

CHAPTER – III

RIGHT TO INFORMATION IN INDIA: HISTORICAL PERSPECTIVE & MAIN PROVISIONS

Prior to enactment of a specific law on the right to information, there existed many laws as well as rules to promote secrecy and against disclosure of information. The culture of secrecy started from colonial era and this culture nurtured by different laws from time to time. The secrecy provisions of Official Secrets Act, Civil Service Conduct Rules (1964), Evidence Act (1872), Manual of Office Procedures, Oath of Secrecy by ministers and other laws, rules containing secrecy provisions.¹

3.1 SECRECY IN INDIA

To promote official secrecy in India, the ‘Official Secrets Act’ (OSA) plays a massive role. The Official S Act 1923 has a long history started from 1889. Later on, the Official Secrets Act 1911, (British Act) was brought into force in India. In 1923 the Indian Official Secrets Act came to the statute book as the Indian Official Secrets Act, 1923. In 1967, its nomenclature was changed and it stands as the Official Secrets Act 1923 (19 of 1923).² This Act contains several provisions for prohibiting the flow of information. It describes the offences and prescribes punishment for offenders. The intent of this law was to secure information related to security of the state and sovereignty of the country, but the atmosphere created by the law during colonial era as “a ‘catch all’ legal provisions converting practically every issue of governance into a confidential matter.”³ Section-5 of the O.S.A. stated that any person having information about a prohibited place or such information* which may help an enemy or which has been entrusted to him in confidence or which has obtained owing to his official position, commits an offence, if he communicates it to an unauthorized

¹ Second Administration Reform Commissions First Report, *Right to Information: Master Key to Good Governance* (June 2006).

² J.N. Barowalia, *Commentary on the Right to Information Act*, (Delhi: Universal Law Publishing, 2006).

³ Second Administrative Reform Commission First Report, *Right to Information: Master Key to Good Governance*. (June 2006)

* In such information sketch, plan, model, article, note and document included as per sec. 5(1) of O.S.A., 1923.

person,⁴ uses it in a manner ‘prejudicial to the interest of the state,’⁵ retains when he has no right to do so, or ‘fails to take reasonable care’⁶ of such information. Along with these provisions, the section provides provision for punishment for unauthorized disclosure of official secrets.

3.1.1 Indian Evidence Act

The India Evidence Act, 1872 also impose unnecessary restrictions under section-123 and section-124. As it stated that there is an obligation of giving evidence from unpublished official records relating to affairs of state except with the permission of the H.O.D. This section read as follow:

“No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of state, except with the permission of the officer of the Head of the Department concerned who shall give or with hold such permission as he thinks fit.”⁷ Section-124 of the Indian Evidence Act stipulates that “no public officer shall be compelled to disclose communications made to him in official confidence, with the court considers that the public interest would suffer by the disclosure.”⁸ Though this Act provides some provisions regarding access to information on demand but along with this there are some provisions which constraint in right to information.

3.1.2 Central Civil Service Conduct Rules (1964)

The Central Civil Service Conduct Rules are applicable to the officials of All India Services working with the union government or with the states, besides the officers of central services and the officers are required to abide by those rules. It forbid the unauthorized communication by a public servant to the citizens and considers it a punishable offence.⁹ In the same way section-9 of ‘All India Civil Service Conduct Rules 1968’ also put down restriction on unauthorized communication of information.

⁴ Sec. 5(1) (a) of O.S.A.,1923

⁵ Sec. 5(1) (b) of O.S.A.,1923

⁶ Sec. 5(1) (d) of O.S.A. 1923

⁷ Sec. 123 of Indian Evidence Act, 1872

⁸ Sec. 124(1) of Indian Evidence Act, 1872

⁹ Sec. 11 of Central Civil Service Conduct Rules, 1964

Further, the Constitution of India also protects certain type of communication among high level constitutional functionaries. Article-74(2) provides that advice tendered by the Ministers to the President shall not be inquired into by any court. Similarly, Article-163(3) provides that advice tendered by the Ministers to the Governor shall not be inquired by any court. This privilege extends not only to the advice but also to the reasons and the background for the advice tendered.

3.2 DEMOCRACY & INDEPENDENCE: IN REFERENCE OF SECRECY AND DIFFERENT PROVISIONS TO PROMOTE RIGHT TO INFORMATION IN INDIA

Official Secrets Act and other secrecy related laws are against democratic spirit. In India, myth of official secrecy¹⁰ has been in practice from long and considered as disservice to democracy. Democratic India has now decided to move from official secrecy regime to an open regime. Openness in government functioning and access to information is an essential module of democracy. No one can enjoy his right to expression without having accessibility. Access to information ensures success of democracy and Independence. Democracy is associated with participation, civil and political liberties. Historically it has been defended on the ground of fundamental values such as equality, liberties, social ability, moral self development and much more. It ensures self rule and allows equal opportunities and rights. Now opportunity and right of 'access to information' about the government functioning is a vital component of democracy.

To promote an access to information to the citizens, various provisions were made through different Acts passed by legislature from time to time before and after independence. The Indian Evidence Act, 1872¹¹ made a provision to know about the contents of the public documents and along with this section-76 of this Act lays down that public official shall provide copies of public documents to any person who has the right to inspect them. Under the Factories Act, 1948, compulsory disclosure of information has to be provided to factory workers regarding dangers including health hazards arising from their exposure to dangerous materials and the measures to

¹⁰ U.C. Aggarwal, "The Official Secrets Act to the Right to Information Act, Dawn of Glasnost", Indian Journal of Public Administration, Vol. 3, (2009), 336.

¹¹ Sec. 74-78 of Indian Evidence Act, 1872

overcome such hazards. Under the Water (Prevention and Control of Pollution) Act¹², 1974, every state is required to maintain a register on water pollution and it is further provided that so much of the register relates to any outlet or any effluent from any land or premises shall be open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises. Under the Representation of the People Act, 1950¹³, a candidate contesting elections is required to furnish in his nomination paper the information in the form of an affidavit concerning: (i) accusation of any offence punishable with two or more years of imprisonment in any case including the framing of charges in pending cases; and (ii) conviction of an offence and sentence of one or more than one year imprisonment.

The Report of National Commission for Review of Working of the Constitution (NCRWC)¹⁴ established under the Chairmanship of M.N. Venkatachaliah, former Chief Justice of India, recognized the right to information wherein it is provided that major assumption behind new style of governance is the citizen's access to the information. Much of the common person's distress and helplessness could be traced to his lack of access to information and lack of knowledge of the decision making processes. He remains ignorant and unaware of the process, which virtually affects his interest. Government procedures and regulations shrouded in the veil of society do not allow the litigants to know how their cases are being handled. Right to Information should be guaranteed and needs to be given real substance. In this regard, government must assume a major responsibility and mobilize skills to ensure flow of information to the citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of secrecy. Administration should become transparent as well as participatory. In the year 1993, the Public Records Act, was enacted to regulate the management, administration and preservation of public records of the central government, union territory administrations, public sector undertakings, statutory bodies and corporations, commissions and committees constituted by the Central Government or a Union Territory Administrations. Record officers were appointed to take appropriate action against the unauthorized removal, destruction etc. of public

¹² Sec. 25(6) of Water(Prevention and Control of Pollution) Act, 1974

¹³ Sec. 33(A) of Representation of the People Act, 1950

¹⁴ Report of National Commission for Review of Working of the Constitution (NCRWC) Para 6.10.1

records in his custody. All unclassified public records that were more than thirty year old were transferred to the National Archives of India or the Archives of the Union Territory as the case may be, subject to such exceptions and restrictions as may be prescribed to be made available to any bona fide research scholar. All these developments set the stage for a right to information law and finally it is widely accepted that information is prerequisite for democracy. True colors of independence and democracy beside moral obligation, legal and constitutional obligations are base stone for right to information. Every democratic polity takes accessibility as principle component. There is contradiction in Constitution and democracy. Democracy requires and takes access to information as an important part of it while the constitution of India does not provide directly 'right to information to enable this. It is wrong to consider democracy as a form of government 'where the participation of people is restricted merely to periodical exercise of the right of Franchise.'¹⁵

Democracy refers to a situation where power and authority ultimately rest with the people. As defined by Anthony Arblaster, "It ensures the accountability of those holding power to the people who are the ultimate source of that power."¹⁶ So without ensuring answerability of power holding peoples and without an access to information democracy and independence are meaningless.

3.3 CONSTITUTIONAL PROVISIONS & RIGHT TO INFORMATION: JUDICIAL PERSPECTIVE

The Indian Constitution provides fundamental rights and directive principles of state policy for social justice and transparent functioning of the democratic political system under Part III and Part IV of the constitution. Several rights have been conferred on the citizens of India through fundamental rights. Encompass there of being widened mainly through pronouncements of Supreme Court from time to time as democracy getting strengthened in India. The interpretations given by Supreme Court in concern of fundamental rights become the base for the development of the rule of law in India. The Supreme Court of India has recognized the right to information as constitutionally protected fundamental rights under the Article 14, the

¹⁵ Niraj Kumar, *Treatise on Right to Information Act, 2005*, (New Delhi: Bharat Law House, 2009), 51.

¹⁶ Subra Kundu and Jyoti, "Democratic Need of Right to Information Act in India", *Global Media Journal Indian Edition*, Winter Issue (2010)

right to equal protection of the laws and equality before law, the right to freedom of speech and expression (Article-19(1) (a)) and the right to life and liberty (Article-21). The right to information is a fundamental right flowing from Article-19(1) (a) of the Constitution is now well settled. The legal position with regard to the right to information has developed through several Supreme Court decisions in the context of the right to freedom of speech & expression, which has been said to be the observe side of the right to know. Article-21 of the Constitution guarantees to every citizen the right to life and personal liberty. The citizens cannot exercise their particular right to protect their lives, unless they are informed about the measures being taken by the concerned authorities and the measures available to them. Without this information, the right becomes totally meaningless. The Supreme Court of India has, from time to time, interpreted these rights and right to information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information.

In *Bennett Coleman*¹⁷ case the Supreme Court gave judgment on freedom of the press in India and elaborates freedom of speech and expression. In this case the petitioners, a publishing house challenged the government's newsprint policy which put restriction on newsprint policy, sale and consumption of news print. This was challenged as restricting the petitioner's right to freedom of speech and expression. In answering the question on government's right to newsprint, the court remarked, "It is indisputable that by freedom of the press is meant the rights of all citizens to speak publish and express their views" and "Freedom of speech and expression includes within its compass, the right of all citizens to read and be informed."

In the case of *Indian Express*,¹⁸ the Supreme Court remarked, "the basic purpose of the freedom of speech and expression is that all members should be able to form their belief and communication them freely to others. In sum, the fundamental principle involved here is the people's right to know."

On the discloser from government officials, the Supreme Court gave decision that right to know arise from fundamental right of freedom of speech and expression

¹⁷ *Bennett Coleman and Co. vs. Union of India* , AIR 1973 SCC 783

¹⁸ *Indian Express (Bombay) Newspapers Pvt. Ltd. vs. Union of India* , AIR 1985(1) SCC 641

guaranteed by the Constitution. In the case of *Uttarpradesh vs. Raj Narayan*,¹⁹ the Supreme Court ruled that right to information is an integral part of right to freedom of speech and expression Article-19(1) (a). In this case, the petitioner sought disclosure of the 'Blue Book' from government officials, relating to the rules and instructions for security arrangements of the Prime Minister and expenses thereof on the than Prime Minister.

The Supreme Court remarked 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. They are entitled to know the particular of every public transaction in all its bearing. The right to know which is derived from the concept of freedom of speech though not absolute is a factor which should make one wary when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with a veil of secrecy, the common routine business is not in the interest of the public."²⁰ This was the first time when Supreme Court established that citizen's right to know arises from the fundamental right of freedom of expression and speech guaranteed by the Constitution. Subsequently, in 1982 in the case of *S.P. Gupta*,²¹ the Supreme Court of India held that the right to information was a fundamental right under the Indian Constitution. Along with this, the court rejects the privilege of the government not to disclose information on the correspondence between the Chief Justice of India and the Union Law Minister regarding the non-appointment and transfer of certain judges. This case added a liberal dimension to the need for increased disclosure in matter relating to public affairs. The court recognized that a democratic society cannot keep the activities of the government hidden from the public in order to avoid accountability and criticism. The court also defined open government deriving from the right to know implicit in free speech and expression rights guaranteed under Article-19(1) (a) of the constitution.²² In that case the court identified a presumption of disclosure; "disclosure of information in regard to the functioning of the

¹⁹*State of Uttar Pradesh vs. Raj Narayan* AIR 1975 SCC 428 865

²⁰ AIR 1975 SC 865

²¹ *S.P. Gupta vs. Union of India*, AIR 1982 SCC 149

²² Ibid

government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistent with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.”²³ In this case the court emphasized on open government as new democratic culture of an open society. Every liberal democracy is moving towards it and India should be no exception.

In the case of *Dinesh Trivedi*,²⁴ the Supreme Court held that freedom of speech and expression includes right of citizens to know about the affairs of the government. In that case the petitioners demanding that union government makes public the reports which were the basis for Vohra Committee report. Being unsuccessful in securing a satisfactory response, Dinesh Trivedi & others* filed writ petition in public interest. On the disclosure of information the court stated that, “In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute.”

In another decision, in the case of *Secretary, Ministry of I&B*²⁵ highlighted that the right to impart and receive information is a part of fundamental right under Article-19(1) (a) of the Constitution. In that case the primary question was that, whether an organizer of any event has a right to get the event telecast through an agency of his choice whether national or foreign. On this Justice Sawant stated, “The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article-19(1) (a) of the constitution. A citizen has a fundamental right to use the best means of importing and receiving information and as such to have an access to telecasting for the purpose.”²⁶ On the question of demand of publication and exposure of information the Supreme Court opined in *Life Insurance*

²³ Ibid

²⁴ *Dinesh Trivedi, M.P. vs. Union of India*, AIR 1997, SCC 306

* In this case along with Dinesh Trivedi, two other NGO’s filled the write petition in public interest. These two NGO’s were Public Interest legal Support and Research Centre (PILSARC) and other was Consumer Education & Research Centre (CERC).

²⁵ *Secretary, Ministry of I&B vs. Cricket Association of Bengal*, AIR 1995 (2) SCC 161

²⁶ Ibid

*Corporation*²⁷ case that there is nothing wrong in requesting the publication of the respondents rejoinder in the Life Insurance Corporations Journal. The rejoinder referred to the discriminatory practice of the corporation which was adversely affecting the interest of many policy holders. The court observed that community is entitled to know whether or not the statute is being satisfied in the functioning of the LIC.

In *People's Union for Civil Liberties*²⁸ case, the right to information was further elevated by the Supreme Court to the Status of a human right, necessary for making governance transparent and accountable. It held that people have every right to know the background of the contesting candidates for assembly and parliament. It also emphasized that governance must be participatory.

Thus the above judgments cut across freedom of the individual, privacy, freedom of the press, duties of governments, duties of public authorities, right to seek disclosure of information about candidates contesting in elections and so on and so forth and also to the exceptions contained in Article-19(2) of the Constitution. The overall impact of these decisions has been to establish clearly that the people's right to know is embedded in the provisions guaranteeing fundamental rights in the Constitution.

3.4 RIGHT TO INFORMATION: POPULAR MOVEMENT, CAMPAIGN & DRAFTS

After Independence the demand for right to information increased. Many people organizations contribute to this success. Historically a movement for right to information first began in Rajasthan in the early 90's with an organization named Mazdoor Kissan Shakti Sangthan (MKSS). Its members were marginal peasants and landless workers of village 'Dungari' in Rajasthan who decided to fight for their wages and transparency in the record to fight corruption.

The movement snowed under mainly 'three kinds of stakeholders.'²⁹It includes people's movements working for ensuring basic economic rights and access to government schemes. The second kinds of stakeholders were group of activist who

²⁷*Life Insurance Corporation vs. Manubhai D. Shah*, AIR 1992 SCC 63

²⁸*People's Union for Civil Liberties vs. Union of India*, AIR 2004 (2) SCC 476

²⁹, Shekhar Singh, "The Genesis and Evaluation of the RTI Regime in India", in *Transparent Governance in South Asia*, (New Delhi: IIPA, 2011), 54.

joined hands in the fight for transparency and third kinds of stakeholders were environmentalists.³⁰

The MKSS works for empowerment of workers and peasants. The MKSS experiment started in 1987-88 in social work with three activists. Nikhil Dev, a non-resident Indian from the United States of America, started public hearings and shook the very foundation of the tradition monopoly, arbitrariness and corruption of the officials. The MKSS demanded that the copies of all documents related to public works be made available to them for a public audit. The Collector accepted the request of the activists but the village development officers refused to comply with the written directions of the Collector and went on strike. The strike spread to the entire of Rajasthan state slowly.

On the 5th April 1995, the Chief Minister of Rajasthan announced in the legislative assembly that his government would be the first in the country to confer upon every citizen the right to obtain (for a fee), photo copies of all official documents related to local development works. One year after that assurance, the MKSS started an agitation in which about 500 people daily heard the speeches of leaders who make a voice for those people who had not been given their due.³¹ After non-compliance of assurance, MKSS started 'Dharna' and evolved a program 'Jansunwai'. Under this program the activist required some information from local administration. At the end of 52 days dharna,³² the state government issued notification allowing people the right to receive photocopies of documents related to panchayat, village or local government institutions. The mode of public hearings initiated by MKSS commence with the promise of the fundamental right of people to information. In early 1999,³³ government of Rajasthan constituted a committee to draft a right to information law.

³⁰ Ibid

³¹ Dheera K. Khendalwal & Krishna K. Khendalwal, *A Commentary and Digest on the Right to Information Act 2005* (Delhi: Bright Law House, 2007).

³² S.R. Bhansali, *The Right to Information Act, 2005*, 2nd Edition, (Jodhpur: Indian Publishing House, 2008).

³³ Sarabjit Sharma and Krishna Goyal, *Right to Information Implementing Information Regime*, (Delhi: Authors Press, 2006) 110.

Although it was a struggle for the rural poor people but it caught an attention and imagination of a large cross section of people, including activist servants, lawyers and even legislators.

3.4.1 LBSNAA (1995)

After public hearing's organized by MKSS, Lal Bahadur Shastri National Academy of Administration,[#] Masoorie took an unusual step of organizing a national workshop of officials and activists to focus attention on the right to information.

3.4.2 NCPRI (1996)

In August 1996, Gandhi Peace Foundation convened a meeting in New Delhi and founded National Campaign for People's Right to Information (NCPRI).³⁴One of its primary objective was to campaign for a national law facilitating the exercise of right to information. The NCPRI took up a task to formulating and having passed a national law on right to information. Its major contribution as a group has been firstly, to assist in preparing the press council draft.³⁵The NCPRI became a broad based platform. As the campaign gathered momentum, it became clear that the right to information had to be legally enforceable. As a result of this struggle various states enacted/pass a law on right to information.

3.4.3 The Press Council Draft on Right to Information (1996)

In 1996 the Press Council of India draws up draft legislation on right to information. That was the first major draft in it. This draft was derived from an earlier one, which had been prepared at LBSNAA Masoorie.[#] The draft affirmed the right of every citizen to information from any public body and in public body the draft not only include state but also all privately owned undertakings, non statutory authorities, companies and other bodies whose activities affect the public interest. As per the draft, the provision of penalty against defaulting authorities was provided. Along with this, the information that cannot be denied to parliament or state legislatures cannot be

[#] Meeting held in October 1995. This is a government institution that trains civil servants on their entry into service.

³⁴ Shekhar Singh, "The Genesis and Evaluation of the RTI Regime in India" in *Transparent Governance in South Asia*.", (New Delhi: IIPA, 2011), 56.

³⁵ Sharma Sarbjit and Krisha Goyal, *Right to Information Implementing Information Regime*,(Delhi : Authors Publishers,2006),

[#] In October 1995 Lal Bhadur Shastri National Academy held a meeting on right to information.

denied to a citizen either.³⁶ The preamble of the draft affirmed that the RTI is already protected under the constitution of India in fundamental rights in Article-19(1) (a).³⁷ Headed by Justice P.B. Sawant, Press Council of India presented a draft model law on right to information to the government of India. The draft model was updated and renamed 'the PCI-NIRD Freedom of Information Bill 1997'.³⁸ None of these drafts was taken seriously by the government.

3.4.4 Consumer Education Research Council (CERC) Draft

In 1996 Consumer Education Research Council prepared a draft on freedom of information. The draft provide a provision of access to information to anyone except 'lien enemies' whether they were citizen or not. The draft provide provision of maintenance of record, computerization of record and publication of all laws, regulations, guidelines and circular related to government or issued by government. The draft provided for outright repeal of the official secrets act. This draft didn't make it through parliament either.³⁹

3.4.5 Chief Minister Conference (1997)

In 1997, the Chief Minister's conference on 'Effective and Responsive Government' held.⁴⁰ The conference resolved that centre and state government would work together on transparency and right to information. The need for right to information law was recognized by this conference and the 'Ministry of Personnel, Public Grievances and Pension' related 38th report included recommendation of parliamentary standing committee on Home Affairs that the Government should take measures for enactment of such legislation. As a result, the state legislatures passed the law.

³⁶ Dheera K. Khendalwal & Krishna K. Khendalwal, *A Commentary & Digest on Right to Information Act 2005*, (New Delhi: Bright Law House, 2007)

³⁷ <http://www.rti.gateway.org.in/Documents/references/english/reprots/12%20an%20article%20on%20RTI20%by%20Mander.pdf> Visited on Dec.14, 2011.

³⁸ <http://www.thesouthasian.org/archives/2006/post.html> Visited on Dec. 28, 2011.

³⁹ Dheera K. Khendalwal and Krishna K. Khendalwal, *A Commentary and Digest on Right to Information Act 2005*, (Bright Law House, 2007)

⁴⁰ S.R. Bhansali, *The Right to Information Act 2005*, (Jodhpur: India Publishing House, 2008) 15.

3.4.6 States Initiative on Right to Information

As a result of Chief Minister Conference on right to information many states passed right to Information Act. In 1997 Tamil Nadu was the first state who passed right to information Act to ensure transparency in the functioning of government actions. In the same year Goa passed right to information legislation. In 1999 Karnataka passed 'the Karnataka Transparency in Public Procurement Act' to ensure transparency in public procurement of goods and services. In next year i.e. 2000 Karnataka state passed RTI Act to promote openness, transparency and accountability.⁴¹ Along with all this some other states also introduced right to information legislations.[#]

3.4.7 Shourie Committee's Draft

After the legislation of right to information in Tamil Nadu and Goa, the government of India formed a working group on right to information under the chairmanship of H.D. Shourie to draft legislation on right to information. The working group submitted report and draft in may 1997.⁴² The group recommended some amendments to the civil service conduct rules and the manual of departmental security instructions as asked to examine, along with the draft on freedom of information.⁴³ The bill was criticized on several grounds for not adopting the enough standard of disclosure. The Shourie Committee's draft was reworked into the freedom of information bill 2000.

3.4.8 Cabinet Minister Order

In 1999, a Cabinet minister Ram Jethmalani passed an order that 'all the files in his ministry henceforth be open to public scrutiny'.⁴⁴ This order enable citizens to inspect and receive photocopies of files in his ministry (Ministry of Urban Development). To clarify his order, Jethmalani pointed out in the order that the

⁴¹ Ruchi Tyagi , " Right to Information : Key to Accountability", in *India Politics in Comparative Perspective*, (Noida: Mayur Paper Backs, 2008).

[#] Before the enactment of Right to Information Act, States had passed legislation on right to information. These are Tamilnadu (1997), Goa, Karnataka (2000), Rajasthan (2002), U.P. (2000), Andhra Pradesh (2001), Delhi (2001) and Assam (2001), Kerala (2002), M.P. (2003), Maharashtra (2003), J&K (2004).

⁴² S.R. Bhansali, *Right to Information Act 2005*, 2nd Edition (Jodhpur: India Publishing House, 2008), 17.

⁴³ Ibid

⁴⁴ Shekhar Singh et al, *Transparent Governance in South Asia*, (New Delhi: IIPA), 58.

Supreme Court had (in at least two constitution bench decision) held⁴⁵ that the citizens have the right to get information about all aspects of government functioning. Though, the minister's order was reversed by the Prime Minister. Against this, petition was filed by activist and lawyers questioning the right of the Prime Minister to reverse a minister's order.⁴⁶

3.4.9 Freedom of Information Bill 2000

The draft presented by H.D. Shourie Committee became the base of freedom of Information Bill 2000 introduced by NDA government. The bill was referred to the select committee which invited comments from peoples, civil society groups and submit its report in 2001. The bill was introduced in parliament and passed by the parliament in December 2002, come to be known as 'freedom of Information Act 2002.' It receives Presidential assent in 2003 and before the Act was come to in force, elections to parliament were held and NDA government lost power. As a result it never came into force.⁴⁷

3.4.10 Enactment of Right to Information Act 2005

In 2004 UPA come in power and appointed a national advisory council to guide as a policy making body for the government.⁴⁸ The council involved the NCPRI and the CHRI in the activity. The first draft of Right to Information Bill was presented to parliament on 22 December 2004. It was referred to the standing committee on Personnel, Public Grievances, and Law & Justice which held many meetings with civil society activists. The amended bill was tabled in the Lok Sabha on March 21, 2005. The bill was passed by parliament on 11-12 May, 2005 and received presidential assent on June 15, 2005.⁴⁹ After the notification in the Gazette of India, the RTI Act came into force on October 12, 2005 with the essential requirement of democracy i.e. informed citizenry and transparency of information.

⁴⁵ First in Indira Gandhi's Election case and second in S.P. Gupta v/s Union of India
<http://www.nyayabhomi.org/treatise/history11.html> visited on December 10, 2012

⁴⁶ Shekhar Singh, "The Genesis and Evolution of the RTI Regime in India", in *Transparent Governance in South Asia*, (New Delhi: IIPA, 2011)

⁴⁷ S.P. Sathe, *Right to information*, (New Delhi: Lexis Nexis Butterworth Publication, 2006).

⁴⁸ J. Venkatesan, "Repeal of Freedom of Information Act recommended", *The Hindu*, March 23, 2005.

⁴⁹ <http://www.thesouthasian.org/archives/2006/past.html> visited on Sep. 15, 2012.

3.5 MAIN PROVISIONS OF RIGHT TO INFORMATION ACT, 2005

The RTI Act has many salutary features and mandatory provisions to ensure information to the people. Some of them are discussed here:

1. Provision of Suo motu Disclosure

The Act provides a provision of Suo motu disclosure and dissemination of information.⁵⁰ The clause put a mandatory duty on every ‘public authority’* to publish Suomoto all relevant facts ‘while formulating important policies or announcing the decisions which effect public.’⁵¹ As per the provisions of the Act, that information should be published within 120⁵² from the enactment of the Act. That information should be provided through ‘various means of communication’⁵³ so that the public have minimum need to use the act to obtain information. As per provision, every public authority requires to publish sixteen categories of information and not sufficient to publish the above information once but also updated on regular intervals.⁵⁴ Section-4(2), (3) & (4) of the RTI Act, call for a regime of maximum suo motu disclosure on the part of the public authorities.

2. Huge Coverage

As per the provisions, the Act covers⁵⁵ all public authorities, any institution or body constituted under the Constitution or by Parliament’s law or made by State Legislatures. It also covers all bodies owned, controlled or financed in any form and NGO’s* as well which are directly or indirectly financed or funded by the ‘appropriate government’.⁵⁶ Along with this huge coverage of institutions and bodies, the Act

⁵⁰ Sec. 4(1) (b) of RTI Act 2005, India

* Public authority means under section 2(h) of any authority or body or institution of self government established or constituted by or under constitution, by any other law made by parliament, by any other made by state legislature, by notification issued or order made by appropriate government and includes anybody owned, controlled or substantially financed, non-government organization substantially financed directly or indirectly by funds provided by appropriate government.

⁵¹ Sec. 4(1) (c) of RTI Act 2005, India

⁵² Sec. 4(1) (b) of RTI Act 2005, India

⁵³ Sec. 4(2) of the RTI Act 2005, India

⁵⁴ Ibid

⁵⁵ Sec 4(1) of RTI Act, 2005

* Appropriate government means ‘In relation to public authority which is established, constituted, owned, controlled or substantially, financed by funds provided directly or indirectly by the central government or the union territory administration, the control government or the union territory administration, the central government or the state government.

⁵⁶ Sec. 2(h) of RTI Act, 2005

provides wide area of access to information including inspection of different work, documents and records, taking certified copies, notes and extracts of all these records and documents and as well as certified samples of material.⁵⁷ All this regime or coverage is applicable in whole of India except the state of Jammu & Kashmir.⁵⁸

3 Provision of Record Management

The RTI Act has a fantastic feature of record management. It instructs all public authorities to maintain record.⁵⁹ It is obligatory to collect, maintain and computerize all information available with 'public authorities' and publish them or communicated through print media, electronic media, public announcements or through notice boards. To provide easy access to records, the Act specifies that while disseminate, 'local language and most effective method of communication' in particular local area'⁶⁰ taking into consideration.

4. Provision of Stipulated Time Period for Supply of Information

As per the provision of the Act, the Public information officer (PIO) should supply the information within thirty days⁶¹ of the receipt of the request in normal cases. Where the information sought for concerns the life or liberty of a person, the same should be provided within forty-eight hours⁶² of the receipt of the request. If request for information is received through transfer of application under section- 6(3) of the Act, the information shall be provided in thirty days in normal cases. The period of thirty days will commence from the day of such transfer (5 days per transfer) if information sought, concerns the life and liberty of a person and transferred from one public authority to another, information should be provided in 48 hours and that time start from receipt of the application by that public authority.⁶³

The period of thirty days may be extended, where application for information is given to an APIO, the period of five days shall be added in computing the period of

⁵⁷ Sec. 2(j) of RTI Act, 2005

⁵⁸ Sec. 1(2) of RTI Act, 2005

⁵⁹ Sec. 4(1) (a) of RTI Act, 2005

⁶⁰ Sec. 4(4) of RTI Act, 2005

⁶¹ Sec. 7(1) of RTI Act , 2005

⁶² Ibid

⁶³ Sec. 6(3) of RTI Act, 2005

thirty days for response.⁶⁴ In case information, related to ‘third party’ then the limitation period would be forty days.⁶⁵ In information related to security and intelligence organization included in the second schedule or notified by the state government and asked to furnish information pertain the alleged violation of human rights, such information should be provided within forty five days after the approval of CIC.⁶⁶

5. Provision Related to Disclosure of Third Party Information

As per the provisions of the Act, ‘other than the citizen making a request for information and includes a public authority,’⁶⁷ is considered as ‘third party.’ Here applicant is first party and the public authority is second party from the information is sought. In the case of third party information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party is exempted from disclosure.⁶⁸

If an information relates to or supplied by a third party and that party treated that information confidential, the PIO shall consider whether the information should be disclosed or not. In some cases disclosure may be allowed if the public interest in disclosure outweighs to the interest of third party. Before disclosing such information the PIO would have to follow a procedure. In that case, within five days from the receipt of the application, PIO shall give a notice to third party⁶⁹ that the information he/she intends to disclose.[#] A submission in written or oral should made by third party regarding disclosure of information. While PIO make decision on disclosure of information that submission should keep in view. The decision taken by PIO in this regard should be intimated to third party in written.

As per the provision of the Act, if third party filed an appeal against the decision of PIO to disclose information, with in thirty days⁷⁰ from the receipt of

⁶⁴ Sec. 5(2) of RTI Act, 2005

⁶⁵ Sec. 11(3) of RTI Act, 2005

⁶⁶ Sec. 24(1) of RTI Act, 2005

⁶⁷ Sec. 2(n) of RTI Act, 2005

⁶⁸ Sec. 11(1) of RTI Act, 2005

⁶⁹ Ibid

[#] In above mentioned situation time of ten days shall be given to make representation against the proposed disclosure from the date of receipt of the notices per section 11(2) of the Act.

⁷⁰ Sec. 19(2) of RTI Act, 2005

notice, if unsatisfied can file a second appeal. In that case, the information should not be disclosed till the appeal is decided.⁷¹

6. Provision of Assistance to Applicants and PIOs

The RTI Act provides a provision of 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. If he is not able to make request in writing the PIO should provide assistance to such persons to reduce same in writing. If a person is sensorial disabled and access to record is required, the PIO should provide assistance to such person to enable him to access the information.

The provision of assistance is also applicable to PIOs. If PIO considers necessary, the assistance of any other officer for the proper discharge of duties may take the assistance. The assistance, whose officer is sought by the PIO, would render all assistance to him. The importance of the provision is that if the officer*does not render necessary help to him, the IC may impose penalty or recommend disciplinary action against the officer.

7. Provision of Rejection of Application

As per the provision of the Act, the PIO may grant or reject a request as per the case.⁷²If application is rejected the PIO shall communicate the reason of rejection and also communicate the period within which an appeal may be preferred against such rejection.⁷³Where no information is provided within the prescribed time limit, the request is deemed to have been refused.⁷⁴

The PIO may reject a request/application if such disclosure would involve breach of copyright subsisting in a person other than the state.⁷⁵An application may be rejected, if it involves the information which effects the sovereignty integrity security, strategic, scientific and economic interest and relation with foreign states of India, the

⁷¹ The time for decide an appeal is thirty days and not exceeding forty five days as per sec. 19(6) of the Act.

* The official whose assistance is sought by the PIO

⁷² Section 7(1) of RTI Act 2005

⁷³ Section 7(8) of RTI Act, 2005

⁷⁴ Sec. 7(2) of RTI Act, 2005

⁷⁵ Sec. 9 of RTI Act, 2005

information which is forbidden to be published by any court, information which is privilege of parliament, the information including commercial confidence, trade secrets, the information which harm the competitive position of a third party, information received in confidence from governments and the information which relate to such an event which has not taken place twenty years before.⁷⁶If information is exempted under section- 8 of the Act and request for information is rejected on that ground the PIO may provide information which can be provided without giving the exempted information.⁷⁷

8. Provision of Transfer of Application

Some times requests are made to a public authority for information which do not concern that public authority or only a part of which is available to that public authority and remaining part or whole information relates to another public authority/authorities. In that case, the Act requires an information provider (PIO) should transfer the application to the ‘concern public authority[#] and intimate to the applicant as well. The time period for transfer of such application should not be more than five days.⁷⁸If partial information is available with that PA where application is made than PIO should provided the available information and copy of the application should be sent to that public authority.⁷⁹

9. Fee Provision

As per Section 6(1) of the Act, an applicant who desires to seek some information from a public authority is required to send fee along with the application. The required fee may be submitted in different made of payments such as through banker’s cheque, demand drafts, IPO, cash to accounts officer/PIO.* The amount

⁷⁶ Sec. 8 of RTI Act, 2005

⁷⁷ Sec. 10 (1) of RTI Act, 2005

[#] As per guidelines of Ministry of Personal of Public Grievances & Pension (2009) in the transfer of applications ‘authority (singular form) is used not authorities (plural form) that indicates that in case information relates to single authority than it should be transfer, not in cases of different authorities.

⁷⁸ Sec. 6(3) of RTI Act, 2005

⁷⁹ If in a public authority with more than one PIO, and an application to the concerned PIO should be transfer immediately or preferably on the same day as per the guide lines of Ministry of Personnel, Public grievances and Pension (2009)

* Right to information (Regulation of Fee and Cost), Rules 2006 (amended)

should be reasonable[#] and no fee shall be charge from the applicant who belongs to below poverty line. However application should submit a proof in support of his claim to belong to the BPL.⁸⁰ The applicant may also be required to pay further fee towards the cost of providing the information and these details shall be intimated to the applicant by the PIO.⁸¹ If the information is not provided with the specified time period time period as per provisions of the Act then no fee will be charged and information will be provided free of cost,⁸² if fee is already paid than it will have to refund.

10. Provision of Appeal

An applicant can file appeal if he does not receive information or decision of rejection of applications within the time limit as specified by the Act or not satisfied with the information furnished to him such an appeal should be filed within a period of thirty days to the senior officer of CPIO/SPIO in concerned public authority. An appeal may be admitted by the concerned officer, after the expiry of thirty days time limit if he feels satisfied that applicant was prevented to file an appeal due to ‘sufficient cause.’⁸³ In the case of third party, an appeal may be filed by third party against the order/decision of PIO to disclose information.⁸⁴ If the third party aggrieved with the decision of the first appellate authority, he may also file second appeal to the CIC/SIC as per case.⁸⁵

The disposal time for first appeal is thirty days or in exceptional cases within 45 days⁸⁶ of the receipt of the appeal. Against the decision given by the first appellate authority, applicant can made second appeal to the CIC/SIC as per the case, with ninety days from the date of the decision or the date of receiving the decision.⁸⁷ The CIC/SIC entertain an appeal after the expiry of ninety days if it is satisfied that the appellant was prevented from filing appeal in stipulated time period due to reasonable

[#] As per Right to Information (regulation of fee and cost) 2005, Rs. 10 is prescribed as application fee and Rs. 2 for each page of the copy. Though states have different fee structures

⁸⁰ Sec. 7(5) of RTI Act, 2005

⁸¹ Sec. 7(3) of RTI Act , 2005

⁸² Sec. 7(6) of RTI Act, 2005

⁸³ Sec. 19(1) of RTI Act, 2005

⁸⁴ Sec. 19(2) of RTI Act, 2005

⁸⁵ Sec. 19(3) of RTI Act, 2005

⁸⁶ Sec. 19(6) of RTI Act, 2005

⁸⁷ Sec. 19(3) of RTI Act, 2005

cause.⁸⁸ The CIC/SIC while deciding the appeal, left responsibility on PIO/SPIO to prove that the denial of request was justified on the ground of provisions of the Act.⁸⁹ On the ground of decision the CIC/SIC has the power to reject application.⁹⁰

11. Provision of Complaints

As per the provisions of the Act, if a person is unable to submit a request to a PIO due to the reason that no such officer has been appointed by the concerned authority or APIO has refused to accept the application or appeal for forwarding to the PIO or appellate authority⁹¹ or denied for access to information under the Act⁹² or not providing response, information within the stipulated time period⁹³ or applicant has required to pay unreasonable fee⁹⁴ or given incomplete, misleading or false information.⁹⁵ The applicant can make a complaint to the CIC/SIC in above mentioned cases or in any other matter relating to request or obtaining access to records under the Act.⁹⁶

12 Provision of Penalties and Disciplinary Action

The RTI Act provides right to appeal and complaint and in that case the CIC/SIC while deciding appeal and complaint find out that PIO has refused to receive an application or has not furnished information within the stipulated time frame or malafidly denied for information or knowingly given incorrect, incomplete, misleading information or destroyed information which was the subject of request or obstructed in any manner in furnishing the information and all above has done without any reasonable cause in that case the provision of penalty is provided. A penalty of two hundred fifty rupees each day till application is received or information is furnished shall be imposed and that penalty should not exceed twenty five thousand rupees total.⁹⁷ Before imposing any penalty the CIC/SIC shall be given a reasonable opportunity to PIO of being heard. The responsibility or burden shall be on PIO to

⁸⁸ Ibid

⁸⁹ Sec. 19(5) of RTI Act, 2005

⁹⁰ Sec. 19(8) (d) of RTI Act, 2005

⁹¹ Sec. 18(1) (a) of RTI Act, 2005

⁹² Sec. 18(1) (b) of RTI Act, 2005

⁹³ Sec. 18(1) (c) of RTI Act, 2005

⁹⁴ Sec. 18(1) (d) of RTI Act 2005

⁹⁵ Sec. 18(1) (e) of RTI Act, 2005

⁹⁶ Sec. 18(1) (f) of RTI Act, 2005

⁹⁷ Sec. 20(1) of RTI Act 2005

prove that he acted reasonably and diligently. The CIC/SIC has authority to recommend disciplinary action against the PIO in above mentioned cases as well as under the service rules applicable to him.⁹⁸

13. Provision of Protection for Work Done in Good Faith

As per the provision of the Act no suit, prosecution or other legal proceeding shall lie against person for anything which is done in good faith or intended to be done under the Act or rules made under this Act.⁹⁹ Further the Act provides that no court shall entertain any suit, application or other such order shall be called in question otherwise than by way of an appeal under this act.¹⁰⁰

14. Overriding Effect of the Act

The RTI Act has overriding effect. The provisions of this act shall have effect not withstanding anything inconsistent 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.¹⁰¹ Through this provision it is indicated that RTI Act has not repealed any law through which confidentiality is existing however the Act has an overriding effect that the authorities under this Act may make independent decisions about the questions whether disclosure of information has any overriding public interest or not.

15. Provision of Monitoring and Reporting

The Act has a splendid provision to make PAs accountable through monitoring and reporting. For monitoring, after the end of each year the CIC/SIC are required to prepare reports on the implementation of the provisions of the act during that year.¹⁰² As per the provision each ministry and department is required to submit a report to the concerned information commission. That report should be based on information collected through the public authorities who are under its jurisdiction.¹⁰³ That report should contain all details regarding number of requests made, number of

⁹⁸ Sec. 20(2) of RTI Act, 2005

⁹⁹ Sec. 21 of RTI Act, 2005

¹⁰⁰ Sec. 23 of RTI Act, 2005

¹⁰¹ Sec. 22 of RTI Act, 2005

¹⁰² Sec. 25(1) of RTI Act, 2005

¹⁰³ Sec. 25 (2) of RTI Act 2005

disposal, number of appeals, particulars of disciplinary action, amount of charges collected by P.A. under this Act and all other efforts of PAs as mentioned in the provision of the Act.¹⁰⁴ This report should lie down before Parliament or State Legislature by CIC/SIC as the case may be.¹⁰⁵ The CIC/SIC has power to recommend or to instruct the concerned public authority on the steps taken for promoting better service and procedures for the implementation of these recommendations.¹⁰⁶

¹⁰⁴ Sec. 25 (3) of RTI Act, 2005

¹⁰⁵ Sec. 25 (4) of RTI Act, 2005

¹⁰⁶ Sec. 25 (5) of RTI Act, 2005