

Chapter- 3

Evolution of Right to Information in India

Right to information is the most controversial right in India as well in other countries and at the global level. This right is regarded as oxygen for any democracy and currency for the people of the country through which they can better participate in democratic activities of the country. Today most of the people in their respective countries enjoy this valuable right. But it was not very easy to get this right. “*Rome was not built in a day*” so as the case with the right to know. People had to fight for the long time to make this right happen as the government of their respective countries was not happy with this right. Now the Right to know has been recognized at international level as 28th September is celebrated as ‘the Right to Know day’ all over the world. Many other countries like Sweden, Finland, Britain, U.S.A., Canada and Scotland has legislation regarding right to know.¹This right works as a tool in the hand of the common people to curb the arbitrariness and corruption in the government offices. With the development of information technology it is very important for any person to have the right to know to make sound decisions within time. The right to know is directly linked to the right to vote because it is not enough just to vote for a democratic election but it is also very important for the voters to know the background, qualification and criminal record of the candidate who is contesting the election and how the policies are being made, decisions are being taken which affect the life of the people directly or indirectly.² A person needs the right to know not only for the big political, economic or social issues but also for the ordinary work that he does in his/her daily life. The right to know is one step towards good governance and inclusive and participatory democracy. Without good governance (which includes four elements; participation, accountability, transparency and predictability) no work of development or policies for public can achieve its goal. This right gives the opportunity to the people to access the government records for public scrutiny and to know that what and how the decisions are taken, which leads accountability, transparency and responsibility in the administration. This increases public

¹Kumbhar, Sita Ram, “ Role of Civil society in Taming development through Information”, Social Action, Vol. 56, October-December, 2006, p. 333

²Jain, N.K., “Right to Information Concept, Law and Practice with Position in Other Countries and Case Studies” Regal Publications, New Delhi, 2010. P. 1

participation in governance process which makes the democracy more inclusive and participatory.³ In India like other countries people fought for long time to get the right to know. Increasing corruption in the welfare programmes for the most disadvantaged section of the society inspire the people to demand for this right. The demand for the right to information in India rose by the weaker section of the society and later on supported by many social activists, Non Governmental Organization (NGOs), Media and intellectuals. However the Constitution of India guarantee the right to know indirectly in Article 19 (1) (a) of the Indian Constitution but because of the arrogance and ignorance of bureaucracy, low awareness and literacy among people and Official Secret Act 1923 restricted the free flow of information and this resulted the demand for a new legislation on right to information.⁴ There were many ups and down in the journey of the Right to Information Act in India but under the huge pressure of masses, media, social activists and NGOs the Government of India had to enact the New legislation to fulfill the demand of the right to know with the title ‘ Right to Information Act 2005’. The act was enacted on 15 June 2005 but it came into force on 12 October 2005. This right provides broad access to public records, policies and decisions to the common people. The preamble of the Right to Information states that; *“Democracy requires an informed citizenry and transparency of information which are vital to the functioning and also to contain corruption and to hold governments and their instrumentalities accountable to the governed.”*⁵

This right will help Indian democracy to become more inclusive, participatory and corruption free. Information is power and it is necessary to disclose the corruption under the red tape by the bureaucrats.⁶ The Right to Information Act 2005 provides vast access on public records covering every aspect of information. The Act describes information as;

“ any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, order, logbooks, contracts, reports, papers,

³Shrinkhal, Rashwet and Jaipriya Swapnil, “The Emerging Dimensions of Right to Information as Human Right in India”, Bharat Book Centre, Lucknow, 2010. P. 1

⁴ Jain, N.K., op.cit., p. 17

⁵ Preamble of The Right to Information Act 2005.

⁶Niranjan, Oulac, “Right to Information and the Road to Heave”, Economic and Political Weekly, Vol. 40, No. 47 (Nov. 19-25, 2005), p.4870

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 other law for the time being in force”⁷

The act further also describes the definition of the *Right to Information*⁸ as;

“The right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to –

- (i) inspection of work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified sample 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 devices.

3.1. Genesis of Right to Information in India

Before India got freedom there was a culture of official secrecy in Indian Administration for long time under the British rule in the name of national security. The veil of secrecy facilitates corruption, favoritism, nepotism, wasteful expenditure and other malpractices. But after the establishment of a democratic government in India it was necessary to develop a culture of openness in the administration.⁹

Towards Secrecy

During the colonial time the secrecy was maintained by an Act named British Official Secret Act 1882 and later amended in 1889 it was applied to whole British India with the name of official secret Act 1889. There was another amendment in the Act in 1904 and in 1911 the British government introduced another act with the name The Official Secret Act, 1911. The Official Secret Act, 1911 was not a permanent Act but was specially introduced for wartime. But the intention of colonial rulers is to maintain secrecy, further strengthens this Act in 1920. In 1923 with the intention to protect executive secrets and to withhold the information leaking from the civil

⁷Sub- Section (f), Section 2, Right to Information Act, 2005.

⁸Sub- Section (j), Section 2, Right to Information Act, 2005.

⁹ Agarwal, U.C., “ *The official secret Act to the Right to Information Act Dawn of ‘Glasnost’*”, Indian Journal of Public Administration, Vol. LV, No. 3, July-September 2009, p. 341

servants the British government introduced the Official Secret Act. 1923.¹⁰ This Act was the consolidation of all the laws which maintain ‘official secrecy’. This act was introduced in the name of national security and friendly relation of foreign states but the act was the imitation of the Act 1911 which was the outcome of one day work to deal with wartime. This act remains in the operation even after the independence. Instead of making it weak it was further strengthened in 1965 and 1967 to deal with spies effectively.¹¹ This act was the main restriction on the free flow of information which is necessary for the progress of a democracy. This act prohibits the inspection of any government area and denies disclosure of any information which affects the national security.¹²

The *Indian Evidence Act 1872* also puts restriction on the free flow of information. Section 123 of the Act states that

“no one shall be permitted to give any evidence derived from unpublished official records relating to any affair of the state, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit”¹³

Further section 124 of the Act states that;

“no public officer shall be compelled to disclose communication made to him in official confidence, when he considers that the public would suffer by the disclosure”¹⁴

Further in this series *The Central Civil Services (Conduct) Rules 1964* put some restriction on the free flow of information in its Section 11. As it states that;

“no government servant shall... communicate, directly or indirectly, any official or any part thereof classified information to any government or any other person to

¹⁰<http://shrutiraj.com/wp-content/uploads/2010/08/Sunlight-is-the-Best-Disinfectant-Final-Delhi-Law-Review.pdf>

¹¹<http://shrutiraj.com/wp-content/uploads/2010/08/Sunlight-is-the-Best-Disinfectant-Final-Delhi-Law-Review.pdf>

¹²Vermani, Autosh, “The Right to Information”, Abhishek Publications, Chandigarh, 2008, p.3

¹³ Section 123, Indian Evidence Act 1872

¹⁴Section 124, Indian Evidence Act 1872

whom he is not authorized to communicate such documents or classified information.”¹⁵

Another obstacle in the way of the right to information comes from the constitution of India itself. In the third schedule of the Indian Constitution the oath of secrecy is motioned which puts restriction to provide information to the people.¹⁶ Article 75 (4) of the Indian Constitution makes it mandatory for every minister to swear the oath of secrecy before he/she enters into his office. The oath of secrecy in Indian Constitution is adopted from the Government of India Act 1935 to withhold administrative secrecy.¹⁷ Along with this article the Indian also contains some other Articles which develops a culture of secrecy such as Article 311 (colonial style civil service), Article 105, 194 (privileges of the legislators, Article 361 (legal protection to the President and Governors) and Article 124, 217 (security of the tenure of the judges). Unless the Constitution of India is made the citizen centered and holds all the organs of power directly accountable to the people a small act on right to information is not enough to bring accountability, responsiveness and transparency in the administration.¹⁸

With the provisions of the above mentioned acts and the Constitution of India it was very difficult for the common people to access information from government offices about government policies and records. In a big democracy elected representatives are like the bridge between the ruler and the ruled. The flow of information is prior condition to fill the gap between the common people and the government.¹⁹ Right to know is a strong pillar of a democracy. Openness is the prior condition of a democracy which should act in a accountable manner. To hold government the availability of information is necessary.²⁰ India has no exception in this case. There was a demand for right to know in India from the grass-roots level. Before the enactment of the Right to Information Act 2005 there were some provisions which support the right to know in India.

¹⁵Section 11, Central Civil Services (Conduct) Rules 1964.

¹⁶ Schedule III, Constitution of India.

¹⁷ Article 75(4), Constitution of India.

¹⁸<http://odisha.gov.in/e-magazine/Orissareview/nov-2006/engpdf/81-86.pdf>

¹⁹Semwal, M.M and Sunil Khosla, “*Right to Information and The Judiciary*”, The Indian Journal of Political Science, Vol. LXIX, No. 4, Oct.-Dec. 2008. P. 853

²⁰Viswam, S., “*The Right to Information*”, India centreQuarterly, Vol. 10, No. 2, June 1983, p. 175

3.2. Right to Information in other Various Acts

Indian Evidence Act, 1872 supports the right to know in its Section 76. It states that;“every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand of a copy of it.....,and each copy so certified shall be called certified copies.”²¹Section 41 of *Factories Act 1948* states that;“the occupier of every factory involving a hazardous process shall disclose in the manner prescribed all the information regarding dangers, including health hazards and the measures to overcome..., to the workers employed in the factory”²²

Section 25 (6) of the *Water (Prevention and Control of Pollution) Act 1974* says that every state will maintain a register and will record all the particulars and condition imposed by the act. any person who is interested can inspect such register at the reasonable hours.²³ *The Environment (Protection) Act 1986 and the Environment Impact Assessment Regulations* also provides disclosure in different circumstances. In this act there is also a provision of public hearing but it was so limited that the environment groups had to go to the court for a more effective disclosure.²⁴ Section 10 of *The Delimitation Act, 2002*^{*1} also made it mandatory for the Commission^{*2} to publish every order in regarding section 8 and 9^{*3} in the concerned state Gazette and the Gazette of India .along with this it is also compulsory to the order in two vernacular newspapers, radio, television and any other possible media of communication available to the public.²⁵ Further in this Section 78 of *The Geographical Indications of Goods (Registration and Protection) Act 1999* provides documents^{*4} for the public assessment. Any person can obtain a certified copy of any

²¹Section 76 of Indian Evidence Act 1872.

²² Section 41 (b) of Factories Act 1948.

²³ Section 25 (6) of The Water(Prevention and Control of Pollution) Act. 1974.

²⁴Shrinkhal, Rashwet and Jaipriya, Swapnil., op.cit., p.23

*¹ The Delimitation Act 2002 is for the readjustment of the allocation of seats in the house of the peoples of the state, the total number of seats in the legislative Assembly of each state, the division of each state and each union territory having a legislative Assembly into territorial constituencies for the election of the house of the people and the Legislative Assemblies.

*²There is provision of a Commission The Delimitation Act, 2002. The commission consists three members one is the chairperson should have been a judge of Supreme Courts, second is the Chief Election Commissioner and the third is the State Chief Election Commissioner.

*³ Section 8 is about the readjustment of numbers of seats and Section 9 is about the delimitation of constituencies.

²⁵ Section 10 of the Delimitation Act, 2002.

*⁴ Documents refers to the register or any document upon which any entry in the register is based, application for the rectification before the Registrar, affidavit or document filed by the parties, the index mentioned in Sec. 77 and other document as the Central Government may specify, by notification.

entry in the register with a written application to Registrar and after the payment of the prescribed fee.²⁶

Along with the above provisions in the different the Article 19 (1) (a) of the Indian Constitution which gives the freedom of speech and expression indirectly gives the right to know to the citizen of India. Article 21 of the Indian Constitution also promotes the right to know indirectly.²⁷ Knowledge is the prerequisite of speech and expression. This also helps peoples to perform their fundamental duties.²⁸ The judiciary in India interpreted very creatively these Articles in its different judgments which paved the way for the right to know in India.

3.3. Indian Judiciary and the Right to Know

Judiciary is the important organs of the government. The task of the judiciary is to provide justice to the people. It is because of the liberal interpretation of the Indian Judiciary that the Idea of right to know took shape in 1970s. In its different the Judiciary supported the right to information. The scope of the right speech and expression is very wide. This right encompasses expressions of views without harming others, exchange of ideas and dissemination of information. Under this right a person can express his/her ideas through any medium e.g. writing , painting, movie, picture, words, film etc.²⁹ along with the expression of the ideas this right also gives the right to silence. Anyone cannot force a person to speak if he/she does not want to speak. Article 19 (1) (a) also covers the right to dance, write, paint and sing along with the right to read literature. Because the basic characteristics of all these activities is to speech and expression.³⁰ Information is a great asset which would help in the formation of one's viewpoint and opinion on an issue.³¹

²⁶ Section 78 of The Geographical Indications of Goods (registration and Protection) Act, 1999.

²⁷ Article 19(1) (a) and 21 of the Indian Constitution.

²⁸ Rattan, Jyoti, “ *Genesis of the Right to Information under International and National Laws with special reference to India: A Critical Analysis*”, Indian Journal of Public Administration, Vol.LV, No. 3, July-September, 2009, p.682

²⁹ Jain, M.P., Indian Constitutional Law”, Lexis-Nexis ButterworthsWadhwa, Nagpur, Vol. I, 2010, p. 1415

³⁰Gnadh, Menka v. Union of India, AIR 1978 SC 597, (1978) I SCC 248; UshaUthup v. State of West Bengal, AIR 1984, cal 268.

³¹ Jain, M.P., op. cit., p. 1414

The right to speech and expression in Article 19 (1) (a) is two-fold right. It also compasses the right to read and be informed.³² Supreme Court also supported this idea in a famous case of *Bennett Coleman Co. v. Union of India*.³³ The apex court held that “newspaper is the most potent means of educating the people and it is read by those who read nothing else and in politics, common men gets his education mostly from newspaper.” In a famous case of *State of U.P. vs. Raj Narain*,³⁴ Justice Methew gave a landmark decisions. The Supreme Court held that “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.”

Further the Supreme Court put a step ahead in the case of *S.P. Gupta vs. Union of India*.³⁵ The court held that “open government is the new democratic culture of an open society, towards which every democratic society is moving and our country should be not an exception. In a country like India which is committed to socialistic pattern of society, right to becomes a necessity for the poor, ignored and illiterate masses.” In the case of *Dinesh Drivedi M.P. V. Union of India*³⁶ in 2004 the Supreme Court held that “to ensure continued participation of people in democratic process, they must be kept informed of the vital decisions taken by the government. Democracy therefore, expect openness and openness in a concomitant society.”

Justices S.B. Sinha an V.N. Khare opined in the case of *People’s Republic for Civil Liberties vs. Union of India* that “ RTI is a facet of freedom of “ speech and expression” under Article 19 (1) (a) of the constitution thus is a fundamental right.”³⁷ On the right to disseminate information the judges of the Apex Court opined in a leading case of *Secretary, Ministry of Information and Broad Casting of India vs. Cricket Association of Bengal*.³⁸ The Court held that “the freedom of speech and expression includes right to acquire and disseminate it. Freedom of speech and

³²Khandelwal, Dheera and K.K. Khandelwal, “A Commentary and Digest on Right to Information Act, 2005”, The Bright Law House, 2007, p.799.

³³ *Bennett Coleman and Co. v. Union of India*, AIR 1973 SC 60

³⁴ *State of Uttar Pradesh v. Raj Narain*, AIR 1975, SC 865

³⁵ *S.P.Gupta v. Union Of India*, AIR 1982, SC 149

³⁶ *Dinesh Drivedi M.P. v. Union of India*, (1997) 4 SCC 306

³⁷ *People’s Republic for Civil Liberties vs. Union of India*, AIR 2004 SC 1447 para 45.

³⁸ *Secretary, Ministry of Information and Broad Casting of India vs. Cricket Association of Bengal*, (1995) 2 SCC 161 para 43.

expression is necessary for self-fulfillment and it enables the people to contribute to debate on social and moral issues.”

In the case of *Union of India v. Association for Democratic Reforms*³⁹ the Apex Court gave the direction about the voters RTI in 2002. The court held that “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 of all side of the issues, in respect of which they are called upon to express their view. One sided information, disinformation, misinformation and non-information all equally creates an uninformed citizenry which makes democracy a farce when medium of information is monopolized either by partition of central authority or by private individual or oligarchic organization” thus the different the Indian Judiciary defined right to information as a fundamental Right and a part of the right t freedom of speech and expression which is describe in Article 19 (a) of the Indian constitution.

These interpretations paved a new for a new legislation on the right to information at centre. Though before the centre passed the Right to Information Act 2005 at national many other states have already passed legislation regarding right to know. Among the states who passed RTI Tamil Nadu was the first state to make legislation on it and followed by many other states e.g. Goa RTI Act 1997, Madhya Pradesh RTI Act 2003, Delhi RTI Act 2001, Maharashtra RTI Act 2002, Rajasthan RTI Act 2000 and Karnataka, Assam 2002, Jammu & Kashmir 2004. These entire Acts on RTI were superseded by the right to information Act 2005 which was passed by the centre government.⁴⁰

3.4.Historical Background of RTI Act. 2005

After a long struggle people of India got the Right to Information. There were many ups and down in this journey of right to Information at the center level. Right to know is a strong tool to enhance accountability and transparency in the governance. The constitution does not give directly this right but the Right to Speech and expression indirectly supports the right. The movement for the right to information is different

³⁹ Union of India vs. Association for Democratic Reforms, AIR 2002 SC 2112: 2002 (5) SCC 294 para 82

⁴⁰http://www.cuts-international.org/cart/pdf/Analysing_the_Right_to_Information_Act_in_India.pdf

from other countries because it was started by the most disadvantaged and ignored section of the society. Official Secret Act has put a veil of secrecy in the governance that leads corruption and nepotism. The disadvantaged section of the society was not able to take benefit of government's welfare programmes in lack of information. It was the question of their survival which inspired them to demand for the right to information. Objections on the official Secret were started raised from 1948 when The Press Enquire Committee recommended certain amendments in the Official secret Act 1923. The Committee said that "the application of the Act must be confined as the recent Geneva Conference of Freedom of Information has recommended, only to the matters which must remain secret in the interest of the national interest."⁴¹

The Working Group Of 1977

The first proposal towards the right to information was introduced by the Janta government in response to the emergency imposed in 1975 by Indira Gandhi. The Janta party promised for an 'open government'. But this promise was not for a new law on access but was for the modification in the Official Secret Act 1923.⁴² Janta party came in power in 1977 and formed a working group. Main task of the group was to look for the possibilities of amendments in the official Secret Act 1923. But unfortunately the group did not recommended any change in the Act. The group stated that Official Secret Act 1923 prevents information for the national interest and there is no need to change in the Act.⁴³

The Working Group of 1989

The issue of right to information gained momentum in the election of 1989 when the National Front Government headed by V.P. Singh promised for an open government in its election manifesto. A committee was set up after the election which recommended limiting some areas in the official Secret where information could be hidden and opens other areas for the public access. But there was no legislation on these recommendations. In 1991 there were reports in the newspapers that a task force

⁴¹<http://www.rti-gateway.org.in/Documents/References/English/Reports/12.%20An%20Article%20on%20RTI%20by%20Harsh%20Mander.pdf>

⁴²<http://shrutiraj.com/wp-content/uploads/2010/08/Sunlight-is-the-best-Disinfectant-Final-Delhi-Law-Review.pdf>

⁴³Jain, N.K., op.cit., p. 19

had recommended some amendments in the Official Secret Act. But this news proved a rumor and no amendments was there in the Act.⁴⁴

Consumer Education Research Council 1993

Some consumers groups took the right to information as the basic right of consumers and demanded for this right. The Consumer Education and Research Center (CERC) conducted a research in 1980 on freedom of information in other countries of the world, in particular Canada and U.S.A. CERC drafted a legislation which was the most detailed proposed legislation on freedom of information and introduced it in the Parliament in 1993 as a private Bill. The proposed draft gave the right to information to every except “alien enemies”. But the draft did propose any protection for the whistleblowers. But the draft was not taken into consideration in the parliament.

Majdoor Kisan Shakti Sangthan (MKSS)

The first inspiring demand for the right to information was raised in Rajasthan by the local people. The demand gets momentum with the support of Majdoor Kisan Shakti Sangthan (MKSS) a social organization. MKSS was founded by three social activists named Aruna Roy, who had reassigned for Indian Administrative Services, Nikhil Day, a young man who quit his studies in U.S.A. in search of meaningful social research activism and Shankar Singh, a resident of a village. The MKSS demanded transparency in the village accounts via the demand of the minimum wages in rural India.⁴⁵ The MKSS started work for transparency in the village accounts but from 1990 onwards one can see some creative initiatives at the grass-root level.⁴⁶ In 1994, MKSS adopted a new way of ‘public hearing’ based on the idea of *jansunwai*. The ideas of *jansunwai* worked and the movement spread at international level. *Jan Sunwai* was a powerful tool to expose corruption and other malpractices in local administration. To organize *jansunwai* MKSS demanded some information from the administration but the administration refused to provide the information. The administration excused that they are not accountable to the people but to their seniors

⁴⁴ Sharma, Sarabjit and Krishan Goyal, “ Right to Information Implementing Information Regime”, Authors Press Delhi, 2006, p. 110

⁴⁵<http://www.rti.gateway.org.in/Documents/References/English/Reports/12.%20An%20Article%20on%20RTI%20by%20Harsh%20Mander.pdf>

⁴⁶<http://projects.cgg.gov.in/KPNRC/Documents/Articles/RTIMovementinIndia-DrEVenkatesuNIRD.pdf>

and went on strike.⁴⁷ In 1995 the Chief Minister of Rajasthan announced for a legislation to obtain free photo-copies of the records related to local development works but even after a year the assurance for a legislation. MKSS decided to launch *dharna* in a town Beawar. On the first of *dharna* government allowed citizens to inspect official documents for a fee but denied to give certified photo-copies of such documents. MKSS was not satisfied with this order and continued its *dharna*. In 1996 there was an official press note on the behalf of the Rajasthan government to establish a committee which would give recommendation to give the practical shape of the Chief Minister announcement made in 1995.⁴⁸ In 1999 a committee was made to draft right to information law. MKSS distributed postcards to involve people personally: “buy a postcard, address it, post it, put in your vote for a Right to Information Act.”⁴⁹ Though the movement was started by the rural poor but it caught attention at national level and got support from media, academics, lawyers and jurists and even from legislators and bureaucrats. Many of them came together and form National Campaign or the People’s Right to Information (NCPRI).

National Campaign for the People’s Right to Information (1996)

National Campaign for the People’s Right to Information (1996) was founded by the people of different sections including retired civil servants, lawyers, jurists, media persons, social activists, professionals and academics in 1996. The main objective of it was to campaign for the national of right to information which would facilitate people to get information from government offices.⁵⁰ Whereas MKSS was trying for the right to information in Rajasthan, the National Campaign for the People’s Right to Information was committed to formulating and having passed such law at national level. The major contribution of this group was the assistance in preparing the press council draft, various versions of the proposed legislation for the right to information and the detailed blueprint for its operationalisation. Media played an important to build public opinion on the issue of the right to know.⁵¹

⁴⁷ Sharma, Sarabjit and Krishan Goyal, op.cit., p. 106

⁴⁸ <http://www.rti.gateway.org.in/Documents/References/English/Reports/12.%20An%20Article%20on%20RTI%20by%20Harsh%20Mander.pdf>

⁴⁹ Sharma, Sarabjit and Krishan Goyal, op.cit., p. 106

⁵⁰ <http://righttoinformation.info/about-us/brief-history-demand-for-the-right-to-information/>

⁵¹ http://www.undp.org/content/dam/india/docs/people_right_information_movement_lessons_from_rajasthan.pdf

The Commonwealth Human Right Initiative Campaign

The Commonwealth Human Right Initiative Campaign also provide link between different human rights and the right to information in its work. When in mid-1997 the developments were taking place on the right to information at grass-root level CHRI stimulated country wide debate in the dissemination of the information. CHRI published many publication supporting the issue, conducted workshops on both local and national in which people from different participated to draw out the feedback on the need of information. CHRI also contributed in governmental initiatives on the right to information.⁵²

The Press Council Draft(1996)

The Press Council of India circulated the first major draft legislation on the right to information in 1996. The draft was prepared from an earlier draft which was prepared in the meeting of social activists, civil servants and lawyers at Lal Bahadur Shastri Academy of Administration, Mussoorie in October 1995. In the preamble of the draft it was stated that the Right to Information is already protected in the Fundamental Rights of the Indian Constitution in Article 19(1) (a).⁵³ In 1996 the draft on the right to information was presented to the government by P.B. Sawant, the head of the press council of India. The draft was updated and renamed as PIC-NIRD Freedom of Information Bill 1997. But none of the draft was taken seriously by the government.⁵⁴

H.D. Shourie Committee 1997

Most of the political parties promised for the transparency in their election manifestos during this time. The government formed a working group on right o information and promotion of open and transparent government on 24 May, 1997 headed by late consumer activists H.D. Shourie. The group was asked to prepare a draft on freedom of information. The report of the committee was published in 1997 but was criticized for not being adopted high standard of disclosure. The Shourie committee draft law was passed through two successive governments but was never introduced in the parliament.⁵⁵

⁵² Sharma, Sarabjit and KrishanGoyal, op.cit., p. 108

⁵³<http://www.rti.gateway.org.in/Documents/References/English/Reports/12.%20An%20Article%20on%20RTI%20by%20Harsh%20Mander.pdf>

⁵⁴<http://www.thesouthasian.org/archives/2006/post.html>

⁵⁵ Sharma, Sarabjit and KrishanGoyal, op.cit., p. 114

Jethmalani's Order 1999

In 1999 there was a historical administrative order passed by Jethmalani, a dynamic advocate and the Union Minister in the government about right to access of common people on the official documents. The order was that any citizen can inspect and take photocopies of any official document in his ministry. According to him people have the right to know all cabinet papers and decisions made by the cabinet. In the support of his view he also pointed the decision of Supreme Court made in two different cases that citizens have the right to get information about all aspects of government functioning. The first case was about the elections of Indira Gandhi and the second case was S.P. Gupta v/s Union of India. But unfortunately the Cabinet Secretary did not permit the order passed by the Union Minister Jethmalani and it remained merely a paper work.⁵⁶

Freedom of Information Bill 2002

After the recommendations of the Shourie Committee, there was a quick demise of two successive governments at the center and the Shourie Draft on right o information was not taken seriously by any government. After some time the Shourie Draft was discussed with some changes in July 2000 and was being introduced in the Parliament with the name of 'Freedom of Information Bill, 2000'.⁵⁷ The bill was send to the Parliamentary Standing Committee on Home Affairs, where the bill was discussed by many civil society groups and after the discussion the report was submitted in July 2001. But the recommendations of the committee were not included in the final draft of the bill.⁵⁸ The bill was approved by both the house of the Parliament in December 2002, with the name Freedom of Information Act, 2002'.⁵⁹

Right to Information Act, 2005

The freedom of Information Bill was never notified and never came into force. In 2004 the U.P.A. government came at center and promised for a more effective right to information Ac. The National Advisory Council was set up to give recommendation

⁵⁶<http://www.nayabhoomi.org/treaties/history/history11.html>

⁵⁷Sharma, Sarabjit and KrishanGoyal, op.cit., p. 114

⁵⁸<http://www.thesouthasian.org/archives/2006/post.html>

⁵⁹ Dr. Kumar Niraj, "Treaties on Right to Information Act, 2005", Bharat Law House, New Delhi, 2009, p. 107

regarding amendments in the Right to Information Bill. 2002. After the third meeting of NCA the report as submitted to the government. The Bill was tabled in the Lok Sabha in winter session in 2004. The bill was passed very quickly by both the houses, 11th of May in Lok Sabha and 12th of May in the Rajya Sabha. The National Right to Information Bill got the assent of President APJ Abdul Kalam on 15 May 2005. ⁶⁰After a long struggle people of India got The National Right to Information Act 2005. The right is the result of many initiatives done by civil society groups, common masses, NGOs and other groups. The right is considered as the oxygen of a democratic society.

3.5. Salient Features of the Right to Information Act 2005

Jurisdiction of the Act

The Act with the name Right to Information Act 2005 applies to whole of India except the State of J&K. all the offices which are established, owned, controlled, continued or substantially financed by funds directly or indirectly by the center government, state government or any Union Territory. The provisions of sub-section (1) of section 4, sub-section (1) and (2) of section 5, sections 12, 13, 15, 16, 24, 27 and 28 came into force at once and remaining provisions of the Act came in force on the one hundred and twentieth day of its enactment of the Act. The act entitled all citizens to demand *information*^{*1} from any office mentioned above.⁶¹

Suo-Motu Disclosure

It is necessary for all the *public authorities*^{*2} to maintain their records in such a manner that can facilitate the people's right to information in a reasonable time. It is mandatory for all the public authority to publish all important information within one

⁶⁰<http://www.thesouthasian.org/archives/2006/post.html>

⁶¹ Section 1, Right to Information Act. 2005.

^{*1} According to the Act Information Means “ any material in any forma including records documents, memos, e-mails, opinion, advise, press releases, circulars, orders, logbooks, contacts, records, 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 public law for the time being in force.”

^{*2} According to the Act Public Authority Means “ any authority or body or institution or self government established or constituted by or under the constitution, by any other law made by parliament, by any other law made by state legislature, by notification issued or order made by appropriate government an includes anybody owned, controlled or substantially financed non-government organization substantially financed directly or indirectly by funds provided by appropriate government.”

hundred and twenty days *from the enactment of the Act*^{*3}. the Important information includes function and duties of the organization, powers and duties of the officers, procedure followed in decision making process, norms set by the organization to discharge its function,, statement of the board ,council and committee, a directory of its officers and employees, the budget allocated to each of its agency, the monthly remuneration received by each of its officer and employees and the name, designation and other particulars of the Public Information Officer. The information should be disseminated in such a manner which is easily accessible to all the people.⁶²

Designation of Public information Officer

It is mandatory under this Act all public authorities within one hundred days of the enactment of the Act to designate as many public information, as may be necessary to provide information to the persons requesting for the information under the Act, as central public information officer or state information officer as the case may be. For the proper discharge of the information public information can take help of other officer and such other officer shall be treated as central public information officer or state information officer as the case may be.⁶³

Making a request under this Act.

This act also mention that how to make a request for the information. A request can be made in writing or through electronic means in Hindi or English or in any official language of the area in which the application is being made. If the request cannot be made in writing it can be made orally also. An applicant is not required to give reason for making a request.⁶⁴ If the application is related with the function of other public authority then it will be send to the appropriate public authority by the public authority who whom such request is made. The transfer of the application should be made within five days from the receipt of the application.⁶⁵

^{*3} The Right to Information came into force on 12 October 2005.

⁶² Section 4, Right to Information Act. 2005.

⁶³ Section 5, Right to Information Act. 2005.

⁶⁴ Section 16 (2), Right to Information Act. 2005.

⁶⁵ Section 16 (3), Right to Information Act. 2005.

Disposal of the request

Every public authority is required to furnish the information within thirty days from the receipt of the request in normal case. If the information is related to life and liberty of a person then it should be provided within forty five days from the receipt of the application⁶⁶. A period of five can added for computing in the period of thirty days.⁶⁷ If the information is related to the *third party*^{*4} then the time period to furnish information will be forty days.⁶⁸ If the application has been received from the way of transfer then the limitation period would be thirty five days.⁶⁹ If the application contains the obligation of corruption and human rights violation then limitation period of such request will be forty five days after the approval of the center Information Commission.⁷⁰

Grounds of Rejection of an application

An application can be rejected if it involves the information which affects the sovereignty, integrity, security, strategic, scientific and economic relation and interest with foreign states of India, the information which if forbidden to be published by any court, information which is privilege of Parliament, the information including commercial confidence, trade secrets, the information which harms competitive position of a third party, information received in confidence from governments and the information which is related to such an event which has not taken place twenty years before.⁷¹ Center Public Officer or State Public Information Officer as the case may be can reject such an application for information which involves the infringement of copy right sustaining a person other than the state.⁷² An application for information can also be rejected which belongs to the third party and the disclosure of such information does not involve public interest.⁷³

⁶⁶ Section 71 (1), Right to Information Act. 2005.

⁶⁷ Section 5 (2), Right to Information Act. 2005.

^{*4} According to this Act Third Party means “ a person other than the person making the request for information and includes a public authority”

⁶⁸ Section 11 (3), Right to Information Act. 2005.

⁶⁹ Section 6 (3), Right to Information Act. 2005.

⁷⁰ Section 24 (1), Right to Information Act. 2005.

⁷¹ Section 8, Right to Information Act. 2005.

⁷² Section 9, Right to Information Act. 2005.

⁷³ Section 11, Right to Information Act. 2005.

^{*5} According to this Act Appropriate Government means “ In relation to public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or

Payment of Fee

An applicant is required to pay fee along with the application under sub-section (1) of section 5 and sub-section (1) and (5) of section 7. the amount of the fee will be determined by the *appropriate government*⁷⁴, such amount should be reasonable and no such amount will be charged for the persons who are below poverty line as determined by appropriate government.⁷⁴ If the information in the specified time period under the Act then no fee will be charged and information will be provided free of cost if the fee is already paid then it will have to be refunded.⁷⁵

Appeal

If the applicant does not receive information within specified time under the Act then he/she can make first appeal to such an officer who is senior to the rank of the central information or state public information as the case may be in each public authority.⁷⁶ Such officer will admit the appeal after the expiry date of thirty days. The decision on the first appeal should be made within thirty days from the date of the admission of the appeal.⁷⁷ But for the reason to be recorded in writing this time period of thirty days should not exceed forty five days from the date of the admission of the first appeal.⁷⁸ A second appeal can be made against the decision of the first appeal, to the Central Information Commission or the State Information Commission as the case may be. The decision on the second appeal should be made within ninety days from the date on which the decision was made for the first appeal.⁷⁹ In an appeal it is required to prove that the rejection of the request was justified, Central Information Commission or the State Information Commission as the case may be who denied the request.⁸⁰

Penalties

If Central Information Commission or the State Information Commission as the case may be without any reasonable cause rejects or refuse to receive an application for

indirectly by the central government or union territory administration, the central government or by the state government, the state government.”

⁷⁴ Section 7 (5), Right to Information Act. 2005.

⁷⁵ Section 7 (6), Right to Information Act. 2005.

⁷⁶ Section 19 (1), Right to Information Act. 2005.

⁷⁷ Section 19 (2), Right to Information Act. 2005.

⁷⁸ Section 19 (6), Right to Information Act. 2005.

⁷⁹ Section 19 (3), Right to Information Act. 2005.

⁸⁰ Section 19 (5), Right to Information Act. 2005.

information within the specified time under the Act or knowingly gives incorrect or incomplete information then he/she has to pay a penalty of two hundred rupees each day till application is received to information if furnished. The total amount of such penalty shall not exceed twenty five thousand rupees. The Central Information Commission or the State Information Commission as the case may be will be given a reasonable opportunity of being heard before any penalty is imposed on him/her.⁸¹

If The Central Information Officer or the State Information officer refuses any complaint or appeal without any reasonable cause or does not give information within the limited time or knowingly destroys the information which is subject to the request, then there will be disciplinary action against the Central Information officer or the State Information officer under the service rules applicable to him/her.⁸² If the information belongs to the third party other than these two then it creates third party interest and in that matter have to follow a definite procedure given in section 11 of the Act to protect the interest of the third party.⁸³

Monitoring and Reporting

It is required to make report by the Central Information Commission or the State Information Commission as the case may be and also forward a copy of this report to the appropriate government.⁸⁴ Each ministry or department in relation to public authority within their jurisdiction is required to collect information and prepare a report containing information such as numbers of the request made to each public authority, numbers of appeal referred to Central Information Commission or the State Information Commission as the case may be, nature of appeals and outcome of appeals, particulars of disciplinary action taken against any officer, the amount of charges collected by each public authority, and recommendations of reforms. Each ministry is required to provide all these information to Central Information Commission or the State Information Commission as the case may be.⁸⁵ The central government or the state government as the case may be is required to present a copy of the report of Central Information Commission or the State Information

⁸¹ Section 20 (1), Right to Information Act. 2005.

⁸² Section 20 (2), Right to Information Act. 2005.

⁸³ Section 11, Right to Information Act. 2005.

⁸⁴ Section 25 (1), Right to Information Act. 2005.

⁸⁵ Section 25 (2), Right to Information Act. 2005.

Commission as the case may be after the end of the year before each house of parliament or state legislature as the case may be.⁸⁶

Programmes to Enhance Understanding about Right to Information Act

If there is availability of finance and other resources then the appropriate government can organize the educational programme to enhance the knowledge of public as how to exercise right to information.⁸⁷ There is also a provision in the Act to train central information officer or state information officer, how to impart information under the Act.⁸⁸ Every public authority is required to publish a guide in its official language, within eighteen month from the commencement of this Act and compile such information which is understandable to those person who are wish to exercise any right under this Act.⁸⁹ Appropriate can publish the guidelines at regular intervals containing information such as the object of the Act, postal and street address and phone numbers of central public information and state public information officers , the assistance available from central public information commission and state public information commission, notice regarding fees which is to be paid for the application of the information and any additional regulation issued in relation to obtaining access to an information.⁹⁰

Authority of appropriate Government to make rules

Appropriate government has the power to decide the cost of or the print cost of the material under the sub-section (4) of section 4 , fee payable under sub-section (1) of section 6 and sub-section (1) and (5) of section 7 and also has the power to decide the salaries and allowances and term and condition of the service of the officers and other employees under sub-section (6) of section (13) and sub section (6) of section 16. The appropriate government can also decide the procedure adopted by the Central Information Commission or State Information Commission as the case may be in deciding the appeals under the sub-section (10) of section 19 *prescribed**6.⁹¹

⁸⁶ Section 25 (4), Right to Information Act. 2005.

⁸⁷Section 26 (1) (a), Right to Information Act. 2005.

⁸⁸ Section 26(1) (d), Right to Information Act. 2005.

⁸⁹ Section 26 (2), Right to Information Act. 2005.

⁹⁰ Section 26 (3) (d), Right to Information Act. 2005.

*6 According to the Act prescribed means “prescribed by rules made under this Act by the appropriate government or the competent authority, as the case may be.”

⁹¹ Section 27, Right to Information Act. 2005.

Authority of Competent Authority to make rules

The *Competent Authority*^{*6} has the power to decide the cost of or the print cost of the material under the sub-section (4) of section 4 , fee payable under sub-section (1) of section 6 and sub-section (1) of Section 7 and any other matter which is required to be prescribed.⁹²

Power to remove Difficulties

The Act gives authority to the central government that if there arise any difficulty in giving effect to the provision of the Act then central government can make rule to remove such difficulties.⁹³

Central Information Commission

According to the Act the central government will constitute a body in with the name, Central Information Commission, to perform the duties assign to it. In this body there will be a chief information commissioner and some information commissioners but the information commissioner should not be more than ten. The Chief Information Commissioner and some Information Commissioners will be appointed by the President of India on the recommendations of a committee. The Prime Minister will be the Chairperson of that committee and other members of the committee include the leader of opposition in the Lok Sabha and a union cabinet minister, nominated by Prime Minister.⁹⁴ The Chief Information Commissioner and other Information Commissioners should not be the Member of Parliament and legislature of any state or union territory. They should have a wide knowledge and experience in law, science and technology, social services, mass media, journalism, or administration and governance.⁹⁵ The head-quarter of the Central Information Commissioner will be at Delhi or can be at any place with the prior approval of the central government.⁹⁶

^{*7} According to the Act Competent Authority means “ the speaker in the case of the house of the people or the legislative Assembly of the state or a union territory having such assembly and the chairmen in the case of the council of the state or legislative council of the state, the Chief Justice of India in the case of Supreme Court, the Chief justice of High Court in the case of High Court, the President or the Governor as the case may be, in the case of other authority established or constituted by or under the Constitution, the administrator appointed under he Article 239 of the Constitution”

⁹² Section 28, Right to Information Act. 2005

⁹³ Section 30, Right to Information Act. 2005

⁹⁴ Sub-section (1), (2) and (5) of Section 12, Right to Information Act. 2005.

⁹⁵ Sub-section (5) and (6) of Section 12, Right to Information Act. 2005.

⁹⁶ Sub-section (7) of Section 12, Right to Information Act. 2005.

Term of Office and Conditions of Services for Central Chief Information Commissioner and Central Information Commissioners

The term of office for the Chief Information Commissioner and Information Commissioners is for five years or sixty five years whichever earlier. Chief Information Commissioner and Information Commissioners cannot be reappointed, but an information commissioner can be appointed as Chief Information Commissioner. But the term of office of such information commissioner cannot be more than five years in aggregate as information commissioner or chief information commissioner.⁹⁷

Chief Information Commissioner and Information Commissioners can resign from his/her office at any time in his/her writing. In such a case he/she will address the President of India. The salary of chief information commissioner will be same as a chief election commissioner and the salaries of the information commissioners will be same as an election commissioner.⁹⁸ Some officers and employees will be provided by the central government to Chief Information Commissioner and Information Commissioners which are necessary for the efficient work of their functionaries under this Act.⁹⁹

Removal of Central Chief Information Commissioner and Central Information Commissioners

The Chief Information Commissioner and Information Commissioner can be removed from his/her office only by order of President on the ground of misbehavior and incapacity after the enquiry done by Supreme Court.¹⁰⁰ The President can also suspend the Chief Information Commissioner and the Information Commissioners during the enquiry until the President gets the report of the Supreme Court on such references.¹⁰¹

Beside all this the President can remove The Chief Information Commissioner and Information Commissioner from his/her office if he/she has been convicted of an offence which in the opinion of the President, involves moral turpitudes holds any

⁹⁷ Sub-section (1) and (2) of section 13, Right to Information Act, 2005

⁹⁸ Sub-section (4) and (5) of section 13, Right to Information Act, 2005

⁹⁹ Sub-section (6) of section 13, Right to Information Act, 2005

¹⁰⁰ Sub-section (1) of section 14, Right to Information Act, 2005

¹⁰¹ Sub-section (2) of section 14, Right to Information Act, 2005

other employment outside the duty of his/her office, in the opinion of the President unfit to continue in the office by reason of his/her mental or physical infirmity or has acquired such financial or other interest which effect his functions as chief information commissioner or information commissioners.¹⁰²

State Information Commission

There is also a provision for State Information Commission in this Act. Every state government will constitute a body with the name, state information commission, to perform the duties assign to it. In this commission there will be a state chief information commission and some other information commissioners, but the number of state information commissioners should not be more than ten.¹⁰³

Chief state information commissioner and the information commissioners will be appointed by the Governor on the recommendation of a committee. Chief Minister will be the chairperson of the committee and other members of the committee include leader of opposition in legislative assembly and a cabinet minister nominated by Chief Minister.¹⁰⁴

The state information commissioner of information commissioners should have wide knowledge and experience in science and technology, law, mass media, social service, management, administration and governance. The state chief information commissioner or state information commissioners should not be the Member of Parliament, legislature of any state or union territory and also should not hold any other office or profit or connected with any political party. The headquarter of state information commission will be at such place in the state as state government specifies and can also be at any other place in the state with the prior approval of state government.¹⁰⁵

Term of Office and Condition of Services for State Chief Information Commissioner and State Information Commissioners

The term of office of state chief information commissioner and state information commissioner will be five years or till 65 years from the date on which he/she enters

¹⁰² Sub-section (3) of section 14, Right to Information Act, 2005

¹⁰³Sub-section(1) and (2) of section 15Right to Information Act, 2005

¹⁰⁴ sub-section(3) of section 15Right to Information Act, 2005

¹⁰⁵ sub-section(5) and (6) of section 15Right to Information Act, 2005

in upon his/her office whichever is earlier. State chief information commissioner and state information commissioners can't be reappointed. If a state information commissioner will be appoints as state chief information commissioner then his/her term of office should not be more than five years in aggregate as the state information commissioner or state chief information commissioner¹⁰⁶The state chief information commissioner or state information commissioners can resign from his/her at any time in his/her writing. In such a case he/she will address the Governor of the state. The salary of state chief information commissioner will be same as an election commissioner and the salaries of state information commissioners will be same as the chief secretary of the state government¹⁰⁷ the state government will provide officers and employees to state chief information commissioner and information commissioner for the effective performance of their functions under this Act.¹⁰⁸

Removal of State Chief Information Commissioner and Information Commissioners

The state chief information commissioner and state information commissioners can be removed from his/her office by President on the ground of misbehavior and incapacity after the inquiry done by Supreme Court.¹⁰⁹ Governor can also suspend the state chief information commissioner or state information commissioners during the inquiry until he gets the report from Supreme Court on such reference.¹¹⁰

Beside this Governor can also remove the state chief information commissioner or state information commissioners if he/she has been convicted of an offence which involves moral turpitude in the opinion of Governor, holds some paid employment outside the duties of his/her office, unfit to hold office by reason of his/her mental or physical incapacity or other interest which effect his/her duty as state chief information commissioner or information commissioners.¹¹¹

¹⁰⁶ sub-section(1) and (2) of section 16Right to Information Act, 2005

¹⁰⁷ sub-section(4) and (5) of section 16Right to Information Act, 2005

¹⁰⁸ sub-section (6) of section 16Right to Information Act, 2005

¹⁰⁹ sub-section (1) of section 17Right to Information Act, 2005

¹¹⁰ sub-section (2) of section 17Right to Information Act, 2005

¹¹¹ sub-section (3) of section 17Right to Information Act, 2005

Powers and Functions of Information Commissioner

The Act assigns some duties and give some powers to the information commissions. It is the duty of central information commission or state information commission to receive and enquire into a complained from any person who has been refused to give information under the Act, who has not been given response on a request within the specified time under the Act, who has been ask to pay such amount of fee which is not reasonable and who believes that the information given to him/her is falls, incomplete and incorrect.¹¹²

If central information commission thinks that there is reasonable ground for inquiry then it can initiate an inquiry in that case.¹¹³ The central information commission or state information commission has the same power as are vested in a civil court while inquire into any matter in respect of some matters such as summoning and enforcing the attendance of persons, requiring the discovery and inspections of documents, receiving evidence on affidavit, requisitioning any public record or copies from any court or office, issuing summons for examinations of witnesses or documents and any other matter which may be prescribed.¹¹⁴

Beside all this central information commission or state information commission, during the inquiry of any complaint under this Act can examine any record on which this Act applies and which is under the control of any public authority. No public authority can deny giving such records on any ground.¹¹⁵

¹¹² sub-section (1) of section 18Right to Information Act, 2005

¹¹³ sub-section(2) of section 18Right to Information Act, 2005

¹¹⁴ sub-section (3) of section 18Right to Information Act, 2005

¹¹⁵ sub-section (4) of section 18Right to Information Act, 2005