that it could boast of, since information officers do not come with aura that surrounds a judicial person. Supreme Court reviews *Namit Sharma judgment* on 4th September, 2013. The SC has held that the Information Commissions are administrative bodies and not judicial tribunals. This judgment clears ambiguity and paves the way for the appointment of the Information Commissioners and Chief Information Commissioners

Another lacuna is reflected in the functions of the commissions under Sec. 18 as there is no provision regarding any interim order to be made while the complaint is being dealt with. Hence, an amendment to the Act must be made incorporating a provision for interim orders to be passed while pendency of the complaint before the commission. Friction caused by Sections 18 and 19, while Sec. 18 deals with complaints to Commissions, Sec.19 is with respect to appeals to officer senior in rank to State Public Information Officer or Central Public Information Officer, as the case may be. However, this demarcation disappears in case the applicant seeks redressal of grievance arising out of either turning down of application or non-receipt of reply within the specified period. For these, the applicant can either appeal or file a complaint. This would lead to confusion with regards multiplicity of forums or even result in forum shopping. Also, the Act is silent on resultant situation of *res judicata*. For instance whether in this scenario, the decision of one forum would be conclusive and not be heard afresh in the other forum? To resolve this issue, the provisions need to be altered accordingly.

File to include notings a positive development has been in the form of withdrawal of the 2012 amendment to the Act. The amendment was to exclude file notings from the purview of information that could be sought. This would have diluted openness as notings give insight into the decision making process. Given the significance of the

same, such a measure should be discouraged in future as well.

The information sought was sometimes misused for alleged blackmailing. However, providing information can't be stopped as there is no provision of asking for a motive or reason to be asked to the RTI applicants. Many a time the information sought, infringed the right of privacy of individuals. Still there are many loopholes in the procedure which need to be plugged so that there shouldn't be any misuse or abuse of the Act by vested interests.⁴¹² As much as the Act has empowered the citizen and given them a weapon to keep the public officers in check, not everything about it is foolproof. The Act has flaws – some of them in its implementation and some in its interpretations.

There are also some specific problems with the implementation of Acts in certain states. For instance, Chhattisgarh has increased the fee for an RTI application to Rs. 500, placing it beyond the reach for a lot of people. This is despite the fact that the Act stipulates a nominal fee. Yet another bone of contention with respect to the Act has been the application of the Act to public-private-partnership (PPP) projects, which rule the roost as far as infrastructure projects in the country are concerned. As per Section 2(h) of the RTI Act, in case of non-governmental organisations, only those that are financed, directly or indirectly, by funds provided by the government fall under the purview of the RTI Act. The Central Information Commission has made repeated pleas to the government to include PPP projects under the purview of RTI Act as public money and interest are involved in such projects. However, Prime Minister Manmohan Singh, at the annual convention of Information Commissioners, said that a blanket extension of the RTI Act to such PPP projects may discourage private enterprises to enter into partnerships with the public sector. On the other hand, a blanket exclusion may harm the cause of accountability of public officials, thus not taking a clear stand on the same. However, RTI activists have criticised this statement, arguing that since public interest is at stake in infrastructure projects, these projects should be under the purview of the RTI Act⁴¹³.

Attacks against RTI activists, some of them even fatal, have also been a major deterrent in the RTI movement, a situation compounded by fact that there are no express provisions in law for the protection of applicants. For instance, activist Amit Jethwa, who had filed several RTI applications and had named an MP while exposing illegal mining in the Gir forest, was gunned down outside the Ahmedabad High Court

⁴¹² Patil Bhaskar, 2013, State Information Commissioner, TOI, Nagpur. 17th March, 2013

⁴¹³ Muthuswamy & Brinda (2013) Swamy's Compilation on Right to Information (Act, Rules, Orders and Guides) , Swamy Publications

in July 2010. There is hope though. The Whistleblowers Protection Bill is closely connected with the success of the RTI Act, considering the increasing attacks on RTI Activists who have dared to register complaints against corrupt politicians and willful misuse of power by them. The legislations to protect whistleblowers, when enacted, shall provide safeguards to an RTI applicant. Act, 2005 is undoubtedly a progressive step towards the just and equitable environment. It has been marred by some shortcomings which has impeded successful implementation of the Act and resulted in its under-performance. Some of the shortcomings are as following:-

- (i) The Act provides for appointment of Public Information Officers in each of the public authority institutions at different levels, for free flow of information. There was delay in such appointments unfortunately even after the lapse of the time limit mandated by the Act. Moreover, sometimes there is not specific mention of the Public Information Officers and Assistant Public Information Officers by the departments thereby confusing the people about whom to address and serve request seeking the information.
- (ii) Obligations of public authorities as conceived by the Act in form of proactive disclosure of the information have not been carried out satisfactorily. Various NGOs and public spirited citizens have raised easy disclosure of relevant information by the public authorities themselves, so that common people are saved from resorting to the statutory way for seeking the same.
- (iii) There have been grievances of the applicants that information is not provided to them in their regional language. This is against the statutory spirit contained in Sec. 6 (1) of the Act which makes it clear that information is to be provided in Hindi or English or in the official language of the area in which the application is being made.
- (iv) It might be feasible, but the provision of taking fees for disclosing the information seems to be against the spirit of the right and the Act too. It is quite paradoxical that a person has to pay for availing information which is a fundamental human right, which has been consecrated even by the Constitution. Being a legislation which is socially oriented, it strikes wrong chord at this place, by creating a hiatus between people on the economic basis. Information can be easily accessed by the affluent classes whereas same is not so comfortable for the students and lower strata of middle class.
- (v) Logical reasons for the rejection of the requests seeking information are not being provided as required by Sec. 7 (8) of the Act. Moreover, exemption

clause contained in s. 8 of the Act is being misused to veil the misdeeds in the name of secrecy essential for national security, integrity etc. Although the inclusion of a public interest override is a huge step forward, the fact that the exemptions only contain a low level harm test requiring that relevant interests are only harmed or prejudicially affected could be used to block a lot of applications at the initial stages. One more difficulty is required to be solved at earliest. Rulemaking power is conferred on the Central Government and State Government simultaneously and in dependently. The RTI Act is a central legislation and it has to be enforced uniformly throughout India. When such is the case, the rule making authority granted to the State Governments should have been made subject to the rules which may be made by the Centre and any rule when made by the State if it conflicts with the Central rule shall have a prior approval of the Central government. The dichotomy created in the field of rule making power shall be removed by making the power of the State Government to make rules subject to Central approval either prior to making the rule or thereafter seeking ratification. Glaring example of the same possibility has been the recent order of the Uttar Pradesh Government including some important public authorities in the Second Schedule by using the power granted under Sec. 24 (2) of the Act.

- (vi) Although the Act bestows power upon the CIC and SIC to impose penalties of Rs. 250 up to Rs. 25000 on erring officials indulging in unreasonable nondisclosure of information. But it does not have such a deterrent effect on the power wielding officials. However, recommendation for disciplinary action is seemingly effective but even it is not sufficient for the strict implementations of the RTI Act, 2005.
- (vii) There is no specific safeguard for the protection of person from the harm he may suffer after seeking the information through the Act. It should not be forgotten that if a person seeks information which is potentially harmful for the authorities superior to him, he can be subjected to ill treatment later. For example, if a student asks for information from the school or college or university in which he, she is studying there are ample of chances that he could be made to suffer in future because of such a step taken by him. There should be promulgation of some safeguard in this regard, so that one can resort to using the Act free from fear.

7.2.2 Criticisms

The Act has been criticized on several grounds. It provides for information on demand, so to speak, but does not sufficiently stress information on matters related to food, water, environment and other survival needs that must be given pro-actively or *suomoto*, by public authorities. The Act does not emphasize active intervention in educating people about their right to access information vital in a country with high levels of illiteracy and poverty or the promotion of a culture of openness within official structures. Without widespread education and awareness about the possibilities under the new Act, it could just remain on paper. The Act also reinforces the controlling role of the government official, who retains wide discretionary powers to withhold information⁴¹⁴.

The one of the big drawbacks of the act is withholding information. But under constant pressure, from the commission and from the people, from civil society, from the media, the government officials are slowly opening up.⁴¹⁵ Any law can be misused, so it cannot rule out that some of the information being sought by the people may be used for settling personal scores, not only with the government servants but may be among companies, about business enterprises between people. It is expected of any law but we should not be deterred by such misuse of the law. By and large nobody has said that the RTI is being used only for such purpose.⁴¹⁶ The Right to Information Act, one of the much-celebrated early legislations, is now meandering into meaninglessness. Even as the demand for RTI-based information soars, the bureaucracy has managed to erect a wall by allowing almost every query to go into appeal and by delays that can't be remedied. The working of the Central Information Commission shows that though information commissioners hear the matter, they postpone judgment for months⁴¹⁷. The reason why the RTI gets too many queries is simple: the bureaucracy treats even basic information that every citizen is entitled to as state secrets. RTI will work the minute all public data especially data relating to a citizen's personal information needs like status of applications for birth and death certificates, ration cards, etc are available to all through websites. Once this supply side problem is licked, the RTI will not be abused for personal information.

The courts have also latched on to the RTI as an avenue of employment for retired judges. The Supreme Court has said that all information commissioners must work in

⁴¹⁴ Metcalf Linda (2010) Solution-Focused RTI, Grades K-8: A Positive And Personalized Approach To Response To Intervention, John Wiley & Sons Inc. Publisher

⁴¹⁵ Chief Information Commissioner speaks to NDTV, NDTV.com | November 13th, 2012

⁴¹⁶ Ibid

⁴¹⁷ Nidhi Sharma, ET Bureau, 26th, Apr, 2013, economictimes.indiatimes.com/news/politics-and-nation/information-officers-callous-attitude-threatens-the-right-to-information-act/articleshow/19732158.cms

benches of two , with one being a former High Court or Supreme Court judge. There is a problem in finding enough judges of caliber for the huge needs of central and state information commissions. Now, of course, the RTI will run into a wall: not enough judges, another supply side problem⁴¹⁸. The most scathing indictment of the RTI Act has come from critics who focus on the sweeping exemptions it permits. Restrictions on information relating to security, foreign policy, defence, law enforcement and public safety are standard. But the Right to Information Act also excludes Cabinet papers, including records of the council of ministers, secretaries and other officials, this effectively shields the whole process of decision-making from mandatory disclosure.

Another stringent criticism of the Act is the recent amendment that was to be made allowing for file notings except those related to social and development projects to be exempted from the purview of the Act. File notings are very important when it comes to the policy making of the government. It is these notes that hold the rationale behind actions or the change in certain policy, why a certain contract is given or why a sanction was withheld to prosecute a corrupt official. Therefore the government's intention to exempt the file notings from the purview of the Act has come in for stringent criticisms⁴¹⁹. There exist strict timelines at the Public Authority Level. However there is no time limit for disposal of appeals at the Information Commission. Even though it is not mentioned in the Act, the Information Commissions have to improve the productivity.

The activities of the Information Commissions and Commissioners for example, tours of the Commissioners to outside the State headquarters were mostly to meet officers, which is good but not good enough to sustain the tempo of a movement and enhance the scope of RTI work. Public interactions of Commissioners other than the hearings in the Commission and formal official engagements, were too few. In fact, field visits are too few in the case of many. The number of Commissioners who did commendably in this regard is too few⁴²⁰. The political leadership and the political parties by and large have done nothing so far to give a push to the Act as if doing so would adversely attract them. The Government, other glaring aspect is that the both at the Centre and in most States, have done little to create much needed awareness among

⁴¹⁸ R. Jagannathan, Apr 06th, 2013 Right to food or right to re-election? UPA's empty gun, http://www.moneycontrol.com/news/current-affairs/right-to-food-or-right-to-re-election-upas-empty-gun_848287.html

⁴¹⁹ Safeguarding the Right to Information, Report of the People's RTI Assessment 2008, http://rti-assessment.org/exe_summ_report.pdf

⁴²⁰ Dr N Bhaskara Rao founder Chairman of independent Centre for Media Studies, Research Needed on RTI Implementation,

large sections of the people and to help open an important window of the Act – *suo moto* obligations maintenance of records and management. The Information Commission in the States has yet to demonstrate proactive initiatives.

7.2.3 Filing of many applications may not necessarily mean seeking more information

According to Central Information Commissions Annual Report 2011-12⁴²¹ the number of requests received have increased from 3.62 lakh in 2008-09 to 7.05 lakh in 2011-12. This incredible increase is, however, paralleled by a jump in the number of requests rejected, from 23,954 applications in 2008-09 to 52,313 applications in 2011-12. In effect, questioned whether the documents received by the applicants are even relevant to what they had asked in their application. In other situations, the particular department may not even have the documents in their record or any systematic means to retrieve them- this poses a serious question on the management of data⁴²².

7.2.4 Overview of the Impact

In India, the Act has produced a better impact on the quality of the life of the poor and the marginalised. After the enactment of the Act, it has brought positive changes in the levels of corruption and accountability. There are quite a number of cases, where the Commission has ordered for providing the details of the decision making processes including file noting, cabinet papers, records of recruitment, selection and promotion of staff, documents pertaining to tender processes and procurement procedure, lists of beneficiaries of government subsidised schemes, such as food grains supplied through ration shops, water and electricity, domestic gas, educational and health facilities, shelter for poor, muster rolls underemployment guarantee schemes, etc. The disclosure of such vital information(s) resulted in checking corrupt practices in delivery of services and ensuring the reach of entitlements to the poor. Concrete steps needs to be taken to make the filing of RTI applications more convenient.⁴²³

At the end the researcher has concluded that the post-independence history of India can be bifurcated in two different eras, one pre-RTI Act and the other one post RTI-Act. Right-to-Information Act has given India a second freedom where a citizen is now much-more empowered than even a Parliamentarian at least in getting

⁴²¹ <http://cic.gov.in/AnnualReports/AR-2011-12/AR2011-12E.pdf>

⁴²² Aishwarya Panicker, Accountability Initiative <http://www.accountabilityindia.in/> accountability blog/2632-right-right-information

⁴²³ Dr. S. K. Tiwari Right to Information: An Important Tool of Social Development, Good Governance and Strong Democracy Global Media Journal - Indian Edition Winter Issue / December 2010

information from the government. For a written Parliamentary question, a Parliamentarian gets just one chance to get reply from the government. While on the other hand, an RTI petitioner has two subsequent chances to grill government if he/she is not satisfied with initial response coming from a public-authority. This is why even several Parliamentarians including Leader of Opposition in Rajya Sabha Shri Arun Jaitley also adopted RTI route to get replies from the government. What more, even the then Central Information Commissioner Dr. O.P. Kejriwal also adopted RTI route to get a government-accommodation in his capacity as Central Information Commission⁴²⁴. The NGO will use Right to Information (RTI) and other means to obtain details of under trials and convicts incarcerated in jails⁴²⁵.

India's Right to Information Act, 2005 has been widely applauded and variously described. It is among the most progressive legislations enacted by our Parliament since we won our freedom. Within a few succinctly worded pages this Act has entitled every Indian citizen to get most of the information he or she might need as a matter of right from various public authorities in a time bound manner and at reasonable cost. It provides for dissemination of maximum information *suo moto*. It contains some radical provisions not found in similar laws even of other advanced democracies of long standing across the world. A citizen is not required to establish his or her *locus standi* or give reasons for seeking information. This Act covers even organizations concerned with national security and intelligence if the information sought concerns allegations of corruption or violation of human rights. The Act provides for stringent penalty provisions for delay or denial of information or indeed for knowingly seeking to mislead an applicant. Citizens have been given a two-tier appeal system and freedom to lodge a complaint with the Central/ State Information Commission free of cost with regard to non-implementation of the provisions of the Act. And these Commissions have been set up independent of government with the tour of duty of the Information Commissioners protected by law⁴²⁶.

Right-to-Information Act 2005 has been successful in much more ways than was aimed to achieve. RTI Act of India is perhaps the best drafted Act of its kind in the global world. Rather than just providing 'Information' as defined technically, RTI Act

⁴²⁴ **gawal Subhash Chandra, 2012for Beyond Headlines**, October 12th, 2012, <http://beyondheadlines.in/2012/10/achievements-of-rti-act-suggestions-for-betterment/>

⁴²⁵ Katju to spearhead 'Court of Last Resort' to offer justice to poor and helpless people, India Today 4th April, 2013, <http://indiatoday.intoday.in/story/markandey-katju-ngo-court-of-last-resort-justice-to-poor-and-helpless-people-sanjay-dutt-zaibunissa-kazi/1/260631.html>

⁴²⁶ Analysis of Judgments of the Central Information Commission on the Right to Information Act, 2005, October 2007, PRIA, New Delhi

has served to be an effective watchdog to make all those coming in purview of the Act to be extremely cautious to do their work only in accordance with rules and without any irregularities. 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. The Right to Information Act of 2005 signals a radical shift in our governance culture and permanently impacts all agencies of state. The effective implementation of this law depends on three fundamental shifts:

- From the prevailing culture of secrecy to a new culture of openness;
- From personalized despotism to authority coupled with accountability; and
- From unilateral decision-making to participative governance.

The Right to Information Act 2005 is unique and one of its kind. The main aim of its enactment was to maintain transparency between the government working and the public who are the beneficiaries. It has been enacted for the convenience of the citizens of the country. India is a democratic nation. Democracy revolves around the basic idea of citizens being at the centre of governance. If we do not have information on how is government and public institutions are functioning, we cannot express any informed opinion on it. It thus clearly flows from this that citizens right to know is of apex importance. By enacting the Right to Information Act India has moved from an opaque and arbitrary system of government to the beginning of an era where there will be greater transparency and to a system where the citizen will be empowered and the true center of power. Only by empowering the ordinary citizen can any nation progress towards greatness and by enacting the Right to Information Act 2005 India has taken a small but significant step towards that goal. The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused. Thus with the enactment of this Act India has taken a small step towards achieving real Swaraj.

RTI is a powerful tool that can deliver significant social benefits. It can provide a strong support to democracy and promote good governance, by empowering the citizen's ability to participate effectively and hold government officials accountable. Rather than just providing information, RTI Act in most of the countries has served to be an effective watchdog ensuring all those coming in purview of the Act to work in accordance with rules and regulations, without any irregularities. However, stricter implementation of this law requires not only political will but also active civil societies, RTI activists and few key democratic features, such as respect for the rule of law. Currently, the RTI Act in India is passing through a decisive phase, much more needs

to be done to facilitate its growth and development. Mere protest against the lack of implementation of this law alone is not sufficient, one needs to encourage this initiative taken, for the law to grow and mature. The right to information Act 2005 is a comprehensive legislation enacted to confer statutory rights on the citizens of India for seeking information from any public authority. This has opened new vistas of governance through transparency and accountability in administration. 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 of 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, disinformation, misinformation and non-information makes democracy a farce. Right to information can be used to elevate democracy to participatory democracy

India is a good example of how the Right to Information Act has worked, in that the number of cases of corruption has dropped and there are more stringent levels of enforcement from the authorities To deepen democracy, these offices are the link, be it at the state or national levels, between a transparent government and the curious public, Information is power and with the various layers of government and the paperwork, the people have the right to know what are the projects that the government is undertaking.

1. RTI derives its root and is in keeping with the principles laid down in the Constitution of India. RTI has a special significance for the disadvantaged sections of the society; This Act is a weapon for societal transformation;
2. With the help of RTI, the principles laid down in our Constitution such as, Liberty, Equality and Fraternity, will reach to the down trodden and the under privileged sections of the society;
3. With the help of RTI Act, proper vigilance can be maintained over the available funds and the expenditure (public money) incurred by the Social Justice Department, the Tribal Development Department and other Government Departments.
4. A visionary outlook, broad and unbiased mindset is needed to view Right to Information Act, 2005 for the development of Nation.

Until the introduction of the Right to Information Act, information was the property of those people who are in the ruling side and secrecy was maintained. With the commencement of the Act, now the people have got right to take, see, check and inspect any information, which is not coming under the exemption list. But at the

same time it require a lot of awareness campaign among the people in order to utilize the act to combat the corruption and get the services of the State, otherwise the present Right to Information Act 2005 will also become just like any other act. Through the Act, often considered one of the most empowering and progressive legislations passed in India, any Indian citizen may request information from a public authority, which is required to reply within 30 days (or 48 hours if the information concerns the life or liberty of a person). It is applicable to all constitutional authorities, including the executive, legislature and judiciary as well as any institution or body established or constituted by an act of parliament or a state legislature. The RTI Act enables applicants to obtain copies of permissible governmental documents; inspect permissible governmental documents; or inspect permissible governmental works and obtain samples. Moreover, with the RTI Act the central and state governments also committed to raise awareness and educate the public, notably disadvantaged communities on this Act.

A citizen who desires to obtain any information under the Act can make an application to the Public Information Officer of the concerned public authority in writing in English, Hindi or the official language of the area in which the application is submitted. There is an application fee of 10 Rupees except for people below the poverty line for whom the application is free. The RTI applications are used, for example, to check if disciplinary action was taken against police personnel involved in torture, to ask for progress reports of investigations or to get the reasoning behind a decision notto provide compensation for cases of police violence. In many cases, the RTI applications have helped victims get ahead in their struggle for justice. The RTI Act has been lauded by democracy advocates all over the world, since it is at par (or even better) than similar laws enacted in countries in the West. For instance, in the US and UK, the respective information disclosure acts require the applicant to disclose his personal details, whereas in India, no such details are required. The RTI Act is one legislation that is indeed the pride of Indian democracy. The RTI Act, as it stands today, is a strong tool to uphold the spirit of democracy. The need of the hour is that the RTI Act should be implemented to ensure that the objects of the RTI Act are fulfilled. Any attempt to dilute the provisions of the RTI Act will only quell its' success.

The Right to know is not meant for gratifying idle curiosity or mere inquisitiveness but is essential for the effective functioning of democracy. Transparency and accountability are sine qua non in a genuine democracy.⁴²⁷ Importance of the information is very aptly echoed in the words of James Madison who said, Knowledge will forever govern ignorance and people who mean to be their own governors must

arm themselves with the power knowledge gives. A popular government without popular information is or the means of obtaining it, is but a prologue to a force or tragedy or perhaps both. India now can proudly proclaim that its citizens today have been conferred with specific RTI, which will surely lead them towards the path of development. Although there are still some shortcoming but it cannot be allowed to dominate the growth of a healthy democratic atmosphere- especially in a country which happens to be the largest democracy in the world.

People's Power for the Control of Corruption opined that information is power and that the executive at all levels attempts to withhold information to increase its scope for control, patronage and the arbitrary, corrupt and unaccountable exercise of power. Therefore, demystification of rules and procedures, complete transparency and proactive dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption. Combating corruption which has been a major concern for our country for decades has a solution potentially in the hands of RTI. It is therefore, quite safe to assert that RTI is a means as well as end to achieve democracy in its truest meaning. This can be achieved by development of a comprehensive information management system and by the promotion of information literacy among the masses. This will positively lead to ultimate realization of the objectives of RTI viz. transparency and accountability. An informed citizenry is a condition precedent to democracy. An informed citizenry is a condition precedent to democracy.⁴²⁸The human development can be described as a comprehensive economical, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals. The right to information as a human right is a result and/or product of the human development. The phrase of the right to information for a person who is hungry, who does not have enough money to live; who is not educated and who does not have freedom, does not have any meaning in either. In the same way, a country which has the problem of hunger, education, economic and politic freedom cannot give the priority to the right to information. Of course, information is a power which plays important role in solving these problems. But governments and individuals generally are not aware of this power and say: first comes the right to eat, the right to work, the right to have a shelter, the right to have social security, in short the right to live and then the right to information.

⁴²⁷ B. N. Kirpal, Ashok H. Desai, Gopal Subramaniam, Rajeev Dhawan and Raju Ramchandran (Eds.), *Supreme But Not Infallible- Essays in Honour of the Supreme Court of India*,

⁴²⁸ p. 354 (Oxford University Press, 2004) cited in Avinash Sharma, *Right to Information : A Constitutional Perspective*, Vol. VIII Nyayadeep, see at pg. 119.

We cannot realize the right to information unless we realize other rights we mentioned above. Although there are many things we can do, as long as the inequality between developing and developed countries, it won't be a realistic attitude to expect to solve the problem of the right to information only by ourselves. As a conclusion, we can say that in the 21st century, the least developed and developing countries still won't reach their right to information⁴²⁹.

7.3 Suggestions

As of now different states have different rules to RTI. There should be certain basic rules. For instance, the rules with respect to appeals, basic application fee and mode of payment like the Indian Postal Order must be uniform. The 2nd Administrative Reforms Commission stated that a number of Information Officers, especially the Panchayats do not have adequate knowledge of the Act. This can be addressed by conducting regular training programmes, providing adequate funds and training material. NGOs and self-help groups with credibility and spatial reach can assist in such programmes. The Government must ensure that the user guides for information seekers must be published and widely circulated, as is required under Sec. 26 of the Act.

Need to make application process less cumbersome. For instance, the Government must ensure compliance with Sec. 5(3) of the Act, according to which the PIO is expected to assist the information seeker with drafting RTI application. It has also been particularly noted that the rural folk face more problems in accessing as well as making sense of the information since a lot of records such as tenders, contracts, estimates and measurement books are generally written in English language. The Act must be amended so as to make it compulsory to publish all the information not only in English, but also in the local language to ensure increased access. It has been noted that CIC and SICs are reluctant in taking action against deviant PIOs. There must be a renewed consensus with respect to imposing penalties and taking disciplinary action more vociferously against PIOs in order to ensure compliance with the provisions of the Act. The essay recognised a range of obstacles varying from the ones in the text of the Act to its implementation. Further, recommendations have been put forth to address the same. If these are adhered to there appears to be a possibility for making right to information a practical reality free from loopholes.

⁴²⁹ Koren, Marian (1997). The right to information as a condition for human development in 63rd IFLA General Conference August 31-September 5 1997 Copenhagen, Denmark Booklet 0 (3-16).

The improvement in the RTI is not in the structure itself. RTI Act is one of the well drafted of laws. The improvement needed is in the government offices where record-keeping is in a very bad state. Computerisation of government records, indexing of records, keeping the record well catalogued so that searching for subjects becomes easier. Today, searching a government file is not an easy task. So when somebody asks for information which is about 2-3 years old, you just don't know in which file the information is contained in. So therefore, a lot is to be done inside the government. Then people will also have to be made aware of what kind of information they should seek. Seeking information is not an easy task. You have to seek the right information and then having sought the information, you must know how to make use of it. So, it is a total package, seeking the information - making use of it. It can't be that one seek the information and then sit over the information. It makes no sense.⁴³⁰

The government officers are the major obstacles in giving out information even when ordered by the CIC under the RTI; From the beginning the government officers have not been very forthright or very forthcoming in giving information. Giving information means giving a part of their power. Nobody wants to share their power so easily. But under constant pressure, both from the commission and from the people, from civil society, from the media, the government officials are slowly opening up. It is not the ideal stage. It will take many more years for the government officials to realise that sharing information is better for them than keeping the information to themselves.⁴³¹ It is observed that close to 70-75% of information sought is for personal use. Only 20-25% information is used for public purpose. Let's hope as the years go by, more and more information for public interest will be sought rather than for personal interest. Of course it can't be ruled out that after all if you have a law and it helps at an individual level than why they should not seek the information. But as time goes by, more public spirited people will seek information for public purpose.⁴³²

Absolutely, with more and more government activities are taking place in collaboration with private enterprises, there is a need to bring in even those entities under the Right to Information Act. It can be nobody's case that we give away hundreds of kilometers of roads or airports or ports to private people to develop and then the entire area becomes a black hole. People should have information, if not about the entire PPP but at least to the extent at which government resources are invested. If some private person has invested his own money maybe the citizens have no right to know

⁴³⁰ Chief Information Commissioner speaks to NDTV, NDTV.com | November 13th, 2012

⁴³¹ Ibid footnote 15

⁴³² Ibid

about his money but surely the people have right to know about the government's investment, if not in cash then in kind.⁴³³ There should be a consensus between the government and the people that PPP be brought under the RTI.

The RTI itself provides that personal information should not be disclosed. And what more can the Privacy bill, bring in that is not there in the RTI itself. Information is defined by law as a piece of paper on which something is written. So if somebody asks for a piece of paper, like a file noting or a letter or copy of a bill or copy of a document, all that you have to decide here is whether it is to be given or not. Very rarely do you come across a case in which application of judicial mind is required. So that might be less than 1% of cases. Just for less than 1% of cases to argue that you need people with vast judicial experience is somewhat exaggerating the work or type of role we are discharging here. Even though CBI has been put in the 2nd Schedule, it has hardly helped them because the law says that even an exempted organisation will have to give information if there is an allegation of corruption. About 90% of the information held by the CBI is about corruption. What has helped them really? It is just nominally in the exemption list.

Improvements are always possible in a statute, because shortcomings are perceivable only after implementation process starts. Problems can occur both at the drafting or implementation level of RTI. The basic premise of the Right to Information (RTI) Act is the concept that a individual citizen is a sovereign in his/her own right and is the part of the Government. This exemplifies the text book definition of democracy as being a 'government of the people, by the people, for the people'. What this leads us to is the practical reality of information being the means to power, which is now shared with citizens. Transparency in working will act as a check on arbitrariness and corruption in governance. Thousands of citizens acting as monitors would be extremely vigilant and uncompromising. The basic issues which are critical to the successful implementation of the RTI Act and which need to be set right. These are⁴³⁴:

- (i) Availability and access to information within a Public Authority through proper record management which calls for a Public Authority setting its own house in order. Implementation of relevant provisions of Section 4 of RTI more seriously, innovatively and efficiently.
- (ii) Compliance with Sec. 4(1)(b) has largely remained a one-time activity at the time when the Act came into full force. There has been a lull since. It is important

⁴³³ Ibid footnote 15

⁴³⁴ Summary of Proceedings of Date: 31.03.2010, Civil Services Officers Institute, New Delhi. http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/2_7_2006-IR.pdf

to make a particular official in a Public Authority responsible for its updation. Meticulous study of the questions / information requests that are usually received by a PA and making all such information available *suo moto* would go a long way in lessening the burden on citizens for getting the information they seek.

- (iii) Dissemination i.e. the manner in which information is made available proactively is also crucial. Disclosure of information on websites is of limited or no value for the 90% populace which has no access to the Internet. Some out-of-the-box thinking for designing apt formats-to address this issue is also called for, This too has implications for good records management.
- (iv) Sound steps need to be taken to ensure free flow of information such that a citizen has less and less reasons to take recourse to filing an application / complaint / appeal. Appropriate guidelines need to be issued regarding invoking Sec. 8. Implementation of the Public Records Act has been appallingly ignored. One needs to consider whether any apt provisions of this Act could be incorporated in the RTI Act, 2005 or in the relevant rules to further reinforce implementation of the RTI Act or whether there is any need to amend the Public Records Act to strengthen it. The fact that Public Records Act does not apply to State Governments needs to be looked into. Good practices in countries like the UK which are relevant in this regard by be appropriately adapted.
- (v) Every Public Authority has its own mandate and its way of functioning etc. In keeping with this, each Public Authority needs to evolve a policy of its own especially for its compliance with Sec. 4(1) (b). Similarly, 'Competent Authorities' defined in the Act which have certain specific responsibilities to carry out when it comes to disclosing certain information, which should also be looked into. Certain research is called for to ensure accountability of the Competent Authorities for RTI implementation as well.
- (vi) Proactive disclosures need to be made more accessible, understandable and meaningful, not only for those without internet connectivity, but also for those who are illiterate. Setting up an Ombudsman in the Information Commissions for continuously seeking inputs and studying good practices as also for addressing the problems that Public Authorities may face in implementing the RTI Act, 2005 may be considered.
- (vii) It may be helpful to look into the possibility of penalizing frivolous applications only at the level of the Information Commission. A PIO / Public Authority cannot be given any authority to call an application frivolous.

- (viii) A district level directory of PIOs would help locate the PIOs easily. This task could be carried out best, perhaps, by NGOs. There is a key role that lawyers and law officers can also play. In Karnataka, for instance, some efforts have been made to link implementation of the RTI Act with that of the Legal Services Authority Act.
- (ix) Procedural propriety needs to be followed in the selection of Information Commissioners. It is also important that the Information Commissioners need to be trained so that they can function more effectively.
- (x) Why the Information Commissions need to be approached on such a large scale. Departments need to look inward to address this issue and overhaul the way they deal with proactive disclosure, processing of applications and disposing of first appeals. This would perhaps address the issue of so many of the government's own employees filing RTI applications. It will also bring about certain other much needed reforms in the manner in which governments function.
- (xi) It was also important for the government to afford all necessary protection to people who are threatened after filing RTI applications. Issuing directions for making it mandatory for a PA to put all questions received by a PA and the replies on the web would be an important step to pre-empt threats to applicants. That apart full compliance with Sec. 4 has to be taken up in a campaign mode and the government should use all possible channels and all possible means - websites, wall paintings, audio-visual tools etc. to promote proactive disclosure. Instituting rewards for performing officials and punishments for lapses and violations regarding compliance need to be instituted,
- (xii) There is a need to spread RTI awareness in rural areas and to use multi-media approaches for the same.
- (xiii) Each Public Authority should be asked by DoPT to have a PIO specifically designated to look after the updation of the Public Authority's proactive disclosure. Outsourcing the work of streamlining record management needs to be considered. SCAN VANS that could go from place to place needs to be considered. This would help creating an effective back-up (thus preventing manipulation) even as the digitisation of records helps their easy retrieval. Digitalising the information and keeping the catalogue ready is the need of the hour.⁴³⁵ It is also favoured for introduction of RTI in syllabus at various levels as for example of the Supreme Court intervention in the matter of introducing

studies of environment in school and college syllabus. It may be a non-credit course.

- (xiv) Serious concern about the victimization of RTI applicants it is being urged for setting up of a RTI helpline whereby such applicants or any other person could report any such case. If the calls are received at the national level, the entity would take the responsibility of forwarding to the State Government concerned for prompt action. This could be done along with the earlier proposed National level Call Centre which would be an upgradation of the 'Jankari' model experimented with in Bihar. It has been urged for its speedy operationalization as well. Finally, the need stressed for rationalizing the content of various training that takes place at various levels in the country so that the message of RTI is not diluted and its purpose is not defeated any way.
- (xv) All applications of RTI to be uploaded on websites of the Public Authorities, their date of receipt and date of reply also being mentioned.
- (xvi) Lack of clarity about the Gazette in which the rules of all Competent Authorities (CAs) under this Act should be removed.
- (xvii) First Appellate Authorities should be enabled in all ways possible for better decision making including giving them the necessary authority to get their decisions implemented and drawn on all necessary resources from within the Public Authority. Popularising the Act through textbooks, as has been tried in some cases, was also offered as a suggestion. Using people-friendly-technology for the filing of applications /appeals, would also go a long way.

7.3.1 Right to Information and Good Governance

Success of a democratic framework depends on good governance. It can be achieved by efficient and effective administration. As per a paper prepared by the Human Rights Initiative, good governance has eight major facets. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. RTI is one of the most important methods of attainment of good governance, which is necessary for ensuring sustainable human development. Corruption is major hindrance in the growth of any system. Dangers are more in a democratic system, where development of people who have reposed their faith by electing the government to power does not takes place. Conditions become more aggravated when basic information related to the people is not disclosed in the

⁴³⁵ www.thehindu.com/news/cities/Visakhapatnam/effective-implementation-of-rti-act-stressed/article5074972.ece 30th, August, 2013

garb of maintenance of secrecy. In fact this culture of secrecy breeds nepotism and increases corruption to an obnoxious level. Information therefore is an antidote to corruption. It limits the abuse of discretion and protects civil liberties.

The whole relation of RTI and good governance finds its mention in the address of the Prime Minister of India, who, while piloting the Bill for its passage by the Parliament, stated, as under, on May 11th, 2005 that I believe that the passage of this Bill will see the dawn of a new era in our processes of governance, an era of performance and efficiency, an era which will ensure that 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 fulfill the hopes of the founding fathers of our Republic. The DoPT had pointed out that Section 4 of the RTI Act required every public authority to *suo moto* provide as much information to the public as possible at regular intervals through various means of communication, including the Internet, so people have to make minimum use of the RTI Act to obtain information.

Though public authorities at the Supreme Court resisted queries on implementation of the resolution on wealth declaration by judges of higher courts, public-awareness generated through an RTI petition resulted in the Bill for Judicial Accountability and *suo moto* declaration of wealth by Supreme Court judges. Later even President of India and Ministers started declaring their wealth because of RTI petitions. Many important documents relating to the Commonwealth Games - 2010, 2G spectrum allotment and so on were brought into the public domain through RTI petitions.

7.3.2 Strengthen in a of disclosure of information under Section 4 of the RTI Act⁴³⁶

Despite a very strong provision for proactive (*suo moto*) disclosure under section 4 of the RTI Act, there is poor compliance by public authorities, thereby forcing applicants to file applications for information that should be available to them proactively and consequently creating extra work for themselves and for Information Commissions. When framing the RTI Act, Section 4 was a commitment and promise of Parliament to ensure that it shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of Sub-section (1) to provide as much information *suo moto* to the public at regular intervals through various means of

⁴³⁶ Summary of Proceedings of Date: 31.03.2010, Civil Services Officers Institute, New Delhi. http://ccis.nic.in/WriteReadData/CircularPortal/D2/D02rti/2_7_2006-IR.pdf

communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

By and large this commitment has not been met. An important part of this section was the promise to computerise and build a network across the country. If this had been implemented in the last 8 years, it would have led to phenomenal benefits. Many people in power complain about the number of RTI queries, but do not admit that they have been lax in providing information '*suo moto*' as mandated by the RTI Act. If they had provided most of the information on websites and in other manner as laid down by the law, the number of RTI queries would have been much less.

Even citizens who may not have access to internet and computers would have probably taken the help of software applications and been able to access information of interest to them using mobile phones. Some may have used cybercafés. When citizens approached Public Information Officers, they would have been able to provide the information in a painless manner. Commissions have passed certain orders for displaying matters of interest to citizens such as status of ration card applications, details of prisoners, MLA and Corporator funds etc. But this must go up considerably. Until the public authorities wake up to their responsibilities, Commissions must give specific orders. Adherence to Section 4 will lead to an improvement in governance and greater trust in the government, apart from reducing the load on citizens and officers.⁴³⁷

- (i) Well defined rules have to be put in place to implement Section 4.l.a,c,d
- (ii) Create simple formats for disclosing information both proactively and reactively
- (iii) Focus on basic needs / essential services programs / schemes and Flagship programmes of the Government
- (iv) Appoint a 'Dedicated PIO' (who can also be the Public Records officer, as listed in the Public Records Act 1993), combining the designation of PIO and Record Officer.

7.3.3 RTI friendly record management system

- (i) Standardize to the extent possible, record management practices and fix responsibilities
- (ii) Make resources available for efficient records management
- (iii) Create a Core Group to work on the road map for facilitating compliance of the Public Records Act, throughout the hierarchy of government.

⁴³⁷ Shailesh Gandhi, <http://www.thehindu.com/opinion/op-ed/the-forgotten-provision-section-4/article5032911.ece>, August 17th, 2013

- (iv) Specific trainings on record management to facilitate the end to end process/ procedures.

7.3.4 Constructive interaction among all stakeholders

- (i) National RTI Council
- (ii) 'Transparency Day' once a month for multi-stakeholder dialogue
- (iii) Joint campaigns and Open houses facilitated by CSOs

7.3.5 Implementation of Section 26 -Awareness Generation

- (i) Social media campaigns- street plays, songs etc. highlighting RTI Act's benefits.
- (ii) Document best practices for dissemination
- (iii) Create a Media strategy and Engage CSOs and Professional Experts to carry it out via TV, radio, local newspapers. Mass Communication should be handled by experts.
- (iv) Create user manuals, guide books outlining the features of the Act and distribute on a mass scale.
- (v) Promote involvement of student groups especially national level organizations like NSS

7.3.6 Capacity building of all stakeholders

- (i) Train PIOs and AAs in Administrative Law and RTI within 2 months of assumption of charge.

7.3.7 Effective Implementation of the RTI Act

- (i) Reliance on Article 256 of the Constitution (whereby the Central Government can give appropriate directions to the State Governments- including for better implementation of Central law).
- (ii) Competent authorities defined under the Act have certain specific responsibilities to carry out with regard to disclosing certain information. This should be looked into.
- (iii) Additional persons to implement the Act either from within the department or from a parallel institution. Clearly earmarked budget for every department to implement RTI Act.
- (iv) Engage Volunteers of Civil Society Groups after proper scrutiny to help the departments and the Information Commissions in all things which might be necessary for implementation of RTI Act.

7.3.8 Improve awareness about the RTI Act, especially in the rural areas

- (i) A task force should be set up at the national level, headed by an eminent media personality or public communications expert, to design and implement suitable public awareness programmes. Information regarding the RTI Act and its relevance to the people should be imparted in conjunction with information about other basic rights, highlighting how the RTI Act can be used to ensure access to these other rights. This would not only contextualize information about the RTI Act but also raise awareness about other rights.
- (ii) To start with, teams using a mix of traditional and modern methods, including song and dance, folk theatre, films, posters, etc. could move from village to village. Similar teams could also be active in urban areas and the programmes could be recorded and broadcast on national TV and radio and use the web and other electronic media.
- (iii) Case studies and other material could be provided to creative people in the broadcasting and television industry to inspire them to fictionalize RTI stories and popularize the concept through television serials in Hindi, English and various regional languages.
- (iv) A module on RTI should be made mandatory (though without credits) in school curriculum for 11th and 12th classes and for all undergraduate and postgraduate courses in India.

7.3.9 The PIOs to be trained towards facilitating the right to information

- (i) Appropriate governments and the ICs should direct all PAs and training institutions (invoking, if need be, S.19(8)(a)(v)), that, apart from conducting separate training courses for PIOs/FAAs and other officers, a module on RTI should be incorporated into all training programmes, considering every government employee is subject to the RTI Act. (ii) In order to facilitate the recommended training courses, a committee of RTI and governance experts should be constituted, also involving CICs/ICs from various states and the Centre, to develop a training plan and a model syllabi for training modules at different levels of the government. This exercise can be anchored by one of the state or national training institutions.
- (iii) Concurrently, it is also important to identify and train the trainers. A roster of trainers, in different languages and for different levels of officials, need to be set up so that training institutions have access to trained trainers.

- (iv) Training material, in the form of printed material and films also needs to be compiled and wherever required, developed in the various languages. State training institutes and other state level institution could be made repository libraries for training material, to be accessed by departments and institutions for use in training programmes.
- (v) An agency, within or outside the government, needs to be given the responsibility of monitoring the state of preparedness among sample of PIOs and officers, in order to assess the efficacy of the training programme.
- (vi) Advisories can be sent (perhaps once a month and at least once every three months) by Information Commissions (ICs), under Section 25(5) of the RTI Act, to all public authorities bringing to their notice important interpretations of the law decided by the ICs, with the recommendation that these should be brought to the notice of all PIOs and maintained by them as reference material. Such advisories can also alert PAs and PIOs against common errors made by them in disposing RTI applications like denying information just because it is third party or just because it is subjudice or just because it concerns a police investigation.

7.3.10 A common set of minimum rules

- (i) All state and union territory governments (a total of 34), all the high courts (19) and legislative assemblies (29), the central government, the Supreme Court and both houses of Parliament have a right to make their own rules. This can result in 86 different sets of rules in the country. In addition, the 28 information commissions also have their own rules and procedures, a total of 114 sets of rules relating to the RTI in India! Consequently, an applicant is confronted with the often insurmountable problem of first finding out the relevant rules and then attempting to comply with the application form, identity proof or mode of fee payment requirements, which differ from state to state and are often virtually impossible to comply with.
- (ii) The Government of India needs to develop a consensus among all appropriate governments and competent authorities on a common set of minimum rules that would enable applicants from residing in one state to apply for information from any other state, without first having to find, study and understand the rules of each state and competent authority.
- (iv) Though, given the provisions of the RTI Act, it might not be possible or even desirable to insist on total uniformity, at least the basic application fee should be

the same. There should be at least one mode of payment that should be acceptable to all states and competent authorities. Applications on plain paper should be accepted by all with at least the following three bits of information: Name of the Public Authority, details of the information sought and name and address of the applicant. Where exemption under BPL category is sought, relevant proof of BPL status should also be enclosed.

- (v) Similarly, basic rules for filing first and second appeals must also be uniform across the country, so that people are enabled to pursue their applications (even where there is a deemed refusal or no response from the first appellate) without having to study 114 sets of rules.
- (vi) Beyond this, appropriate governments and competent authorities can exercise the freedom of allowing additional modes of payment specifically appropriate to their conditions or give additional concessions like the waiver of application fee in rural areas of Andhra Pradesh.
- (vii) The Information Commissions can support the imperative for basic common rules and procedures across the country by invoking the powers given to them under Sec.19(8)(a) of the RTI Act.
- (viii) Meanwhile, nodal departments in all appropriate governments should ensure that all the 114 sets of rules relevant to different governments/competent authorities/ICs in India are on their website and regularly updated.
- (ix) Special effort must be made to ensure easy payment of application and additional fee. Though Indian Postal Orders (IPOs) are the easiest of the currently allowed modes of payment, especially for those who do not live close to the public authority or do not want to go personally and pay in cash, IPOs are not easy to purchase, especially in rural areas. Besides, many states and competent authorities do not accept IPOs. Rather than introducing a new instrument for payment of fees, perhaps all states and competent authorities can be persuaded to accept postage stamps (including post cards) as a means of payment. These are widely available. Where the amount is large, especially where a large number of pages have to be photocopied, all public authorities should be willing to accept money orders.
- (x) Prescribed forms must be discouraged as they are difficult to access for the rural Indian, especially those who do not have access to the internet. Whereas generic forms can be made that guide applicants on what details to provide, applications should not be rejected just because they are not in any specific form.

- (xi) Appropriate governments and competent authorities must refrain from prescribing exorbitant application or photocopying fee. Whereas an exorbitant fee might deter a few non-serious applicants, it would prevent a large number of poor people from exercising their basic right and thereby defeat the whole purpose of the RTI Act.

7.3.11 The weaker segments of society, threatened and even physically attacked to submit an RTI application

- (i) Complaints of such intimidation, threat or attack to ICs must be treated as complaints received under Sec. 18(1)(f) of the RTI Act and, where prima facie merit is found in the complaint, the IC should institute an enquiry under Sec. 18(2) read along with Sec. 18(3) and Sec.18 (4).
- (ii) Such intimidation, threat or attack, in so far as it is an effort to deter the applicant from filing or pursuing an RTI application, can clearly be considered as obstruction and falls within the gamut of Sec. 20(1) as a penalisable offence. Therefore, where the enquiry establishes the guilt of a person who is a PIO, the IC must impose such penalty as is appropriate to the case and acts as a deterrent to other PIOs.
- (iii) Where the guilty party is not a PIO, the IC must establish a tradition of passing on the enquiry report to the police, where a cognizable offence is made or otherwise to the relevant court and use its good offices (and its moral authority) to ensure that timely and appropriate action is taken.
- (iv) It would also help if public authorities designated Assistant Public information Officers (APIOs), as required under Sec. 5(2) of the RTI Act, from neutral agencies. Following the example of the Government of India, it would be a good idea if post offices across the country are made universal APIOs, so that any applicant can file an application in any post office pertaining to any public authority. This would also otherwise facilitate the filing of RTI applications, especially for the rural applicant.

7.3.12 Poor compliance of Suomoto disclosure under Section 4 of the RTI Act,

- (i) Given the very poor implementation of Section 4 by most public authorities, the ICs could recommend (under Sec. 25(5) read with Sec.18(8)(a)) that each PA designate one PIO as responsible for ensuring compliance with all the relevant provisions of Section 4. The Commission would hold this PIO responsible for any gaps or infirmities, subject to provisions Sec. 5(4) and Sec.5(5) of the RTI Act.

- (ii) Where an appeal or compliant comes before an IC relating to information that should rightly have been made available *suomoto* under Section 4 of the RTI Act, but was not, the IC should exercise its powers under Sec. 19(8)(b) and compensate the appellant/complainant for having to waste time and energy seeking information that should have been provided proactively. This will not only encourage applicants to complain against PAs not complying with S.4, but also encourage PAs to fully comply.
- (iii) To ensure that the information proactively put out is up to date, the ICs could direct all PAs that each web site and publication relating to Sec. 4 compliance must carry the date (where appropriate for each category of information) on which the information was uploaded/printed and the date till which it is valid/it would be revalidated.
- (iv) Concurrently, appropriate governments should commission competent professional agencies to develop a template for Sec. 4 declarations, with the required flexibility to be usable by different types of PAs. This or some other agency should also be in a position to help PAs to organize the required information in the manner required.
- (v) The ICs should also require each PA to make a negative list of those subjects/files which might attract any of the Sub-sections of Section 8(1) and thereby be exempt from disclosure. This list should be sent to the ICs, with justifications and the advice of the ICs considered before finalizing it. The remaining subjects/files should be declared open and any RTI request relating to them should be automatically honoured. Further, all the relevant information in these open files should be progressively made public *suo moto*, so that there is finally no need to invoke the RTI Act in order to access such information.
- (vi) Appropriate governments and competent authorities should encourage the setting up of information clearing houses outside the government, especially by involving NGOs and professional institutions for subjects related to their area of work. Such clearing houses could function as repositories of electronic information accessed from the concerned public authorities. They can systematically and regularly access information that is of interest to the public. They can demystify, contextualize and classify such information and make it easily available to the public through electronic and other means. They can also send out alerts regarding information that needs urgent attention. However, such clearing houses should not absolve public authorities of their own obligations under the RTI Act and should actually motivate governments to be more proactive and organized while disclosing information.

7.3.13 The poor state of record management in most public authorities.

- (i) Section 4(1)(a) of the RTI Act obligates every public authority to properly manage and speedily computerize its records. However, given the tardy progress in this direction perhaps what is needed is a national task force specifically charged with scanning all office records in a time bound manner. Apart from saving an enormous amount of time and valuable space, the replacing of paper records by the digital version would also make it more difficult to manipulate records or to conveniently misplace them, provided proper authentication and security protocols are followed.
- (ii) A priority should be given to scanning records at the village, block and sub-divisional level. As facilities for digitizing records are not usually available at this level, it is recommended that a special scheme for scanning rural records, using mobile vans (or scan vans) fitted with the requisite equipment and with their own power source and wireless communication facilities should be commissioned to cover all rural records in a time bound manner.

7.3.14 To deal with a large number of RTI applications in addition to normal work.

- (i) Without illegitimately curbing the citizen's fundamental right to information, there are various ways of ensuring that the numbers of RTI applications received by a public authority do not become unmanageable. First, each public authority should assess every three months what types of information are being sought by the public. As far as possible, the types of information that are most often sought should then be proactively made available, thereby making it unnecessary for the citizen to file and pursue an RTI application.
- (ii) Second, most often RTI applications are filed because there are unattended grievances that the public has with the public authority. These are mostly delays, lack of response to queries, not making the basis of decisions public, seemingly arbitrary or discriminatory decisions, violation of norms, rules or laws by the public authority and non-disclosure of routine information that should have been disclosed even without the RTI. If heads of public authorities periodically (say once in six months) review the basic reasons behind the RTI applications received, they could initiate systemic changes within the PA that would obviate the need to file these applications.
- (iii) Besides, such systemic changes would ensure that the benefits of the enhanced transparency and accountability consequent to the RTI Act do not only go to

those who actually use the Act, but to even those who might be too poor or otherwise unable to take advantage of it.

- (iv) Another practice that would minimize the work load of many public authorities is the putting of all RTI queries and the answers given (except where the information relates to matters private) in the public domain. This would allow people to access information that has already been accessed by someone earlier without having to resort to filing an RTI application. This would also be a good way of ensuring that information accessed under the RTI Act is not used to blackmail anyone. Once all accessed information has been proactively put into the public domain, the potential blackmailer would have no remaining leverage.

7.3.15 Pendency of cases growing every month

- (i) There is a need to develop a consensus among information commissioners, across the country, on norms for budgets and staffing patterns of ICs, based on the number of cases/appeals received, the number of information commissioners and other relevant state specific issues.
- (ii) Similarly, there needs to emerge, through a broad consensus, a norm on the number of cases a commissioner is expected to deal with in a month. This could help determine the required strength of commissions, the period of pendency and also indicate to the public the norm which the commissioners have agreed to follow for themselves. Of course, such a norm should be developed after discussion with other stake holders, especially the public.
- (iii) In order to have the ability to evolve a consensus among information commissioners on these and other such issues, it is important that there be a community or body of commissioners, formal or semi-formal, perhaps as collegiums.

7.3.16 Information commissions undermines their independence and autonomy

- (i) The budgets of information commissions must be delinked from any department of the government and should be directly voted by the Parliament or the state assembly, as the case may be. The CIC should be the sanctioning authority with full powers to create posts, hire staff and incur capital and recurring expenditure, in accordance with the budget, based on budget norms developed for information commissions across the countr.

7.3.17 Information commission orders are of varying quality

- (i) Newly appointed information commissioners must be provided an opportunity to orient themselves to the law and case law. Incumbent commissioners should have an opportunity to refresh their knowledge and understanding and to discuss their experiences and thinking with commissioners from other commissions. Towards this end, it might be desirable to link up with the National Judicial Academy and request them to organize orientation and refresher workshops, the latter over the weekend, in order to minimize disruption of work. This is similar to the workshops being organized by them for High Court judges.
- (ii) There also needs to be a standardized format for IC orders that ensures that at least the basic information about the case and the rationale for the decision is available in the order. This again needs to be discussed with other stakeholders and agreed to by the community of information commissioners.

7.3.18 The orders of information commissions not heeded by the concerned public authority

- (i) All ICs must fix a time limit within which their orders have to be complied with and compliance reported to the commission in writing. Every order of the commission where some action is required to be taken by a public authority should also fix a hearing two weeks after the deadline for compliance is over, with the proviso that the IC will only have a hearing if the appellant appeals in writing that the orders of the commission have not been complied, to be received by the commission at least three days before the date of hearing. Where no such complaint is received, the hearing should be cancelled and the orders assumed to have been complied with, unless evidence to the contrary is presented subsequently.
- (ii) Where there is a lack of compliance by a PIO, automatically show cause notices should be issued for imposition of penalty and unless compliance follows in a reasonable time, penalty should invariably be imposed.

7.3.19 A very small proportion of the penalties imposable under the RTI Act

- (i) Information commissioners across the country should get together and collectively resolve to start applying the RTI Act more rigorously, especially as four years have passed since the Act came into effect and this is more than enough time for the government and for PIOs to prepare themselves to implement the Act

- (ii) At the same time, a dialogue needs to be initiated between the public and information commissions to discuss why they are not imposing penalties even where clearly no reasonable ground exists for delay or refusal of information, etc. To that end, it is required that groups of interested citizens join hands with the media and the legal professionals and progressive former civil servants and judges and start on a regular and systematic basis, analyzing orders of commissions, so that a meaningful dialogue can be had with commissions on the need for imposition of penalties.

7.3.20 No mechanisms for monitoring the implementation of the RTI Act

- (i) There needs to be a National Council for the Right to Information, to monitor the implementation of the RTI Act and to advise the government from time to time on the measures that need to be taken to strengthen its implementation. This council should be chaired by the concerned Minister and have as members, apart from people's representatives, nodal officers from various state governments on a rotational basis. The Central Information Commissioner and CICs from a certain number of states on a rotational basis should be permanent invitees to the Council.

7.3.21 Composition of information commissions towards retired government servants

- (i) Towards this end, the process of short-listing candidates for appointment to information commissions must be participatory and transparent, allowing public consultation and debate before a short-list is finally sent to the selection committee.

7.3.22 Need for setting up follow up mechanisms

- (i) The Central and state governments need to set up independent grievance redressal authorities (along the lines of the one in Delhi – but with more teeth), so that instances of delay, wrong doing or inaction can be independently and speedily adjudicated and corrective action initiated⁴³⁸.

7.3.23 Role of Government

Some of the recommendations regarding the role of the government as are:

- (i) Spell out specific responsibilities for implementation of specific provisions of the Act.

- (ii) There is poor awareness about the RTI Act, especially in the rural areas. Mass awareness campaign both at Central and State levels is required. Its main objective should be to increase public awareness; encourage citizen involvement and increase transparency within the government.
- (iii) Direct all public authorities and training institutions to incorporate training module on RTI in all training programmes. There should be a Special training programme to train PIOs.
- (iv) The Government of India needs to develop a consensus among all appropriate governments and competent authorities on a common set of minimum rules that would enable applicants from residing in one state to apply for information from any other state, without first having to find, study and understand the rules of each state and competent authority. Develop a consensus on a common set of minimum rules that would enable applicants from residing in one state to apply for information from any other state, without first having to find, study and understand the rules of each state and competent authority.
- (v) Applicants, especially from the weaker segments of society, are often intimidated, threatened and even physically attacked when they go to submit an RTI application or as a consequence of their submitting such an application. Complaints of such intimidation, threat or attack to ICs must be treated as complaints received under Sec. 18(1)(f) of the RTI Act and, where prima facie merit is found in the complaint, the IC should institute an enquiry under Sec. 18(2) read along with Sec. 18(3) and Sec.18 (4).
- (vi) Process of short-listing candidates for appointment to ICs must be participatory and transparent.
- (vii) The government should ensure that the CIC functions at full strength. For this, the government would require planning well in advance to make sure vacancies are filled in time.
- (viii) The process of selection of ICs should be more rigorous and participative unlike the adhoc system currently under way. There should be a vigorous campaign to sensitise ICs to the importance of their job to the country's democratic heritage.
- (ix) The government should allow more legal staff with the ICs. This would allow the commissioners to work more efficiently.

⁴³⁸ Safeguarding The Right To Information Report of the People's RTI Assessment 2008 http://www.rti.gateway.org.in/Documents/References/English/Reports/8.%20RaaG%20study_exe_summary%20-%20revised.pdf

- (x) In cases of delay or no-response, the penalties on the information officers should be mandatory. At present, penalties that could be imposed by ICs on the departmental information officers are discretionary. Making them mandatory would summarily take care of a huge chunk of complaints.

Publicity budget of Rs. 300 crores for RTI should be spent through Central Information Commission. Chapters on RTI Act should be added in school-syllabus to make children know about it at root-level to make its effective use later in life. Considering dominating-role of private-sector in public-life through banking, communications and others, India should follow South Africa in extending RTI Act to private sector for firms with some stipulated turn-over fixed separately in respect of goods and services. New Information Commissioners have been added to share ever-increasing appeals/complaints at Central Information Commission. But highly inadequate sub-ordinate staff needs also to be strengthened for best utilization of services of senior officers and Information Commissioners at the Commission. There is a big time-gap of even several months between an appeal/complaint reached at the Commission and its being registered. Even the Commission can and should modify its system to ensure a compulsory registration of all appeals/complaints found fit for registration within say one week of their reaching at mail-receipt section of the Commission. This can be done by deputing special and adequate evening-staff with duty-hours after normal office-hours to diary all mail received in the day and by simultaneous registration of all feasible appeals/complaints at the mail-receipt section only. Such evening/night duty-hours will make fast work uninterrupted from public hindrance in normal working-hours. Appeals found unfit to be registered should be returned to the sender say within a fortnight with a deficiency-note. Field of 'Monthly Disposal of Cases' at Commission's website should separately highlight data for each of the Information Commissioner so as to enable Commission have its own self-study to streamline the system in a manner that period of pending appeals/complaints may be almost same for each of the Information Commissioner. Also since a fresh reallocation of work is being done subsequent to addition of four new Information Commissioners at the Commission, a system can be worked out whereby all pending appeals against a public-authority registered till date may be fixed on same day so that saving may be possible on precious time and conveyance expenses of public-authorities may be largely saved by not being required to attend to hearings on different dates. Same procedure can be adopted even for future, whenever hearing-schedule is to be fixed on weekly or monthly basis for Information Commissioners.

Sections 27 and 28 of RTI Act giving often-misused power to state-governments and public-authorities for drafting their own rules, should be repealed. Some public-authorities like several High Courts drafted their own rules which are/were in contradiction of RTI Act itself. Even now, many High Courts have fixed RTI fees abnormally high at rupees 500 which is otherwise just rupees 10 only. 'One Nation, One Rule' should be motto for RTI Act and rules.

Public authorities have to spend man hours and postal charges to demand just rupees two for copy of single page. Best and practical option is to have an RTI fee of rupees twenty uniformly for all public-authorities without giving any liberty under Section 27 or 28 to have a different RTI fees as notified by DoPT with a provision to provide copy of first say ten pages of documents free-of-cost. Every additional ten pages or part may require twenty rupees extra. RTI fees and copying charges may be payable only through specially introduced RTI stamps which should be available at all post-offices, banks and all public authorities also to avoid huge loss of public-money in handling postal-orders sent towards RTI fees. Recent RTI response has revealed that handling charge for a postal-order are Rs. 22.71 as per data on basis of financial year 2011-12. All public-authorities should be directed to use fast, reliable and economical Speed Post service in cities connected through Speed Post service. According to a DoPT circular, name of payee on postal-orders towards RTI fees is to be Accounts Officers for all public-authorities. But lack of awareness amongst CPIOs makes task of petitioner tough with different public-authorities demanding remittance in different names payees. While Prime Minister's Office requires pay-orders in name of 'Section Officer PMO', President's Secretariat and Department of Justice in name of 'Pay & Accounts Officer', Lok Sabha and Rajya Sabha Secretariat in name of 'Drawing & Disbursing Officer' and Supreme Court in name of 'Registrar (Administration)'.

There should also be penal-provision for first Appellate Authorities not deciding appeals in stipulated period. It should be mandatory (not discretionary) not only for the Commission but even for first Appellate Authority to impose penalty on CPIOs not responding within 30 days. Copying-charges waived under Section 7(6) of RTI Act due to late response from CPIO, should be deducted from salary of CPIO instead of being suffered by the public-authority. There should be penal-provision even for competent authorities of public-authorities not complying with provisions contained in Section 4 (and its other Sub-sections) of RTI Act. However it should be mandatory for Information Commissioners to impose penalties for late response in their main verdict on the appeal itself. Otherwise, reasons for waiver of penalty should be clearly mentioned in the order. Written submissions by public-authorities at least twenty days

before scheduled hearing at the Commission should be made compulsory with a copy to the petitioner. Since public-authorities are much-more elaborative in their response at the Commission, ever-increasing work-load on the Commission may be considerably reduced by abandoning the hearing in case petitioner is satisfied by suggested compulsory written submissions of public-authorities.

Another rule should be for PIOs to compulsorily mention date of RTI petition and of its receipt apart from name, telephone-number, e-mail ID and complete postal address of the PIO. Not providing any of these information may also be taken as non-compliance. PIOs usually do not comply with Section 7(8) of RTI Act when they do not give particulars of Appellate Authority. Central Information Commission should have power to review its single-bench decisions by a larger bench at Central Information Commission itself. No dilution of RTI Act in any other form either as demanded by Judiciary or by DoPT should be done. Chief Information Commissioner should be appointed from amongst senior-most Information Commissioners turn-by-turn for one year each like is adopted for appointing Dean at Faculty of Management (Delhi University). System will avoid vacuum at post of Chief Information Commissioner in case of unexpected vacancy apart from existing Information Commissioners feeling humiliated of being bypassed through appointment of an outsider at post of Chief Information Commissioner. Newer ideas will emerge from various Information Commissioners getting opportunity to head the Commission turn-by-turn each for a year.

If RTI petitions are drafted carefully, then it can achieve much greater objective in getting things done and objectives achieved. There have been many cases where ordinary citizens using RTI Act for getting information relating to their applications for ration-cards or passports, got such documents door-delivered after filing the RTI petitions but before getting the RTI response. Publicity budget for RTI should be spent through Central Information Commission. Chapters on RTI Act should be added in school-syllabus to make children know about it at root level to make its effective use later in life. It is a matter of great regret that most college-going youngsters do not know even about existence of such a wonderful Act. Seminars and workshops should be conducted in colleges and universities to fill the big gap between RTI Act and its knowledge amongst youngsters.

Website of the Commission needs to be given a total new look with provision to update it regularly. Presently there are many fields like say 'Legal Opinion' which has just one entry made in very beginning of launch of the website. It is quite general that cases allotted hearing dates do not always appear in the field 'Status of Appeals &

Complaints'. Since full-bench hearings are very rare and are on some peculiar cases, their hearing-dates should be put under the field of 'Public Notices'. Data in month-wise disposal should be put separately for each of the Information Commissioner. Details of payee's names are neither displaced in offices concerned nor on their respective websites. Public-awareness campaign if derived through Central Information Commission, can well take care of such petty but important aspects to guide all concerned properly to use RTI Act. Considering dominating-role of private-sector in public-life through banking, communications and others, India should follow South Africa in extending RTI Act to private sector for firms with some stipulated turn-over fixed separately in respect of goods and services.

Prime Minister Dr. Manmohan Singh while inaugurating the 7th Annual Convention of the Central Information Commission pointed out the successful implementation of this Act in past seven years and congratulated all those associated with the implementation of this act. However, the right to Information is still evolving in the country he said. He also expressed his anxieties in the area of concern in this field viz. misuse of this Act, infringement of personal privacy, how much and what extant information regarding public private partnership be disclosed etc. The Prime Minister emphasized on a balance between Right to Information and right to privacy. Dr. Singh also stated that the public authorities have also an important part to play in bringing about improvements in the implementation of the Right to Information Act. Dr. Manmohan Singh argued that the Right to Information is one of the many steps of the government has taken for strengthening the institutional architecture for curbing corrupting, enhancing transparency and accountability in public administration and improving delivery of services to the people⁴³⁹.

The stake-holders should use the information responsibly⁴⁴⁰. The role of civil society for keeping their support to this Act because this Act is the mother of all other rights of citizens and its intelligent and responsible use can correct many infirmities in the government and make corruption difficult. It is emphasized on the usage of information received for redressing personal grievances of the citizen. The annoyances for misuse of this Act resulting wasteful expenditure of public resources and highlighted the role of civil society for checking the misuse by imparting training to the information seekers. The annoyance against public authorities for not implementing Section 4 (1)(b) of RTI Act⁴⁴¹. The civil societies (CSO) are an important element/agent in the democracy. The CSO cannot be efficient unless the concept of the citizen is

⁴³⁹ PIB, The 7th Annual Convention of the Central Information Commission commenced with inauguration of the event by Hon'ble Prime Minister of India Dr. Manmohan Singh.12-October, 2012

developed. The CSOs, being a natural society, should scrutinize the action of the government⁴⁴². The Gujarat IC, in its annual report for the year 2011-12, has stated every public authority should maintain all records in proper format and even suggested that computerization of the data should be done wherever possible. Also, the data has to be maintained with proper classification.⁴⁴³

A major challenge is to develop capacities for access to information. The capacities of both the public authorities (i.e. the duty bearers) and the citizens (i.e. the claim holders) may have to be enhanced, for which a two pronged strategy would be needed.

First, a comprehensive information management system (IMS) should be developed by each public authority for storage and retrieval of data and information that may be shared with anyone who seeks to inspect and use the information for development purposes. Not only the institutional capacity but also the individuals associated with various public activities should also be trained and equipped with facilities to cope with the demand for sharing of information.

Second, in order to properly manage the demand for information from the NGOs, in general and the citizens, in particular, a concerted effort would be needed to create mass awareness among the people to promote information literacy. A multimedia approach should be adopted to educate and train people as to how to decide and select what information should be sought for and that from where and how? Besides, they should be educated as to how to make best use of information for effective participation in economic and political processes. This alone can ensure cost effective use of the provisions of the RTI Act.

Right to Information Act provides a broad framework for Government and Citizens' interface to design and monitor relevant projects, contain corruption, ensure accountability and to mutually share the responsibility for development. Under the Act, the public authorities are required to adopt open and transparent procedures and methods of delivery of services. They ought to reveal what they do, how they do and what are the outcomes of the policies, programmes and public expenditures. In a

⁴⁴⁰ PIB, Shri Narayanasamy, Minister of State for Personnel Public Grievances & Pension, Govt. of India
The 7th Annual Convention of the Central Information Commission, 12-October, 2012

⁴⁴¹ Shri Satyananda Mishra, CIC, PIB, The 7th Annual Convention of the Central Information Commission, 12th, October, 2012

⁴⁴² Andre Beteille, PIB, The 7th Annual Convention of the Central Information Commission, 12th, October, 2012

⁴⁴³ Gujarat Information Commission suggests RTI action plan TNN Apr 16, 2013, http://articles.timesofindia.indiatimes.com/2013-04-16/ahmedabad/38585617_1_the-gic-public-authority-gujarat-information-commission

democratic society, the citizen, NGOs and media have the right to know as to how they are governed and they also have right to exercise their options to indicate how they ought to be governed and served by the Government. It is important, therefore, to ensure the following:

Under Section 4 of the Act, all the 'Public Authorities' are required to make proactive disclosure of information. Almost entire gamut of their activities and the manner in which they are executed are to be disclosed. The issue is how to present and capture the relevant information that can be of use to the stakeholders for realizing their rights. The computerization of records and use of IT resources to ensure transparency in functioning of different departments should be accorded high priority. The information should be disclosed on *suo moto* basis so that a citizen does not have to resort to the provisions of the RTI Act. Almost all the Ministries/ Departments have put up information on their websites, which needs to be examined to assess the adequacy of their details for analysis and use of information.

The Act empowers every citizen to seek information and to gain ideas and acquire new knowledge to improve quality of life as well as to participate in the effective governance of public authorities. The issue is how to promote information literacy among people to enable them to decide what to ask for, how to ask and how to make good use of information, so that they can effectively participate in the process of development, including control of corruption. The issue of promotion of information literacy among both educated and not so well educated citizens is critical, because the people and the government functionaries share the responsibility of expediting the process of development. Accordingly, under Section 26 of the Act, provisions have been made for advancement of understanding of the public through education and training programmes. A multimedia strategy for promotion of information literacy should be designed by all the public authorities, including educational institutions, in collaboration with media agencies so as to ensure greater interface between the stakeholders. The task is challenging, as less than 10 per cent of the poor have some awareness about the law on RTI and the manner in which it could be used by them to claim for their entitlements. The potential of IT resources and widespread educational institutions of all types and levels should be exploited to promote information literacy.

BIBLIOGRAPHY

Acts and Regulations

Civil Service Code of Conduct Rules, 1964

Constitution of India

Factories Act, 1948

Freedom of Information Act, 2002

Environment (Protection) Act, 1986

Indian Evidence Act , 1972

Information Technology Act, 2000

Official Secrets Act, 1923

Public Record Act, 1993

Right to Information Act, 2005

Right to Information (Regulation of Fee and Cost) Rules, 2005.

Books

Analysis of Judgments of the Central Information Commission on the Right to Information Act, 2005 (2007)PRIA, New Delhi

Alam Afroz (2010) Suchana Ka Adhikar (Hindi), Jama'at-e-Islami Hind (community & social wing), Jamia Nagar, New Delhi, India

Chawla , S. K. (2013) Suchana Ka Adhikar : Pardarshita Ki Aur Agrasar (Hindi) , Delhi

Das, P.K. (2013) Handbook on The Right To Information Act, Published by Universal Law Publishing Co. Pvt. Ltd., New Delhi,

DeRuvo, Silvia L. (2010) The Essential Guide To RTI An Integrated, Evidence-Based Approach, Wiley Publisher

Guide on Right to Information Act, 2005 (2009) Government of India, Ministry of

Personnel, Public Grievances & Pensions, Department of Personnel & Training
Habibulla, Wajahat and Kumar, Prakash (2007) Digest of CIC Decisions Under The
RTI Act, Volume 1 (2006-2007)

Hand Book on Right To Information Act 2005, National Institute of Social Defence
(Ministry of Social Justice and Empowerment) Govt. of India.

Information Handbook under Right to Information Act, 2005 Mahatma Gandhi
Antarrashtriya Hindi Vishwavidyalaya

Information Handbook Under Right to Information Act 2005, Publications Division
Ministry of Information and Broadcasting , Government of India, New Delhi-
110 003

Joga Rao, S. V. (2009) Law relating to Right to Information, Pentagon Press
Publications

Kumar , Prakash & Rai, K. B. (2008) Right To Know - A Hands-on Guide to the
Right to Information Act, Vikas Publications

Kumar, Niraj (2009) Handbook on Right to Information Act, 2005, Bharat's
Publications

Metcalf Linda (2010) Solution-Focused RTI, Grades K-8: A Positive And Personalized
Approach to Response To Intervention, John Wiley & Sons Inc. Publisher

Muthuswamy & Brinda (2013) Swamy's Compilation on Right to Information (Act,
Rules, Orders and Guides) , Swamy Publications

Naib, Sudhir (2011) The Right to Information Act 2005: A Handbook, Oxford
Publication

Owocki, Gretchen (2010) The RTI Daily Planning Book, K-6: Tools and Strategies
for Collecting and Assessing Reading Data & Targeted Follow-Up Instruction,
Heinemann Portsmouth NH

Pandey, J.N. (2012) Constitutional Law of India, Central Law Agency Publication

Puri, V.K. (2010) Right to Information - Practical Handbook, A JBH Publications

Puri V. K. (2007) Digest of CIC Decisions Under The RTI Act, Volume 1 (2006-
2007), A JBH Publications

Puri V. K. (2009) Digest of CIC Decisions Under The RTI Act, Volume 2 (2008-
2009), A JBH Publications

- Puri V. K. (2010) Digest of CIC Decisions Under The RTI Act, Volume 3 (2009-2010), A JBH Publications
- Puri V. K. (2011) Digest of CIC Decisions Under The RTI Act, Volume 4 (2010-2010), A JBH Publications
- Puri V. K. (2012) Digest of CIC Decisions Under The RTI Act, Volume 5 (2011-2012), A JBH Publications
- RTI Act (s) and CIC Decisions (2006) Divya Jyoti Industries
- Sahai, Nandini and Rajgadia, Vishnu (2008) Book on RTI, Published by UNESCO, FES-India and MICCI
- Sharma, S. D. (2012) Right to information implementation problems and solution, Neha Publishers & Distributors
- Shreyaskar, Pankaj K. P. (2013) RTI Act in India : Futures and Implications, Tata McGraw-Hill Education Publication
- Tolia, R. S. (2001) Handbook for public information officers under RTI, Natraj Publication
- Uppal, R. K., Mishra Bishnupriya, Mishra Bishnupriya (EDT) (2009) Right To Information (RTI) And Rural Development In India, New Central Book Agency Publisher
- Verma, R. K. (2009) Right to Information Law & Practice with Case Book on Right to Information, Taxmann Publications Pvt. Ltd.
- Verma, R. K. and Verma, Anuradha (2010) Right to Information Law & Practice, Taxmann Publications Pvt. Ltd.
- Verma, R. K. and Verma, Anuradha (2011) PIO's Guide to RTI, , Taxmann Publications Pvt. Ltd.
- Vyas A. K. (2013) Implementation of RTI Act 2005 in Armed Forces and Its Implication, Neha Publishers & Distributors

Journals/Research Papers/Articles

- Agrawal, S. C. My Experiences on RTI & Judiciary
- Battacharyya, M. RTI Awareness Campaign organised in West Bengal
- Battacharyya, M. (2007) First ever Penalty u/s 20 in West Bengal, 9th, August.
- Chhaba, A., et. al. (2005) Right to information : Step towards transparent governance

Dalal, P. Consumer Protection and Right to Information

Dalal, P. The Expanding Horizons of Right to Information.

Dhawan, H. (2008) CIC to decide if CJI under RTI Act, 14th, May, The Times of India, N. Delhi

Geist, M. (2006) Supreme court tips its hand on privacy, 8th, May, Ottawa, Canada

Hencke, D. and Dyer, C. (2008) High court orders MPs to reveal their expenses, 17th, May The Guardian, UK.

Himalayan News Service, Nepal's Parliament passes the RTI Bill, 2006 Kashyap, R. (2007) RTI Act empowers common man, 5th, Feb. Punjab News Line, Chandigarh.

Krishnamoorthi, T. N. (2008) Lessons from Penalties Imposed By CIC. 11th, September, Little Andaman.

Kumar, C. N. Karnataka Education Department to include RTI in syllabus.

Misra, K.K. (2008) RTI Act is fine, The Hindu, 15th, March, Raichur

Nair, S. (2008) BMC yet to open up, despite Disclosure Act, 25th, May, The Indian Express, Mumbai.

Rajasekharan, M.V. (2006) RTI Act: It is a powerful tool in the hands of the media, 28th June, Bangalore.

Rajgadia, V. (2007) Penalty on PIO: First Time in Jharkhand, 13th, February, Ranchi.

Rao, N. B. Research Needed on RTI Implementation - A review of RTI

Singh, Kunwar Vijay Pratap (2014) Right to Information (RTI) Law & Practice

The Assam Tribune Assam, RTI Act to cover file notes.

The Daily Star, RTI for Bangladesh.

The Independent (2008) The time has come to end the 30 year rule of disclosure, 30th, May, UK.

The Pioneer (2007) NRI's in US allowed RTI excess, 24th, June, N. Delhi

The Times of India (2008) 78% RTI officers have 'average awareness', 28th, Sept., Bangalore.

Yilmaz, B., (1998) The right to information: is it possible for developing countries?, Hacettepe University, Beytepe-Ankara Turkey

Zee News (2008) Over 2,500 RTI applications still pending with Delhi Govt., 3th, May, N. Delhi.

websites

[aptel.gov.in/RTI/RTI%20Rules\(29.2.2008\).pdf](http://aptel.gov.in/RTI/RTI%20Rules(29.2.2008).pdf)

cic.gov.in

en.wikipedia.org/wiki/Right_to_Information_Act

GreaterKashmir.com- Application filed under RTI seeking details of the disappeared youth

indiaimage.nic.in

righttoinformation.gov.in/rtiact.htm

rti.gov.in

rti.india.gov.in

rtiocc.cgg.gov.in

rtionline.gov.in

www.freedominfo.org, China Adopts First Nationwide Open Government Information Regulations , 9th, May, 2007, Washington, DC,

www.freedominfo.org, Fundamental Human Right to Access Government Information - Rules Inter-American Court , 12th, October. 2006

www.imd.gov.in/doc/rtimanual/rtiman.htm

www.nic.in/rti

www.rti.gateway.org.in/