Chapter-3

Genesis of Right to Information: International and National Perspective
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INTERNATIONAL AND NATIONAL PERSPECTIVE

“Freedom will be bereft of all effectiveness if the people have no access to information. Access to information is basic to the democratic way of life. The tendency to withhold information from the people at large is therefore to be strongly checked.”

–Abid Hussein¹

3.1 INTRODUCTION

The Constitution is known as the ‘basic law of the land’ from which all other laws derive their sanctity or validity. Therefore, it must be able to cope up with the newer situation and development.²

The word ‘information’ has been derived from the Latin word ‘formation’ and ‘forma’ which means giving shape to something and forming a pattern, respectively. Information adds something new to our awareness and removes the vagueness of our ideas. Information is indispensable for the functioning of a true democracy. People have to inform about current affairs and broad issues like political, social and economic. Free exchange of ideas and free debate are essentially desirable for the Government of a free country. In a fast developing country like ours, availability of information needs to be assured in the fastest and simplest form possible. This is important because every development process depends on the availability of information. Right to know is also closely linked with the other basic rights such as freedom of speech and expression and right to education. Its independent existence as an attribute of liberty cannot be disputed. Viewed from this angle, information or knowledge becomes an important resource. An equitable access to this resource must be guaranteed.³

Lack of transparency was one of the main causes for all pervading corruption and Right to Information would lead to openness, accountability and integrity. The barrier to

information is the single most cause responsible for corruption in society. It facilitates clandestine deals, arbitrary decisions, manipulations and embezzlements. Transparency in dealings with their every detail exposed to the public view, should go a long way in curtailing corruption in public life. The Government recognizes that access to information is an essential part of its accountability.\(^4\)

This is the age of information affluence. All human rights depend on the basic right to know, to demand accountability and it is Fundamental Human Right. Lack of information denies people, the opportunity to develop their potential to the fullest and realize the full range of their human rights.\(^5\)

Transparency in administration is a sure technique to minimize the abuse and misuse of administrative discretion. As knowledge is a guarantee against ignorance, so Government’s openness is a guarantee against misconduct. Openness negates the ideas of fantastic, arbitrary and oppressive form of Government action. Justice Krishna Iyer in Menaka Gandhi’s case\(^6\) rightly said that ‘Government which revels in secrecy not only acts against democratic decency but busies itself with its own burial’. Public power must rarely hide its heart in an open society and system.

3.2 EVOLUTION OF RIGHT TO INFORMATION: INTERNATIONAL CONVENTIONS & DECLARATIONS

There had been many revolutions which took place worldwide in past time. Today a new revolution is growing up fastly that is right to information revolution. In present scenario not only prosperous people but a person who daily struggles for his livelihood also has a small star shine about his rights in society. They know that more they have knowledge about their surrounding they will grow more. Democratic set up of countries also pay a lot in development of right to information, because in democratic set up people have right to know what has been done by these representatives on behalf of people. Every person is keen to know about society development and act of government. More than 68 countries have enacted their legislations for right to

\(^4\) Ibid.


\(^6\) AIR 1978 SC 597.
information and more than 30 countries are in the process of enacting the legislation on right to information. Apart from that, a number of international bodies or organizations having the responsibility for promoting and protecting human rights have authoritatively recognized the fundamental and legal nature of the right to freedom of information as well as the need for effective legislation to secure respect for that right in practice. Collectively, this amounts to a clear international recognition of the right.7

3.2.1 Origin and Development of Right to Information

The origin of right to freedom of information can be traced back to the year 1215 when the great barons of England, who forced from the hands of the unwilling King John the glorious character of popular liberties known as Magna Carta. The 30th chapter of this great constitutional document contained the pledge that “No freedom shall be taken or imprisoned or disposed or outlawed or banished or in any way destroyed… except by the lawful judgment of his peers and by the law of the land.” Magna Carta was reaffirmed from time to time by successive English Monarchs and in 1354 Edward III recognized the liberties and customs which the people had enjoyed in the past and declared in Chapter 3 of 20 Edward III that no man of what estate or condition that he be, shall be output of land or tenement nor taken nor imprisoned nor disinherited nor put to death without being brought in answer by due process of law. The expression ‘the law of the land’ which appeared in these documents appear to be synonymous and to guarantee that sovereign shall not proceed against the life, liberty or property of a feudal lord except in conformity with the usages of ancient customs or the common law. The object of this chapter of Magna Carta was to prevent the King from acting against the person or property of a baron except by a prosecution or suit instituted or conducted according to the prescribed forms and solemnities for ascertaining the guilt or determining the title to the property. In his famous institutes, Sir Edward Coke expressed the view that Magna Carta had embodied certain fundamental principles of right and justice, and that the common law be contended, where the Supreme Law of the Land controlled both the King and Parliament.8

It is important to remember that in many instances around the world, social and cultural factors perpetuate the hierarchical, unjust social system in the country resulting in illiteracy and extreme poverty conditions and the leadership it produces has been hardly interested in changing the system.\(^9\)

The phrase ‘freedom of information’ originated in the United States. There is a widely held view that the United States has one of the world’s most open and transparent systems of government. But Sweden, in 1766, was the first to enshrine a right to access to information in its laws.\(^10\) Interestingly, it was not until the latter part of the 20\(^{th}\) Century that the U.S. Supreme Court interpreted the First Amendment to the Constitution as including a right of access to information. Freedom of Speech and the Press are expressly guaranteed by the First Amendment, but this guarantee had previously been interpreted as only indirectly ensuring the public’s right to know.\(^11\)

### 3.2.2 United Nations

From the very beginning, freedom of information was recognized as a fundamental right within the United Nations (UN). On 14\(^{th}\) December, 1946, at its First Session, the UN General Assembly adopted the Resolution 59(1) on the reports of the third committee, ‘calling of an international conference on freedom of information’ which stated that:

> “Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated.”\(^12\)

The United Nations General Assembly further provides that in ensuing international human rights instruments, freedom of information was set out as a part of the fundamental right of freedom of expression, which included the right to seek, receive and part information. Freedom of information implies the right to gather, transmit and publish news anywhere and everywhere without letters. As such it is an essential factor

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\(^9\) Ibid.

\(^10\) Michael James, “Freedom of Official Information”. The oldest (freedom of information) law (anticipating the rest of the world by two centuries) is called the Swedish Freedom of the Press Act, though its right to access provisions are not limited to the press at all.

\(^11\) Rodney D. Ryder, at p. 4.

\(^12\) Retrieved from <http://www.refworld.org/docid/3b00f0975f.html> visited on 19-08-2008.
in any serious effort to promote the peace and progress of the world. Freedom of information requires as an indispensable element the willingness and capacity to employ its privileges without abuse. It requires as a basic discipline the moral obligation to seek the facts without prejudice and to spread knowledge without malicious intent. To understanding and co-operation among nations are impossible without an alert and sound world opinion which, in turn, is wholly dependent upon freedom of information. Therefore, to resolve in the spirit of paragraphs 3 and 4 of Article 1 of the Charter, to authorize the holding of a conference of all Members of the United Nations on freedom of information.

The United Nations General Assembly instructs the Economic and Social Council to undertake, pursuant to Article 60 and Article 62, paragraph 4 of the Charter, the convocation of such a conference in accordance with the following guiding principles:

a) The purpose of the Conference shall be to formulate its views concerning the rights, obligations and practices which should be included in the concept of the freedom of information;

b) Delegations to the Conference shall include in each instance persons actually engaged or experienced in press, radio, motion pictures and other media for the dissemination of information;

c) The Conference shall be held before the end of 1947, at such place as may be determined by the Economic and Social Council, in order to enable the Council to submit a report on the deliberations and recommendations of the Conference to the following regular session of the General Assembly.\(^{13}\)

In ensuring international human rights instruments, freedom of information was not set out separately but as a part of freedom of expression, which includes the right to seek, receive and impart information.

**3.2.3 Universal Declaration of Human Rights, 1948**

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10\(^{th}\) December, 1948 at Palais de Chaillot, Paris.

\(^{13}\) Ibid.
The declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled.\(^{14}\)

It consists of 30 Articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws. International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. In 1966, the General Assembly adopted the two detailed Covenants, which complete the International Bill of Human Rights; and in 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.\(^{15}\)

The Preamble of the Universal Declaration of Human Rights, 1948, guarantees that:

1. Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

2. Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people;

3. Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;

4. Whereas it is essential to promote the development of friendly relations between nations;

5. Whereas the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in

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\(^{14}\) Vide United Nations General Assembly Resolution, 217 (A) (III) dated 10\(^{th}\) December, 1948.

the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom;

6. Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms;

7. Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

General Assembly proclaims that Universal Declaration of Human Rights as a common standard of achievement for all people and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of Member States themselves and among the people of territories under their jurisdiction. For democratic countries, free expression was among the primary goals of the new human rights regime. **Article 19** of the Universal Declaration of Human Rights, 1948, thus, declares that:

> “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

**3.2.4 American Declaration of the Rights and Duties of Man, 1948**

The American Declaration of the Rights and Duties of Man was the world’s first international human rights instrument of a general nature, predating the Universal Declaration of Human Rights by less than a year.

The Declaration was adopted by the nations of the Americas at the Ninth International Conference of American States in Bogotá, Colombia, in April 1948, the same meeting that adopted the Charter of the Organization of American States (OAS) and thereby created the Charter of the Organization of American States (OAS).

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16 Ibid, p. 511.
Chapter one of the Declarations sets forth a catalogue of civil and political rights to be enjoyed by the citizens of the signatory nations, together with additional economic, social, and cultural rights due to them. As a corollary, its second chapter contains a list of corresponding duties.\textsuperscript{17}

The American Declaration of the Rights and Duties of Man provides the following guiding principles:

1. The American people have acknowledged the dignity of the individual, and their national constitutions recognize that juridical and political institutions, which regulate life in human society, have as their principal aim the protection of the essential rights of man and the creation of circumstances that will permit him to achieve spiritual and material progress and attain happiness;

2. The American States have on repeated occasions recognized that the essential rights of man are not derived from the fact that he is a national of a certain state, but are based upon attributes of his human personality;

3. The international protection of the rights of man should be the principal guide of an evolving American law;

4. The affirmation of essential human rights by the American States together with the guarantees given by the internal regimes of the states establish the initial system of protection considered by the American States as being suited to the present social and juridical conditions, not without a recognition on their part that they should increasingly strengthen that system in the international field as conditions become more favorable,

The Ninth International Conference of American States agrees to adopt the Preamble, which provides that:

a) All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

\textsuperscript{17} Raj Kumar Pruthi, “Manual of Right to Information Act” Pentagon Press, New Delhi, 2006, p. 269.
b) The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.

c) Duties of a juridical nature presuppose others of a moral nature which support them in principle and constitute their basis.

d) In as much as spiritual development is the supreme end of human existence and the highest expression thereof, it is the duty of man to serve that end with all his strength and resources.

e) Since culture is the highest social and historical expression of that spiritual development, it is the duty of man to preserve, practice and foster culture by every means within his power.

f) And, since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect.

They have agreed upon certain relevant Articles. Chapter 1 titled ‘Rights’ deals with freedom of speech and expression and right to information. Article I\(^{18}\) which provides that every human being has the right to life, liberty and the security of his person. Article IV\(^{19}\) which guarantees that every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.\(^{20}\)

### 3.2.5 Rome Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was adopted by the Council of Europe in 1950, hence pre-dating the establishment of the European Union (EU). However, all EU Member States are Members of the Council of Europe and have ratified the ECHR.

\(^{18}\) Right to life, liberty and personal security.

\(^{19}\) Right to freedom of investigation, opinion, expression and dissemination.

\(^{20}\) Raj Kumar Pruthi, at p. 270-271.
The Convention establishes the European Court of Human Rights. Any person who feels their rights have been violated under the Convention by a state party can take a case to the Court; the decisions of the Court are legally binding, and the Court has the power to award damages. State parties can also take cases against other state parties to the Court, although this power is rarely used.\textsuperscript{21}

The Governments signatory to this Convention being members of the Council of Europe, which considered and recognized the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10\textsuperscript{th} December, 1948. This Declaration aims at securing the universal and effective recognition and observance of the Rights declared therein. The aim of the Council of Europe is the achievement of greater unity between its members and that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms. Their profound belief in those fundamental freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the human rights upon which they depend. The Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain rights stated in the Universal Declaration.

They have agreed upon certain relevant Articles. The obligation to respect human rights provides that the high contracting parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.\textsuperscript{22} Article 2 of Section I\textsuperscript{23} deals with right to life, which says that everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

\textsuperscript{22} Article 1.
\textsuperscript{23} Rights and Freedoms.
a. in defence of any person from unlawful violence;

b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Article 5 deals with right to liberty and security which guarantees that:

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

   a. the lawful detention of a person after conviction by a competent court;

   b. the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

   c. the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

   d. the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

   e. the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

   f. the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this Article shall be brought promptly before a judge or other officer authorised by
law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

Freedom of expression guaranteed under Article 10 of the Convention provides that everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Everyone whose rights and freedoms as set forth in this convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.\textsuperscript{24}

The political bodies\textsuperscript{25} of the Council of Europe have made important moves towards recognizing the right to access information held by the State as a fundamental right. As early as 1970, the Consultative Assembly, the forerunner of the Parliamentary Assembly, passed a Resolution stating: “there shall be a corresponding duty (to the right

\textsuperscript{24} Article 13 ‘Right to an Effective Remedy’.

\textsuperscript{25} European People’s Party, Alliance of European Conservatives and Reformists, Party of European Socialists (PES) European Liberal Democrat and Reform Party (ELDR), European Green Party (EGP), Party of the European Left (PEL), European Free Alliance (EFA) European Democratic Party (EDP).
to freedom of expression) for the public authorities to make available information on matters of public interest within reasonable limits.”

3.2.6 International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on 16th December, 1966, and in force from 23rd March, 1976. It declared the right of people to be fully and reliably informed so as to improve their understanding through free flow of information and opinion. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of May 2013, the Covenant had 74 signatories and 167 parties.

The ICCPR is part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR).

The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee normally meets in Geneva and normally holds three sessions per year.

The Preamble of the International Covenant on Civil and Political Rights (ICCPR) provides that the States are parties to the present Covenant, which considers and recognizes the following:

28 Ibid.
29 Ibid.
i. that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

ii. that these rights derive from the inherent dignity of the human person,

iii. that in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

iv. that the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

v. that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

They have agreed upon certain relevant Articles. Article 1 of Part I provides that all people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All people may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language,
religion, political or other opinion, national or social origin, property, birth or other status. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.³⁰

Article 19 of Part III says that everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression. This right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) for respect of the rights or reputations of others;

(b) for the protection of national security or of public order (ordre public), or of public health or morals.³¹

³⁰ Article 2 of Part II.
3.2.7 International Convention on the Elimination of All Forms of Racial Discrimination, 1966

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is a United Nations convention. A third-generation human rights instrument, the Convention commits its members to the elimination of racial discrimination and the promotion of understanding among all races. Controversially, the Convention also requires its parties to outlaw hate speech and criminalize membership in racist organizations. The Convention also includes an individual complaints mechanism, effectively making it enforceable against its parties. This has led to the development of a limited jurisprudence on the interpretation and implementation of the Convention. The convention was adopted and opened for signature by the United Nations General Assembly on 21st December, 1965, and entered into force on 4th January, 1969. As of June 2013, it has 86 signatories and 176 parties. The Convention is monitored by the Committee on the Elimination of Racial Discrimination (CERD).\(^\text{32}\)

The States which are party to this Covenant considered and recognized the following:

1. that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

2. that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

3. that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

4. that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to colonial countries and people on 14th December, 1960 (General Assembly Resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

5. that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20th November, 1963 (General Assembly Resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

6. that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

7. that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among people and the harmony of persons living side by side even within one and the same State,

8. that the existence of racial barriers is repugnant to the ideals of any human society,

9. that alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

10. that resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

11. that bearing in mind the Convention concerning Discrimination in respect of Employment and Occupation adopted by the International Labour Organisation in
1958, and the Convention against Discrimination in Education adopted by the United Nations Educational, Scientific and Cultural Organization in 1960,

12. that desiring to implement the principles embodied in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination and to secure the earliest adoption of practical measures to that end,

They have agreed upon certain relevant Articles. Article 5 of Part I provides that in compliance with the fundamental obligations laid down in Article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

a) The right to equal treatment before the tribunals and all other organs administering justice;

b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;

c) Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

d) Other civil rights, in particular:

(i) The right to freedom of movement and residence within the border of the State;

(ii) The right to leave any country, including one’s own, and to return to one’s country;

(iii) The right to nationality;

(iv) The right to marriage and choice of spouse;
(v) The right to own property alone as well as in association with others;
(vi) The right to inherit;
(vii) The right to freedom of thought, conscience and religion;
(viii) The right to freedom of opinion and expression;
(ix) The right to freedom of peaceful assembly and association;

e (e) Economic, social and cultural rights, in particular:

(i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;

(ii) The right to form and join trade unions;

(iii) The right to housing;

(iv) The right to public health, medical care, social security and social services;

(v) The right to education and training;

(vi) The right to equal participation in cultural activities;

(f) The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.33

Article 7 provides that States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting

33 Article 6.
understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.\(^{34}\)

3.2.8 **American Convention on Human Rights (‘Pact of San Jose, Costa Rica’), 1969**

The American Convention on Human Rights, also known as the Pact of San Jose, is an international human rights instrument. It was adopted by many countries in the Western Hemisphere San Jose, Costa Rica, on 22\(^{nd}\) November, 1969. It came into force after the eleventh instrument of ratification (that of Grenada) was deposited on 18\(^{th}\) July, 1978. The bodies responsible for overseeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, both of which are organs of the Organization of American States (OAS).\(^{35}\)

The American States signatory to the present Convention, which reaffirms, considers and recognizes the following:

1. that their intention to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man;

2. that the essential rights of man are not derived from one’s being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states;

3. that these principles have been set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights, and that they have been reaffirmed

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and refined in other international instruments, worldwide as well as regional in scope;

4. that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights; and

5. that the Third Special Inter-American Conference (Buenos Aires, 1967) approved the incorporation into the Charter of the Organization itself of broader standards with respect to economic, social, and educational rights and resolved that an inter-American convention on human rights should determine the structure, competence, and procedure of the organs responsible for these matters,

They have agreed upon certain relevant Articles. Article 1 of Chapter I\textsuperscript{36} of Part I\textsuperscript{37} which deals with obligation to respect rights says that the States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. For the purposes of this Convention, “person” means every human being.

Article 2 deals with domestic legal effects which states that where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

Article 13 of Chapter II\textsuperscript{38} dealing with freedom of thought and expression provides that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless

\textsuperscript{36} General Obligations.
\textsuperscript{37} State Obligations and Rights Protected.
\textsuperscript{38} Civil and Political Rights.
of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

   a. respect for the rights or reputations of others; or

   b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.39

3.2.9 UNESCO Declaration, 1978

United Nations Educational, Scientific and Cultural Organization (UNESCO) is committed to remove the obstacles on the free flow of information. The right to know together with the other concepts, the right to communicate provides the basis of a New World Information and Communication Order.40

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Article I of the UNESCO Declaration of 1978 on ‘Fundamental Principles Concerning the Contribution of Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement of War’ states:

“The strengthening of peace and international understanding, the promotion of human rights and the countering of racialism, apartheid and incitement of war demand a free flow and a wider and better balanced dissemination of information”.

Article II of this declaration states:

“….the exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in strengthening of peace and international understanding.”

The UNESCO Declaration of 1978 recognizes that freedom of opinion, expression and information is an integral part of human rights and fundamental freedoms.

3.2.10 African Charter on Human and Peoples’ Rights, 1981

The African Charter on Human and Peoples’ Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent.

It emerged under the aegis of the Organization of African Unity (OAU) (since replaced by the African Union) which, at its 1979 Assembly of Heads of State and Government, adopted a resolution calling for the creation of a committee of experts to draft a continent-wide human rights instrument, similar to those that already existed in Europe (European Convention on Human Rights) and the Americas (American Convention on Human Rights). This committee was duly set up, and it produced a draft that was unanimously approved at the OAU’s 1981 Assembly. Pursuant to its Article 63 (whereby it was to “come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority” of the OAU’s member states), the African Charter on Human and Peoples’ Rights came into

41 Ibid.
effect on 21st October, 1986, in honour of which 21st October was declared “African Human Rights Day”.

The Preamble of the African Charter on Human and Peoples’ Rights provides that African States members of the Organization of African Unity are parties to the present Covenant, which considers and recognizes the following:

1. that the decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17th to 20th July, 1979 on the preparation of a “preliminary draft on an African Charter on Human and Peoples’ Rights providing inter alia for the establishment of bodies to promote and protect human and peoples’ rights”;

2. that the Charter of the Organization of African Unity, which stipulates that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African people”;

3. that the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the people of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

4. that the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples’ rights;

5. that on the one hand fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand the reality and respect of people’s rights should necessarily guarantee human rights;

6. that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

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7. that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

8. that consciousness of their duty to achieve the total liberation of Africa, the people of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, language, religion or political opinions;

9. that their adherence to the principles of human and peoples’ rights and freedoms contained in the declarations, conventions and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

10. that their duty to promote and protect human and people’s rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

They have agreed upon certain relevant Articles. Article 1 of Chapter I\(^{43}\) of Part I\(^{44}\) states that the member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.\(^{45}\)

\(^{43}\) Human and People’s Right.
\(^{44}\) Rights and Duties.
\(^{45}\) Article 2.
Article 9 states that every individual shall have the right to receive information and every individual shall have the right to express and disseminate his opinions within the law.\textsuperscript{46}

In 2002, the African Union’s African Commission on Human and People’s Rights adopted a Declaration of Principles in a Resolution which recognised that “public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information.” Part IV of this Declaration of Principles on Freedom of Expression in Africa deals explicitly with the right to information, and while it is not binding, still, it has considerable persuasive force representing the will of a sizeable section of the African population.\textsuperscript{47}

\textbf{3.2.11 Framework Convention for the Protection of National Minorities}

The Framework Convention for the Protection of National Minorities (FCNM) is a multilateral treaty of the Council of Europe aimed at protecting the rights of minorities. It came into effect in 1998 and by 2009 it had been ratified by 39 member states.\textsuperscript{48}

The member States of the Council of Europe and the other States, signatories to the present framework Convention, considers and recognizes the following:

1. that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

2. that one of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms;

3. that to follow-up the Declaration of the Heads of State and Government of the member States of the Council of Europe adopted in Vienna on 9\textsuperscript{th} October, 1993;

4. that to protect within their respective territories the existence of national minorities;

\textsuperscript{47} African Commission on Human and People’s Right, 32\textsuperscript{nd} Session, October 2002, 170.
5. that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;

6. that a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity;

7. that the creation of a climate of tolerance and dialogue is necessary to enable cultural diversity to be a source and a factor, not of division, but of enrichment for each society;

8. that the realisation of a tolerant and prosperous Europe does not depend solely on co-operation between States but also requires transfrontier co-operation between local and regional authorities without prejudice to the constitution and territorial integrity of each State;

9. that with regard to the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto;

10. that with regard to the commitments concerning the protection of national minorities in United Nations conventions and declarations and in the documents of the Conference on Security and Co-operation in Europe, particularly the Copenhagen Document of 29th June, 1990;

11. that to define the principles to be respected and the obligations which flow from them, in order to ensure, in the member States and such other States as may become Parties to the present instrument, the effective protection of national minorities and of the rights and freedoms of persons belonging to those minorities, within the rule of law, respecting the territorial integrity and national sovereignty of states;

12. that to implement the principles set out in this framework Convention through national legislation and appropriate governmental policies.

They have agreed upon certain relevant Articles. The parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly,
freedom of association, freedom of expression, and freedom of thought, conscience and religion.⁴⁹ Article 10 states that the parties undertake to recognise that every person belonging to a national minority has the right to use freely and without interference his or her minority language, in private and in public, orally and in writing. In areas inhabited by persons belonging to national minorities traditionally or in substantial numbers, if those persons so request and where such a request corresponds to a real need, the Parties shall endeavour to ensure, as far as possible, the conditions which would make it possible to use the minority language in relations between those persons and the administrative authorities. The parties undertake to guarantee the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter.⁵⁰

³.₂.₁₂ United Nations Development Programme (UNDP), 1997

The United Nations Development Programme (UNDP) is the UN’s global development network, advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. In 1997, United Nations Development Programme (UNDP) adopted its Public Information Disclosure Policy and recognized information as a key to Sustainable Human Development and also to UNDP accountability. The Policy objective clearly shows that information concerning UNDP operational activities will be made available to public in the absence of a compelling reason for confidentiality such as commercial confidentiality, confidentiality of internal deliberation process, legal privilege or privacy of employees.⁵¹

In an effort to encourage the development of right to know legislations in developing countries, the UNDP conducted a seminar and issued a report in May 2006, designed to heighten awareness about transparency laws and their values. The Report describes these laws, their advantages and their evolution, all with the goal to encourage and help the UNDP to promote their adoption. The UNDP officials are advised to analyse the

⁴⁹ Article 7 of Section II.
current state of law and identify the most important institutional allies and potential blockages. Other steps stated in the report include: raising awareness of the issue, supporting activities that feed local initiatives, providing space for a dialogue between civil society and activists and offering expertise about the content of such laws.

The seminar reiterated that freedom of expression is the undisputed international right in all international treaties. It has a number of rights packed into it including the right to information. Seeking and receiving implies a human right to information. Although the right to information has never appeared as an independent right in any global UN treaty, it is guaranteed by a number of regional treaties and declarations by the bodies such as the Council of Europe and other bodies. The media functions as a channel through which the individual right to freedom of expression is given a public form. It operationalizes the right but is not a privileged right-holder per se. It is also important to bear in mind that it is possible to push the RTI agenda without specific legislation. In these circumstances it is possible to make use of and build on other legal frameworks such as the constitution and international treaties. Further, it is also important to identify and work with groups and sectors of society to mobilize them and support their efforts in demanding RTI. The UNDP and other development organizations can draw upon drivers of change analysis. Youth are an especially important group to work with and stimulate their demand for greater access to information. While citing the rapid increase in right-to-know laws in the last decade, the report points out that only thirty of the countries in which UNDP operates have such laws. Thus, we see that the right to get information in a democracy has been recognized throughout and it is a natural right following from the concept of democracy. The freedom of expression including freedom to information has four broad social purposes to serve. These include: helping an individual to attain self-fulfillment; assisting in discovering the truth; strengthening the capacity of an individual in participating in decision-making; and providing a mechanism by which it would be possible to establish a reasonable balance between stability and social change.\footnote{Ibid.}
3.2.13 Rio Declaration on Environment and Development, 1992

The Rio Declaration on Environment and Development, 1992 recognized the fact that access to information on the environment, including information held by public authorities, is the key to sustainable development and effective public participation in environmental governance. Principle 10 of the Rio Declaration on Environment and Development states:

“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

Agenda 21, the ‘Blueprint for Sustainable Development’, the companion implementation document to the Rio Declaration, states that:

“Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information protection measures.”

This declaration was endorsed by the UN General Assembly in 1997 by passing a Resolution that “Access to information and broad public participation in decision making are fundamental to sustainable development.”

Another significant development is Rio+10 World Summit on Sustainable Development (WSSD) Johannesburg, 2002 which reaffirmed to “ensure access, at the national level, to environmental information and judicial and administrative proceedings in environmental matters.”

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54 Ibid.
3.2.14 European Union (EU)

European Union gave explicit legal status to the right to access information in 1997 through the Amsterdam Treaty. European Union Charter’s Article 255 guarantees the following rights:

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to European Parliament, Council and Commission documents, subject to the principles and the conditions to be defined in accordance with paragraphs 2 and 3.

2. General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the Council, acting in accordance with the procedure referred to in Article 251 within two years of the entry into force of the Treaty of Amsterdam.

3. Each institution referred to above shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents.  

In 2001, a regulation was passed by EU on Freedom of Information, to ensure widest possible access to documents by its members, drawn up or received by it and in its possession, in all areas of activities of the European Union.

3.2.15 United Nations Principles on Freedom of Information, 2000

It is commendable to note that the RTI had become so important worldwide that even the United Nations adopted Principles on the Freedom of Information in 2000. In these principles duties were also imposed upon member States for disclosing certain kinds of important information especially which is of public interest to the seeker of such information. These principles were adopted by the UN to set a standard against which anyone can measure whether domestic laws genuinely permit access to official information. Main objective was to set out clearly and precisely the ways in which Government can achieve maximum openness in accordance with international standard and practice. These principles are:

(i) Principle of Maximum Disclosure\(^{60}\)
(ii) Obligation to Publish\(^{61}\)
(iii) Freedom of Open Government\(^{62}\)
(iv) Limited Scope of Exception\(^{63}\)
(v) Strict Time Limit\(^{64}\)
(vi) Cost\(^{65}\)
(vii) Open Meeting\(^{66}\)
(viii) Disclosure takes Precedence\(^{67}\)
(ix) Protection of Whistleblower\(^{68}\)

3.2.16 Inter-American Declaration of Principles on Freedom of Expression, 2000

In 2000, Inter-American Declaration of Principles on Freedom of Expression was the most comprehensive official document on freedom of information in the inter American System. Therefore, freedom of information and right to access information held by the State is a guaranteed human right in inter American System.\(^{69}\)

The Preamble of Inter-American Declaration of Principles on Freedom of Expression provides the following:

1. that the need to ensure respect for and full enjoyment of individual freedoms and fundamental rights of human beings under the rule of law;

2. that consolidation and development of democracy depends upon the existence of freedom of expression;

\(^{60}\) Principle 1.
\(^{61}\) Principle 2.
\(^{62}\) Principle 3.
\(^{63}\) Principle 4.
\(^{64}\) Principle 5.
\(^{65}\) Principle 6.
\(^{66}\) Principle 7.
\(^{67}\) Principle 8.
\(^{68}\) Principle 9.
3. that the right to freedom of expression is essential for the development of knowledge and understanding among people, that will lead to a true tolerance and cooperation among the nations of the hemisphere; convinced that any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process;

4. that guaranteeing the right to access to information held by the State will ensure greater transparency and accountability of governmental activities and the strengthening of democratic institutions;

5. that freedom of expression is a fundamental right recognized in the American Declaration on the Rights and Duties of Man and the American Convention on Human Rights, the Universal Declaration of Human Rights, Resolution 59(1) of the United Nations General Assembly, Resolution 104 adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Covenant on Civil and Political Rights, as well as in other international documents and national constitutions;

6. that the member states of the Organization of American States are subject to the legal framework established by the principles of Article 13 of the American Convention on Human Rights;

7. that Article 13 of the American Convention on Human Rights, which establishes that the right to freedom of expression comprises the freedom to seek, receive and impart information and ideas, regardless of borders and by any means of communication;

8. that the importance of freedom of expression for the development and protection of human rights, the important role assigned to it by the Inter-American Commission on Human Rights and the full support given to the establishment of the Office of the Special Rapporteur for Freedom of Expression as a fundamental instrument for the protection of this right in the hemisphere at the Summit of the Americas in Santiago, Chile;
9. that freedom of the press is essential for the full and effective exercise of freedom of expression and an indispensable instrument for the functioning of representative democracy, through which individuals exercise their right to receive, impart and seek information;

10. that the principles of the Declaration of Chapultepec constitute a basic document that contemplates the protection and defense of freedom of expression, freedom and independence of the press and the right to information;

11. that the right to freedom of expression is not a concession by the States but a fundamental right;

12. that the need to protect freedom of expression effectively in the Americas,

The Inter-American Commission on Human Rights, in support of the Special Rapporteur for freedom of expression, adopts the declaration of relevant principles which are as follows:

1. Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.

2. Every person has the right to seek, receive and impart information and opinions freely under terms set forth in Article 13 of the American Convention on Human Rights. All people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.

3. Every person has the right to access to information about himself or herself or his/her assets expeditiously and not onerously, whether it be contained in databases or public or private registries, and if necessary to update it, correct it and/or amend it.

4. Access to information held by the state is a fundamental right of every individual. States have the obligation to guarantee the full exercise of this right. This principle
allows only exceptional limitations that must be previously established by law in case of a real and imminent danger that threatens national security in democratic societies.

5. Prior censorship, direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of oral, written, artistic, visual or electronic communication must be prohibited by law. Restrictions to the free circulation of ideas and opinions, as well as the arbitrary imposition of information and the imposition of obstacles to the free flow of information violate the right to freedom of expression.

6. Every person has the right to communicate his/her views by any means and in any form. Compulsory membership or the requirements of a university degree for the practice of journalism constitute unlawful restrictions of freedom of expression. Journalistic activities must be guided by ethical conduct, which should in no case be imposed by the State.

7. Prior conditioning of expressions, such as truthfulness, timeliness or impartiality is incompatible with the right to freedom of expression recognized in international instruments.

8. Every social communicator has the right to keep his/her source of information, notes, personal and professional archives confidential.70

3.2.17 Legislation of Sweden, United States of America and United Kingdom on Freedom of Information

Freedom of information laws allow access by the general public to data held by national Governments. In many countries there are constitutional guarantees for the right of access to information, but usually these are unused if specific support legislation does not exist. Over 90 countries around the world have implemented some form of freedom of information legislation. Sweden’s Freedom of the Press Act of 1766, is the oldest in the world. Other countries are working towards introducing such laws, and many regions of countries with national legislation have local laws.71 Brief overview of legislation of Sweden, USA and UK regarding freedom of information is discussed below:

70 Ibid.
Sweden

The earliest legislation governing open records dates back to 1766, in Sweden, the Freedom of the Press Act, 1766, granted public access to Government documents. It became an integral part of the Swedish Constitution, and the first ever piece of freedom of information legislation in the modern sense. In the Swedish language this is known as Offentlighetsprincipen (The Principle of Public Access), and has been considered valid since. But it has passed its Freedom of Information Act in 1810, which provides its people their right to know. It was replaced in 1949 by a new Act, which enjoyed the sanctity of being a part of the country’s constitution itself. This present law is unique in that it is one of the four laws, which together comprise the Constitution of the country. The law outlines the main principles of the open records scheme, but the detailed provisions are contained in an ordinary Act, the Secrecy Law. The principle is that every Swedish citizen should have access to virtually all documents kept by the State or Municipal agencies. Access to information legislation provides citizens with a statutory ‘right to know’. In practice the specific provisions of the legislation will determine the extent to which citizens are able to obtain access to records of government activities. The intention is to provide access whenever disclosure is in the public interest, nor for public officials to use the legislation as a secrecy law. The key points of freedom of information laws are as follows:  

1. provide access to records not just information;
2. define exemption;
3. confer legal rights on citizens that can be enforced;
4. seek to change the culture of secrecy within the civil service; and
5. define rights of appeal.

United States of America (USA)

USA enacted the Freedom of Information Act (FoIA) in 1966, when President Lynden B. Johnson signed it on 6th September, 1966, 200 years after Sweden passed the

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73 Ibid.
Freedom of the Press Act, which is the first law on freedom of information in the world.\textsuperscript{74} The Act provides to the common man all type of information from the administration unless it is specifically exempted. The USA was the first country among the leading democracies to enact the law on this point.\textsuperscript{75} That law was full of discrepancies and loopholes. This was amended in the year 1974 and another law: Privacy Act was passed as a companion piece of Legislation to the earlier Act. The Act has considerable reduce the secrecy in the Government affairs. The 1976 amendment specified Exemption 3 of the FoIA. The publication of Pentagon Papers and the exposure of Watergate Scandal by Washington Post reporters become possible due to this Act. Even the exemptions under the Act are subject to judicial review. The Court shall conduct camera examination of such documents concerning national security to ascertain whether it deserves non-disclosure based on security of the country.\textsuperscript{76} However, the Act has generated criticism as too much of information costs the administrative efficacy. The commercial bodies seeking information on business competition make most of the information requests. In 1996, President Clinton signed the Electronic Freedom of Information Act Amendment Bill that provided that records created by all federal agencies on or after 1\textsuperscript{st} November, 1996, should be made available to citizens to access records and increased the response time to 20 days from the earlier stipulation period of 10 days. President Clinton’s Executive Order allowed release of previously classified national security documents more that 25 years old and of historical interest as part of the FoIA. After 11\textsuperscript{th} September, 2001 attack, President Bush through an Executive Order dated 1\textsuperscript{st} November, 2001 restricted access to the records of the former President. On 21\textsuperscript{st} January, 2009 President Barack Obama used an Executive Order that encourages openness, transparency and accountability in Government records without changing the Presidential Records Act.\textsuperscript{77}


\textsuperscript{76} National Labour Relaxation Board v. Robbin Tyre and Rubber Co., 437 US 251 (1977).

United Kingdom (UK)

United Kingdom’s Freedom of Information Act was passed by the British Parliament in 2000 as the fulfillment of the Labour Party’s election manifesto of the 1997 election. It created and bestowed upon the public in the country the legal right to know about the functioning of public authorities. Moreover, the growing recognition that open Government is a part of effective democracy, also led to the enactment of Freedom of Information Act, 2000. It took at least twenty years of campaigning. The Act guarantees to every person a general right to access to information held by a large number of authorities. The requests for accesses under the Act would be responded within twenty working days. The Act also casts an obligation on public authorities to publish information about their structure, policies and activities. The Act also creates a new office, the Information Commission who will oversee the freedom of information. The Commission shall receive complaints and make decisions. However, in some cases the Minister of the Department can overrule Commission’s decision. Appeal lies to the Information Tribunal and then to the High Court. There are a few golden lines in the Act, otherwise, it is full of exemptions.

3.3 EVOLUTION OF RIGHT TO INFORMATION: NATIONAL PERSPECTIVE

One of the most neglected rights in democracies throughout the world has been the Right to Information. Although one of the most cherished human rights, most countries throughout the world, including India, have largely disregarded it. The Right to Freedom of Information is considered to be a customary international law, which is exemplified from its enshrinement in various international covenants, declarations and treaties, most notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and European Commission on Human Rights and many more.

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80 Niraj Kumar, “Right to Information Act, 2005” Bharat Law House, New Delhi, 2011, p. 82.
In the last few decades, freedom of information has been recognized as an internationally protected human right, and societies across the world have been moving away from opaque and secretive administrative system to open and transparent system. In fact, Sweden is supposed to have put in place the first set of laws for transparency in public affairs in 1776, more than 225 years ago. Alongside there is an exciting global trend towards recognition of the Right to Information by States, Inter-governmental Organizations, Civil Society and the people. There is a growing body of authoritative statements supporting the right to information, made in the context of official human rights mechanisms, including the United Nations, the Commonwealth, the Organization of American States and the Council of Europe. All this amounts to a clear international recognition of the right to information, which we have already discussed earlier in this chapter.

In India, the feudal social fabric has exploited the formal democratic system to its advantage because the literate and the well to do are too busy in building their careers and empires to bother about social inadequacies and the illiterate and the poor are too weak and powerless to force any change.

3.3.1 Judicial Response

The need for the legal status to the right to information is a cause and concern today in India. Through judicial pronouncements in the past years it was realized that there is a need for recognition of such right. The 179th Report of the Law Commission of India and a number of other reports of various committees and councils working on the subject sensitized the Government of India to enact a specific law on the right to information.

The Constitution of India as it was originally adopted contained a Bill of Rights incorporated in Part III. When incorporated in the Constitution, the bill of rights is made organic and fundamental law of the country. It gets the full force of a higher law and the legislature cannot alter it or disregard it. The development of the welfare liberal state

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81 Id. at p. 83.
82 Ibid.
and an increase in the coercive authority of the State touching every aspect and sphere of the individual life stressed their necessity. Under the Constitution, the duty to safeguard and protect these rights is vested mainly in the Supreme Court and the High Courts.\textsuperscript{84}

In India, citizens do not have an express constitutional right to freedom of information. Article 19(1)(a) of the Constitution of India secures to every citizen the right to freedom of speech and expression, which means the right to express one’s convictions and opinions freely by the word of mouth, writing, printing, pictures or any other mode. A democratic Government attaches great importance to the freedom because without this freedom an appeal to reason, which is the basis of democracy, cannot be made.\textsuperscript{85}

The need for Right to Information has been widely felt in all sectors of the country and this has also received judicial recognition through some landmark judgments of Indian courts. A Supreme Court judgment delivered by Justice Mathew is taken as a milestone. In his judgment, in the case of State of Uttar Pradesh v. Raj Narain\textsuperscript{86} Justice Mathew says that:

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

The right to know evolved to the status of a constitutional right in the famous case of S.P. Gupta v. Union of India\textsuperscript{87} popularly known as judges transfer case. In this case the claim for privilege was discussed before the court by the Government of India in regard to the disclosure of various documents. The Supreme Court by a generous explanation

\textsuperscript{86} AIR 1975 SC 865.  
\textsuperscript{87} AIR 1982 SC 149.
and interpretation of the guarantee of freedom of speech and expression developed the right to know and the right to information to the position of a fundamental right, on the principle where certain unarticulated rights are implicit and imminent in the listed guarantees. The Court further held that the concept of an open government is directly emanated from the right to know which is to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). The Supreme Court of India emphasized that open Government is the latest democratic culture of any open society towards which every liberal democracy is marching and to which our country should also join hands. In a country like India being committed to socialistic pattern of society, the right to know is a necessity for the poor, illiterate and ignorant.

### 3.3.2 Right to Information Movements in India

The right to information is the result of a great democratic movement in the rural India. A historical event took place in a remote village Dendungri in Rajasthan during 1987, which no one knew that could possess immense potentially to pave the way for right to information. The three founding activists of MKSS - Mazdoor Kisan Shakti Sangathan and NCPRI - National Campaign on People’s Right to Information chose a humble hut in a small and impoverished village Dendungri as their base to share the life and struggles of the rural poor. A former Indian Administrative Service officer, Ms. Aruna Roy, an activist in an NGO, the Social Work and Research Centre, Tilonia, Mr. Shankar Singh, a resident of a village, who established a rural communication unit, and Mr. Nikhil Dey, a young man who abandoned his studies in USA in search for meaningful rural social activism started their mission in Dendungri.\(^{88}\)

They were, in fact, leading a ‘Gandhi’ life in rural area for achieving the Gandhi’s goal of Gram Swarajya through the Right to Information. The hut was as simple as generally inhabited by the poor of the village with no electricity or running water. They ate the same sparse food of thick coarse grain rotis as the working class villagers. They had no vehicle, and used trucks and buses for transport. The region, which they had chosen for their life and the work, was surrounded with problems, which could be solved only by people’s awareness followed by agitation. It was environmentally degraded and

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chronically drought prone. The landholdings were too small to be viable even if the rains occur. There were few alternate sources of rural livelihood, and distress migration in the lean summer months was high. Government interventions mainly took the form of famine relief works, like construction of roads and tanks, with extremely high levels of corruption and extremely poor durability. Wages, even on government relief works, were low and payment too erratic to provide any real social security cover. Literacy levels were terribly low, especially for women (1.4%) and even for men (26%), The average debt burden was massive, at over 3,200 rupees per household.  

In early 1990s Mazdoor Kisan Shakti Sangathan (MKSS) began a movement to bring transparency to village financial accounts. Initially, MKSS lobbied government to obtain information such as master rolls (employment and payment records) and bills and vouchers relating to purchase and transportation of materials. This information was then crosschecked at Jan Sunwai (public hearing) against actual testimonies of workers. The MKSS was engaged in a struggle for minimum wages on Government work sites. The public hearings were incredibly successful in drawing attention to corruption and exposing leakages in the system. 

The name of the organization itself means the unified struggle. It is the powerful union of agricultural labour. The struggle of MKSS ushered into the history of socio-economic agitations that forced the state to make a new law and offer a new right to the people. They have not asked for food or employment. Their demand was for information. It was not a petition but a demand. Two authors and information right activists Harsh Mander and Abha Joshi chronicled this historical struggle in detail.

Indeed, under the Right to Information Act, the citizens’ Access to Information (ATI) is an essential step in ensuring transparency and accountability in government systems and processes. When a Government is transparent, there is less chance for corruption and more room for accountability. That’s why Freedom of Information Acts (FoIAs) are

91 Eventually their struggle and others supporting agitations led to the enactment of Right to Information Act by the Parliament of India in 2005.
becoming standard good practice in the international arena. The RTI generally understood as the ‘right to access information held by public authorities’ is not just a necessity of the citizens; it is a precondition to the good governance. To be specific, ATI makes democracy more vibrant and meaningful and allows citizens to participate in the governance process of the county. In particular, it empowers ordinary citizens, especially the rural folk. When people have ATI they naturally tend to make more meaningful decisions, raise informed opinions, influence policies affecting their society and even help shape a more assured future for the next generation.\(^2\)

Success of MKSS became a source of inspiration for activists in other parts of India and led to a broader discourse on the right to information in India. In 1993, a first draft RTI law was proposed by the Consumer Education and Research Council, Ahmedabad, Gujarat (CERC). In 1996, the Press Council of India headed by Justice P.B. Sawant presented a draft model law on the right to information to the Government of India. The draft model law was later updated and renamed the PCI-NIRD Freedom of Information Bill 1997. MKSS’s advocacy gave rise to the National Campaign on People’s Right to Information (NCPRI), which was formed to advocate for the right to information at the national level. In 1997 efforts to legislate for the right to information, at both the State and National level, quickened. A working group under the chairmanship of Mr. H.D. Shourie (the Shourie Committee) was set up by the Central Government and given the mandate to prepare draft legislation on freedom of information. The Shourie Committee’s Report and draft law were published in 1997. The Shourie Committee draft law was passed through two successive governments, but was never introduced in Parliament.\(^3\)

In 1998, during the Rajasthan State elections the Congress Party promised in its election manifesto to enact a law on right to information if it came to power. Following their election, the Congress Party appointed a committee of bureaucrats to draft a bill on the right to information. As the Committee was comprised only of bureaucrats, civil society organizations raised strong objections. As a result, members of MKSS and National


Campaign for People’s Right to Information (NCPRI) were invited to assist in drafting the bill. MKSS and NCPRI conducted a host of consultations in each divisional headquarters of the State. Drawing on the input from these consultations, a draft civil society Right to Information Bill was prepared, which was then submitted to the Committee. The Committee drew on the citizens draft Bill for its recommendations, but refused to accept the Bill in toto. The Rajasthan Right to Information Act, 2000 was eventually passed on 11th May, 2000. The Act in its final form retained many of the suggestions of the RTI movement, but diluted others.\textsuperscript{94}

In 1999, NDA Minister Mr. Ram Jethmalani, then Union Minister for Urban Development, issued an administrative order enabling citizens to inspect and receive photocopies of files in his ministry. Disappointingly, the Cabinet Secretary did not permit this order to come into force.\textsuperscript{95}

In the early 2000s Anna Hazare led a movement in Maharashtra State which forced the State Government to pass a stronger Maharashtra Right to Information Act.\textsuperscript{96}

The establishment of a national-level law, however, proved to be a difficult task. Given the experience of State Governments in passing practicable legislation, the Central Government appointed a working group under H. D. Shourie and assigned it the task of drafting legislation. The Shourie draft, in an extremely diluted form, was the basis for the Freedom of Information Bill, 2000 which eventually became law under the Freedom of Information Act, 2002. In late 2002 the Centre for Public Interest Litigation (CPIL) asked for scrutiny of the proposed bill by the Supreme Court to determine whether the bill gave citizens sufficient power to find out about governance. The Government had been reluctant to recognise that the people had a right to know, and after the CPIL filing it rushed through the bill without correcting known defects. This Act was severely criticized for permitting too many exemptions, not only under the standard grounds of national security and sovereignty, but also for requests that would involve

\textsuperscript{94} Ibid.
\textsuperscript{95} Niraj Kumar, “Right to Information Act, 2005” Bharat Law House, New Delhi, 2011, p. 84.
\textsuperscript{96} This Act was later considered as the base document for the Right to Information Act, 2005 (RTI), enacted by the Union Government. It also ensured that the President of India assented to this new Act. Retrieved from <http://en.wikipedia.org/wiki/Right_to_Information_Act> visited on 04-08-2011.
“disproportionate diversion of the resources of a public authority”. There was no upper limit on the charges that could be levied. There were no penalties for not complying with a request for information. This Act, consequently, never came into effective force.

Under the leadership of Sonia Gandhi, the Congress party won the 2004 national elections and formed the Central Government. Aruna Roy was inducted into the National Advisory Committee (NAC), an extremely powerful but extra-constitutional quasi-governmental body headed by Sonia Gandhi which effectively supervises the working of the Common Minimum Program of UPA II. Aruna Roy submitted a paper recommending amendments to the 2002 Freedom of Information Act to the NAC which in turn sent by it to the Prime Minister’s Office. The Right to Information Bill, 2004 (RTI Bill, 2004) was tabled on 23rd December during the winter session of the Lok Sabha. The RTI Bill, 2004 was based largely on recommendations submitted to the Government by the NAC (based on the NCPRI’s original draft bill).97

The RTI Bill, 2004 was referred by Parliament to the Department related Standing Committee on Personnel, Public Grievances, Law and Justice for consideration. Commonwealth Human Rights Initiative (CHRI) submitted recommendations to the Parliamentary Standing Committee on the RTI Bill, 2004 prior to giving evidence before the committee on 14th and 16th February, 2005. A range of civil society activists also gave evidence before the committee. CHRI made a supplementary submission on the RTI Bill on 21st February, 2005. The report of the Committee (including proposed amendment version of the RTI Bill) was tabled in the Lok Sabha on 21st March, 2005. CHRI tabulated and running text analysis of the report highlights the recommendations for change to the RTI Bill, 2004 made by the Committee. CHRI made a submission to the Cabinet commenting on the Committee’s Report. On 10th May, 2005 the RTI Amendment Bill, 2005 (which auctioned many of the recommendations of the Parliamentary Standing Committee) was tabled in the Lok Sabha. The Bill was passed very quickly and it was approved by the Lok Sabha on 11th May, 2005 and by the Rajya Sabha on 12th May, 2005. On 15th June, 2005, President APJ Abdul Kalam gave his assent to the National Right to Information Act, 2005. With presidential assent, the

Central Government and State Governments had 120 days to implement the provisions of the Act in its entirety. The Act formally came into force on 12th October, 2005 (120th day of its enactment on 15th June, 2005).98

The Right to Information Act, 2005, was passed with a motive to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities in order to promote transparency, openness and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.99

3.3.3 Election Commission’s Guidelines for Publication and Dissemination of Results of Opinion Polls/Exit Polls, 1998100

The Election Commission has observed that:

1. During the run up to any general elections to the House of the People or State Legislative Assemblies, Opinion Polls are often conducted by different organizations. The results of such opinion polls are published in newspapers, magazines and other periodicals, and sometimes telecast/broadcast on the electronic media. The dissemination of such results of Opinion Polls receives wide publicity and coverage in the print and electronic media and such dissemination, particularly on the eve of polls, has the potential to influence the electors when they are in the mental process of making up of their minds to vote or not to vote for a certain political party or a candidate. The methodology followed by different organizations conducting such opinion polls varies from organization to organization, or the agencies, conducting such polls. Similarly, the sample size of the electorate covered by such polls and geographic spread of the survey also differs substantially in each case.101

101 Ibid.
2. Apart from the Opinion Polls, Exit Polls are also conducted by some organizations on the days of polls. Considering the magnitude of the electorate in the country, particularly at the time of countrywide general elections to the House of the People, and the complexity of operations involved in the conduct of such general elections, the poll is taken in a phased manner, spread over a period of two to three weeks. Publication of result of any Exit Poll, in the intervening period when the poll in any of the States or Union Territories or constituencies is yet to be taken, is likely to affect the unbiased exercise of franchise by the elector, one way or the other.

3. Representations have been made to the Commission by various political parties and others concerned that the conduct of such Opinion Polls and Exit Polls, and publication of their results, when the election process is on, should be stopped, so that no political party or candidate suffers adversely or gain an undue advantage, because of the above.

4. The Commission has discussed the matter with all recognized National and State political parties at the meetings held in New Delhi on 22nd and 23rd December 1997. Almost all the political parties, with the exception of one or two, emphatically stated that Opinion Polls, the way in which these are conducted, are unscientific. According to them, there is considerable bias in the size and the nature of the sample drawn to make such an opinion poll and they tend to influence the voters in an unbecoming manner. They further stated that many of the polls are motivated and are not impartial, because of the known leanings or prejudices of some of the organizations conducting such polls, towards or against certain political parties and/or their leaders. While some parties were in favour of opinion polls not being allowed, right from the date of announcement of elections by the Commission, a large number of parties were in favour of such restrictions being applied from the date of notification for the elections.

5. Almost all the parties were also opposed to allowing the exercise of Exit Polls and emphatically stated that the results of such Exit Polls, even if permitted, should, in no way, come out before the polling in all the constituencies in all States and Union Territories was over in all respects.
6. The Commission has carefully examined the matter. It has also examined the position as obtaining in some of the other advanced democracies in various parts of the world. It has been observed that in many of these democracies, like Canada, France, Italy, Poland, Turkey, Argentina, Brazil, Colombia, etc., restrictions in one way or the other, are placed on the conduct of Opinion Polls and Exit Polls.

7. The Canadian Elections Act, (vide Section 322.1) peremptorily prohibits the publication of results of any Opinion Poll two days before the voting begins. The said section provides as under:

“No person shall broadcast, publish or disseminate the results of an opinion survey respecting how electors will vote at an election or respecting an election issue that would permit the identification of a political party or candidate from midnight the Friday before polling day (which is always a Monday) until the close of all polling stations”.

8. The Italian Decree Law of 18.11.1995, n. 488, titled “Urgent Provisions for equal access to the Media during electoral and referendary campaign” provides, vide Art. 8, as follows:

“Starting from the 20th day before the elections till the closing date of voting, it is forbidden to publish or circulate the results of exit polls, even if such surveys were carried out before the above mentioned period.”

9. In this context, the provisions of Section 126 of our Representation of the People Act, 1951, as amended by the Representation of the People (Amendment) Act, 1996, w.e.f. 01-08-1996, also deserve to be taken special note of section 126 deals with Prohibition of public meetings during the period of forty-eight hours ending with hour fixed for conclusion of poll provides as under:

1. No person shall-

   (a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

   (b) display to the public any election matter by means of cinematography, television or other similar apparatus; or
(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

2. Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both.

3. In this section, the expression ‘election matter’ means any matter intended or calculated to influence or affect the result of an election.

10. The law, as contained in the above quoted section 126, is clear manifestation of recognition of ground reality by Parliament, in its collective wisdom and as a measure of electoral reform carried out by it as recently as August, 1996 after the last general election to the House of the People in 1996, that the voter needs a period of at least 48 hours before the completion of the poll, during which he should not be disturbed in the process of weighing the merits and demerits of political parties and contesting candidates in the electoral fray and he can absorb, what he has heard or witnessed during the campaign period, in a tranquil and balanced frame of mind.

11. Viewed in the light of the above statutory restrictions, allowing results of Opinion Polls and Exit Polls to be published, on the eve of polls or during the polling process, would be a deleterious intrusion into the mind of the voter, which is prohibited by law during the aforesaid period of 48 hours. The Commission is statutorily bound to take all such steps as will give effect to the Parliamentary intent and implement the law, in letter and spirit, as laid down by Parliament.

12. The Commission is conscious of the fact that, in any democratic society, the electors, who choose their representatives to give them a government, do have a right to have information, and be informed and educated, about the policies,
programmes, manifestos, etc., of political parties and candidates, who are vying for their votes, and who, if voted to power, will form the government. The Commission is equally conscious of the ‘freedom of press’ in any democratic country, and the rights of the print and electronic media to gather information, on any issue or event of public importance, and disseminate it to the general public for their information and decision making. But the Commission also has to balance between such rights of the print and electronic media and the rights of the electorate in the matter of exercise of their franchise in a free and fair manner, uninfluenced by any extraneous factors. In striking such balance, it would not be unreasonable and unfair to place certain reasonable restrictions on the dissemination of information, particularly unverified information, by the print and electronic media, on the eve of polls.

13. In this context, the guidelines framed by the Press Council of India, established under an Act of Parliament with the object of preserving the freedom of Press and of maintaining and improving its standards, in regard to the dissemination of results of Opinion Polls and Exit Polls, also deserve special attention. The attention of the Commission has been invited to these guidelines by none other than Hon’ble Mr. Justice P.B. Sawant, Chairman of Press Council of India and President of World Association of Press Councils. These guidelines on ‘Pre-poll’ and ‘Exit-Polls’ Survey of Press Council of India provide, inter alia, as follows:

1. The Press Council of India having considered the question of desirability or otherwise of publication of findings of pre-poll surveys and the purpose served by them is of the view that the newspapers should not allow their forum to be used for distortions and manipulations of the elections and should not allow themselves to be exploited by the interested parties.

2. The Press Council, therefore, advises that in view of the crucial position occupied by the electoral process in a representative democracy like ours, the newspapers should be on guard against their precious forum being used for distortions and manipulations of the elections. This has become necessary to emphasize today since the print media is sought to be increasingly exploited by the interested individuals and groups to misguide and mislead the unwary voters.
by subtle and not so subtle propaganda on casteist, religious and ethnic basis as well as by the use of sophisticated means like the alleged pre-poll surveys. While the communal and seditious propaganda is not difficult to detect in many cases, the interested use of the pre-poll survey, sometimes deliberately planted, is not so easy to uncover. The Press Council, therefore, suggests that whenever the newspapers publish pre-poll surveys, they should take care to preface them conspicuously by indicating the institutions which have carried such surveys, the individuals and organizations which have commissioned the surveys, the size and nature of sample selected, the method of selection of the sample for the findings and the possible margin of error in the findings.

3. Further in the event of staggered poll dates; the media is seen to carry exit-poll surveys of the polls already held. This is likely to influence the voters where the polling is yet to commence. With a view to ensure that the electoral process is kept pure and the voters’ minds are not influenced by any external factors, it is necessary that the media does not publish the exit-poll surveys till the last poll is held.

The Press Council, therefore, advised the Press to abide by the following guideline in respect of the exit-polls:

“No newspaper shall publish exit-poll surveys, however, genuine they may be, till the last of the polls is over.”

14. Having regard to all the above mentioned facts and circumstances, and the constitutional and legal provisions relevant to the issue under consideration, the Election Commission of India has, in pursuance of its sacred and solemn duty of conducting free and fair elections to Parliament and State Legislatures, entrusted to it by Article 324 of the Constitution, decided to lay down the following guidelines for observance by print and electronic media, including Government controlled electronic media in connection with the conduct of Opinion Polls and Exit Polls by them, during the forthcoming general elections to the House of the People and the Legislative Assemblies of Gujarat, Himachal Pradesh, Meghalaya, Nagaland and Tripura:
1. The organizations or agencies conducting Opinion Polls shall be free to conduct such polls, and publish results thereof, in or by any print or electronic media, at any time, except the period mentioned in clause (ii), during the run up to the polls for the aforesaid general elections to the House of the People and State Legislative Assemblies mentioned above.

2. No result of any opinion poll conducted at any time shall be published, publicised or disseminated, in any manner whatsoever, in or by any print or electronic media, after 1700 hours on the 14th February, 1998 (16th February, 1998 being the first day of poll for the aforesaid general elections) and till half an hour after the closing of poll in all States and Union Territories, except three Parliamentary Constituencies in the State of Jammu and Kashmir i.e., 1730 hours on the 28th February, 1998.

3. The organizations and agencies shall also be free to conduct exit polls. But the result of any such exit poll conducted at any time shall also not be published, publicised or disseminated, in any manner whatsoever, in or by any print or electronic media, at any time from 0700 hours on the 16th February, 1998 (being the first day of poll for the aforesaid general elections) and till half an hour after the closing of poll in all States and Union Territories, except three Parliamentary Constituencies i.e., 1730 hours on the 28th February, 1998.

4. Any organizations or agencies conducting any Opinion Poll or Exit Poll, while publishing, publicising or disseminating the result of any such poll, must indicate the sample size of the electorates covered by such polls and geographic spread of survey so conducted. They must invariably give the details of methodology followed, likely percentage of errors, the professional background and experience of the organisation or organizations and the key professionals involved in the conduct and analysis of the poll.

(a) ‘Electronic media’ includes Radio and Television - both Government owned and Private and covers Satellite, Terrestrial and Cable Channels.
(b) ‘Dissemination’ includes publication in any newspaper, magazine or periodical, or display on electronic media, or circulation by means of any pamphlet, poster, placard, handbill or any other document.

15. The above guidelines shall also apply mutatis-mutandis at all future elections to Parliament and State Legislatures.\textsuperscript{102}

3.3.4 Commonwealth Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development

The Commonwealth Expert Group Meeting on the Right to Know and the Promotion of Democracy and Development held at Marlborough House, London on 30\textsuperscript{th} and 31\textsuperscript{st} March, 1999. The main aim of this expert group meeting was to promote the open government commonwealth principles and guidelines on the right to know.

I. First part deals with the introduction which provides that:\textsuperscript{103}

1. The Commonwealth Law ministers at their Meeting in Barbados in 1980 emphasized that “public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information.”

2. Since that time a number of Commonwealth countries have enacted freedom of information legislation establishing a public right of access to government information. Their experience has demonstrated that these laws enhance the effectiveness of government. Other Commonwealth countries are preparing legislations drawn on this practical experience.

3. During the 1990’s the Commonwealth, guided by its Fundamental Political Values enshrined in the 1991 Harare Commonwealth Declaration, has sought to promote democracy, the rule of law, just and honest government and fundamental human rights. Consolidating the achievements of the past decade, the Commonwealth seeks to focus its efforts on strengthening the processes of open and accountable government together with the promotion of sustainable development.

\textsuperscript{102} Ibid.

4. The 1990’s has been a decade of democratization with a number of countries, many within the Commonwealth, making the transition from one party and authoritarian regimes to elected representative governments.

5. The new millennium promises to be an era for transparency and accountability on the part of government and all sectors of society concerned with public life. These trends will be further stimulated by the growth of information technology and increased globalization and inter-dependency of national economies.

II. Second part deals with the benefits of freedom of information which states that:

1. Freedom of information has many benefits. It facilitates public participation in public affairs by providing access to relevant information to the people who are then empowered to make informed choices and better exercise their democratic rights. It enhances the accountability of government, improves decision-making, provides better information to elected representatives, enhances Government credibility with its citizens, and provides a powerful aid in the fight against corruption. It is also a key livelihood and development issue, especially in situations of poverty and powerlessness

2. Following a review of the successful experience of Commonwealth freedom of information laws, the Expert Group of the Right to know submits for the consideration and endorsement of Commonwealth Law Ministers, at their forthcoming meeting in Trinidad from 3rd to 7th May, 1999, on Principles and Guidelines on the Right to Know. The Group further recommends that the Law Ministers submit the Principles and Guidelines to the Commonwealth Heads of Governments at their summit in South Africa from 12th to 15th November, 1999 for their consideration and adoption.

III. Third part deals with the principles which states that:

1. Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.
2. The legislation should contain a presumption it favour of maximum disclosure.

3. The right of access may be subject to only such exemptions, which are narrowly drawn, permitting government to withhold information only when disclosure would harm essential interests such as national defence and security, law enforcement, individual privacy or commercial confidentiality, provided that withholding the information is not against public interest.

4. Decisions under the legislation should be subject to independent review capable of ensuring compliance.

IV. Fourth part deals with the guidelines which are as follows:

1. Governments should enact freedom of information legislation containing appropriate administrative measures for its implementation.

2. Governments should permit any individual to obtain information promptly and at low or no cost.

3. Legislation should provide for an independent review of decisions capable of providing an effective remedy in any case of delay or denial.

4. Governments should maintain and preserve records.

5. Government should promote a culture of openness, publicly disseminating information related to the exercise of their functions and the information held by them.

V. Fifth part deals with the role of the commonwealth which provides that:

1. The Commonwealth through its various institutions should take steps to promote these principles and report periodically on their progress in this regard. The Secretariat should report to the Commonwealth Law Ministers about the progress achieved at their meeting in 2002.

2. In particular, the Commonwealth Secretariat should facilitate and assist governments in promoting these principles through technical and other assistance
including measures to promote the sharing of experience between member states and the involvement of civil society in this process.

3. Commonwealth associations and organizations are encouraged to consider ways in which they can contribute to this process.\textsuperscript{104}

3.3.5 \textbf{Freedom of Speech, Right to Know and Right to Privacy as Per Recommendation by 179\textsuperscript{th} Report of Law Commission of India, 2001}

The Chapter IV of the 179\textsuperscript{th} Report of Law Commission of India, 2001\textsuperscript{105} which speaks about the Freedom of Speech, Right to Know and Right to Privacy.

Before discussing the proposals for a Bill enabling public servants to provide information about corruption or mal-administration in their department, it is necessary to refer to the Constitutional provisions relating to freedom of speech, right to know and right to privacy.

Freedom of speech and expression is guaranteed by sub clause (a) of Article 19(1) of the Constitution of India. This right is, however, subject to Article 19(2) which permits law to be made for the purpose of imposing reasonable restrictions in the interests of the sovereignty and integrity of India, the security of State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

In this context, we may point out that Article 19(a) of the Universal Declaration of Human Rights and Article 19(2) of the Covenant on Civil and Political Rights and Art. 10 of the European Convention on Human Rights and Fundamental Freedoms expressly refer to the:

“Freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”

\textsuperscript{104} Ibid.

And this right is, however, subject to restrictions that may be imposed by law, (a) for respecting the rights or reputations of others or (b) for the protection of national security or of public order or of public health and morals.

The Law Commission also emphasized about the provisions in America viz. The First Amendment to the American Constitution also refers to the right of free speech. The American Supreme Court has held in one of the most celebrated judgments in New York Times v. Sullivan,¹⁰⁶ that the ‘central meaning’ of the First Amendment was the:

“Profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public servants”.

The above case involved the right of the public official to seek damages for libel and the court held:

“The constitutional guarantees require ….. a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with ‘actual malice’ – that is, with knowledge that it was false or with reckless regard of whether it was false or not”.

The word ‘Public official’ would include an elected representative, an appointed official and all governmental employees, even those located near the bottom of any organization provided they are government officials ‘who have or appear to have substantial responsibility or control over the conduct of governmental affairs’. In principle, not every person in government is a ‘public official’. His position must be one which could invite the public scrutiny and discussion occasioned by the particular charges in controversy. Again, in relation to what is ‘official conduct’ of the public servant, the law has been laid down expansively.¹⁰⁷ The American Supreme Court held that allegations of ‘laziness, inefficiency and obstruction directed against local criminal court judges were relevant to official conduct of such judges’. Allegations could be ‘anything which might touch on an official’s fitness for office’ and they would be relevant.¹⁰⁸

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¹⁰⁶ (1964) 376 US 254.
¹⁰⁸ Garrison v. Louisiana, (1964) 379 US 64.
Our Supreme Court had occasion to deal with the exposure of the conduct of Government through the media or otherwise. In one of the earliest cases in S. Rangarajan v. P. Jagjivan Ram\(^{109}\) the Supreme Court held that criticism of Government policies was not prohibited though there should be a proper balance between freedom of expression and social interests. But courts cannot simply balance the two interests as if they are of equal weight. The court’s commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest will be endangered. The anticipated damage should not be remote, or conjectural or farfetched. It should have proximate and a direct nexus with the expression.

In Life Insurance Corporation v. Manubhai D. Shah\(^{110}\) the Supreme Court held that there is nothing wrong in requesting the publication of the respondent’s rejoinder in the Life Insurance Corporation’s (LIC’s) inhouse journal though the rejoinder referred to the discriminatory practices of the Corporation which were adversely affecting the interests of a large number of policy holders. This was because the statute required the Corporation to function in the best interests of the community. The Court observed that ‘the community is, therefore, entitled to know whether or not this requirement of the statute is being satisfied in the functioning of the LIC. The LIC was bound to publish the rejoinder of the organization be it, in its inhouse journal, so that the readers who read the magazine obtained a complete picture of the corporation and not the one sided one. The LIC’s refusal to publish the rejoinder was, therefore, violative of the right of the community to know the internal functioning of the Corporation.’

The legal foundation for exposure of corruption, misconduct or maladministration by public servant was laid down by the Supreme Court in R. Rajagopal v. State of Tamil Nadu\(^{111}\). The case involved the publication of serious misconduct of public servants by a convict who was serial-killer. The case squarely deals with the right to know and the limits of privacy of public servants. The Supreme Court referred to the judgments of the

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\(^{109}\) 1989 (2) SCC 574.
American Court in New York Times v. Sullivan\textsuperscript{112} already referred to another judgment of the House of Lords in England reported in Derbyshire v. Times Newspaper Ltd.\textsuperscript{113} The Supreme Court held that while decency and defamation were two of the grounds referred to in clause (2) of Art. 19, still any publication against any person will not be objectionable if such publication was based on ‘public record’. In addition, in the case of ‘public official’, the right to privacy or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon facts and statements which are not true, unless the public official establishes that the publication was made with reckless disregard for truth. In such a case, it would, however, be enough for the person who published the news to prove that he reacted after a reasonable verification of the facts. It is not necessary for him to prove that what he has published is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, damages can be awarded. No doubt, in matters not relevant to his official duties, the public official enjoys the same protection in respect of his privacy as any other citizen (The judiciary, Parliament and legislatures are not subject to these principles and enjoy greater immunity). The above principle does not, however, mean that the press is not bound by the Official Secrets Act, 1923, or any similar enactment.

The above declaration of law by the Supreme Court is of fundamental importance on the subject of exposure of corrupt officials. If the law permits furnishing of information regarding corruption, past, present or impending and gives protection to the informants from reprisals, unless the disclosure is proved to be malicious, such a law can play a very useful role.

Recently, the Supreme Court has traced the origins of the community’s ‘right to know’ from his right to freedom of speech and expression. The Court observed in Dinesh Trivedi v. Union of India\textsuperscript{114} 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

\textsuperscript{112} (1964) 376 US 254.
\textsuperscript{113} 1993(2) WLR 449.
\textsuperscript{114} 1997 (4) SCC 306.
welfare. To ensure that the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the Government and the basis thereof. The Court was dealing with the Vohra Committee Report and stated that though it was not advisable to make public the basis on which certain conclusions were arrived at in that Report, the conclusion reached in that Report should be examined by a new body or institution or a special committee to be appointed by the President of India on the advice of the Prime Minister and after consideration with the Speaker of the Lok Sabha.

It is, therefore, clear that the Supreme Court has accepted that the right to know is part of the fundamental right of freedom of speech and expression guaranteed under Article 19 (1) (a). Of course, it will be subject to the reasonable restrictions, as may be imposed by law under Article 19 (2).

In the light of the above judgment of the American and English Courts and Supreme Court of India, on the question as to the scope of ‘free speech’, the Commission is of the view that a statute enabling complaints to be made by public servants, or persons or NGOs against other public servants and the grant of protection to such complainants is perfectly valid and will not offend the right to privacy emanating from sub-clause (a) of clause (1) of Art. 19. The right to privacy has to be adequately balanced against the right to know. Both these rights emanate from same sub-clause in Article 19.\footnote{Reports of the Law Commission of India, Universal Law Publishing Co. Ltd., New Delhi, Vol. 15, edi. 2010, p. 179.20-179.22.}

It is now recognized that while a public servant may be subject to a duty of confidentiality, this duty does not extend to remaining silent regarding corruption of other public servants. Society is entitled to know and public interest is better served more if corruption or maladministration is exposed. The Whistleblower laws are based upon this principle.

\textbf{3.3.6 Report of National Commission to Review the Working of the Constitution, 2002}

The National Commission to Review the Working of the Constitution was set up vide Government Resolution dated 22\textsuperscript{nd} February, 2000. The terms of reference
stated that the Commission shall examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features. The Commission was required to complete its work and make recommendations within one year. The tenure of the Commission was extended from time to time upto 31st March, 2002. The NCRWC was headed by Justice M.N Venkatachaliah. The Commission submitted its report on 31st March 2002.

The National Commission to Review the Working of the Constitution of India, 2002 among other things with its dimension towards fundamental rights in the present Constitution of India amplified that:

“During the last three decades, a vast number of human rights have found place in new Constitutions and Bill of Rights of more than eighty countries. The countries which enacted three new Constitutions have had the benefit of all the developments in the human rights jurisprudence which have taken place since 1950. Also our Supreme Court has by judicial interpretation expanded the scope of fundamental rights particularly in relation to Article 21 and this has included more civil and political rights which were not explicit in Part III.”

Further a new development in that of the Principle of Basic Structure of the Constitution enunciated by the Supreme Court in 1973 in Kesavananda Bharati v. State of Kerala, as to what are these basic features, the debate still continues. The Supreme Court has also held that the scope of certain fundamental rights could be adjusted by reading them or reading them not only in the light of Directive Principles of State Policy but also International Conventions or Covenants which were in harmony with the fundamental rights.

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117 AIR 1973 SC 1461.
The Commission feels that after 50 years, time is ripe to review and enlarge suitably the contents of some of the fundamental rights, particularly those fundamental rights which have been judicially deduced.

The Commission in its Chapter 3 Para 3.8.1\textsuperscript{119} recognized the Freedom of Press and Freedom of Information, which reads as follows:

“Article 19(1) (a) refers to ‘freedom of speech and expression’. It is proposed that the Article must expressly include the freedom of the press and other media, the freedom to hold opinion and to seek, receive and impart information and ideas. It is also proposed to amend Article 19(2) by adding a further restriction on disclosure of information received in confidence except if required in public interest.”

The Commission recommends that Articles 19(1) (a) and (2) be amended to read as follows:

“Art. 19(1): All citizens shall have the right (a) to freedom of speech and expression which shall include the freedom of the press and other media, the freedom to hold opinions and to seek, receive and impart information and ideas”.

“Art. 19(2): Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or preventing the disclosure of information received in confidence except when required in public interest.”.

The Commission in its Chapter 3 Para 3.12\textsuperscript{120} recognized the Right to Privacy, which reads as follows:

The Supreme Court has included ‘Right to Privacy’ in the ‘Right to Life’ under Article 21. It is, therefore, proposed that a new Article, namely, Article 21-B, should be inserted on the following lines:

\begin{flushright}
\textsuperscript{119} Ibid.
\textsuperscript{120} Ibid.
\end{flushright}
“21-B. (1) every person has a right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the right conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others.”

The Commission in its Chapter 6 Para 6.10\textsuperscript{121} recognized the Right to Information. Para 6.10 of the Report of NCRWC which speaks about the Right to Information states that:

“Major assumption behind a new style of governance is the citizen’s access to information. Much of the common man’s distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes. He remains ignorant and unaware of the processes which vitally affect his interest. Government procedures and regulations shrouded in a veil of secrecy do not allow the clients to know how their cases are being handled. They shy away from questioning officers handling their cases because of the latter’s snobbish attitude and bow-wow style. 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 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 and participatory. Right to information can usher in many benefits, such as speedy disposal of cases, minimizing manipulative and dilatory tactics of the babudom, and, last but most importantly, putting considerable checks on graft and corruption.”


“The object of the Freedom of Information Bill, 2000 now pending before Parliament is to promote transparency in government activity. The public has a right to know what decisions are being taken and why. Dissemination of information about policies and actions in the public realm leads to a more accountable government. This deserves full support. The Commission recommends that the Union Government should take steps to move the Parliament for early enactment of the Freedom of Information Legislation. It will be a major step forward in strengthening the values of a free and democratic society.”

\textsuperscript{121} Ibid.
\textsuperscript{122} Ibid.
3.3.7 State Level Legislations on Right to Information

Unlike any other country, in Indian context, it is the people’s sufferings and grievances that have led to the initiation of campaigning of freedom of information. It is also a truism that Indian people are becoming aware of that supervisory role to the Government. They have been more interested to know about the revenue collected from them and spent on their name.

In absence of the Central Legislation, several Indian States have passed their State Acts on the Right to Information or the executive orders to implement this right. The comparative review of these State laws on right to information shows that various models adopted have different kinds of pros and cons. Some of these State laws have a long list of exceptions and few have adequate provisions for imposing liability for not providing information. The State Level RTI Acts were successfully passed by the following State Governments:

i. Goa Freedom of Information Act, 1997

The Goa Legislative Assembly is the first among the other Indian States to pass the Goa Right to Information Act, 1997. This is, so far, the best of the laws passed in any Indian States, although it still has shortcomings. The objects and reasons emphasized in this Act are the need for the long demands of openness, transparency and accountability in administration. All States Right to Information laws that are in operation have defined “public authorities” in a similar manner. However, Goa laws have added to the above. In Goa the RTI law also recognizes the right of a citizen to seek information from a body that executed public works or service on behalf or of as authorized by the Government.

One of the earliest and most progressive legislation, it has the fewest and reasonable categories of exceptions, a provision for urgent proceeding of requests pertaining to life and liberty, and a penalty clause. Goa Act provides that if any person is aggrieved by an order of the competent authority as to the refusal of any information, he can appeal to the Administrative Tribunal constituted under the Goa Administrative Tribunal Act.

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The Act also lays down that if a person obtains information under this Act for malafide purposes or publishes in any manner information, which he has reason to believe to be false, shall be punished with fine, which shall not be less than ten thousand rupees. This Act does not provide for pro-active disclosure of information by Government.

**ii. Tamil Nadu Right to Information Act, 1997**

In Tamil Nadu, there is Tamil Nadu Right to Information Act, 1997. This Act is narrower in defining information for the purposes of the Act. The legislation stipulates that the authorities should part with information within 30 days of it being sought. The Act does not envisage judicial or quasi-judicial forum for hearing appeals in the matters if any person is aggrieved by an order of the competent authority as to the refusal of any information and lays down that appeal can be made to the Government. This provision thus excludes judicial review and makes the Government a judge in its own cause, which violates a fundamental principle of natural justice of administrative law. All public distribution system shops in the State were asked to display details of stock available. All Government departments also brought out citizens charters listing information on what the public was entitled to know and get. The Tamil Nadu Act contains 21 categories of exceptions. Long list of exceptions have made this Act fairly week. There is no penal provision providing for offences. The absence of these provisions in the Act makes it a mockery on right to information. This Act does not have any provision for pro-active disclosure of information by Government.

**iii. Rajasthan Right to Information Act, 2000**

The Rajasthan Legislative Assembly has passed the Rajasthan Right to Information Act, 2000 (Act No. 13 of 2000) and received the assent of the Governor on the 11th day of May, 2000. The main objective of the Act was to provide for Right to Information to the citizens about the affairs of the State and public bodies. This Act has 13 sections in all. In the Rajasthan Act, ‘information’ means any material or information relating to the affairs of the State or a public body. This Act contains 10 main clauses of exceptions. The Rajasthan Act has provisions of suo-moto disclosure of the information by the State Government and Public Bodies as it may consider appropriate in public interest. The provision relating to penalties clause under this Act are quite weak.
iv. Karnataka Right to Information Act, 2000

The Karnataka Right to Information Act received the assent of the Governor on the 10th day of December, 2000. In this Act information means information relating to any matter in respect of the affairs of the administration or decisions of a public authority. The right to information legislation contains standard exceptions clauses covering 12 categories of information. It has limited provisions for pro-active disclosure, contains a penalty clause and provides for an appeal to an independent tribunal.

v. Delhi Right to Information Act, 2001

The Delhi Legislative Assembly has passed the Delhi Right to Information Act, 2001 (Act No. 7 of 2001) and received the assent of the Lt. Governor of Delhi on the 14th day of May, 2001. This Act has 16 sections in all. This Act was along the lines of the Goa Act, containing the standard exceptions and providing for an appeal to an independent body, as well as the establishment of an advisory body, the State Council for Right to Information. Residents of the capital can seek any type of information, with some exceptions, and from the civic body after paying a nominal fee. The corporation has to provide it within a month, failing which the concerned official could be penalised and are liable to pay Rs. 50 per day for any delay beyond 30 days, subject to a maximum of Rs. 500 per application. It had also clearly stated that wherever the information is found to be false or has been deliberately tampered with, the official would face a penalty of Rs. 1000 per application.

vi. Assam Right to Information Act, 2002

Assam was until recently the only state in the North East which had enacted right to information legislation. The passage of the Assam Right to Information Act, 2002, came as a surprise to most. The State Act was brought in so quietly that there was hardly any discussion on its contents. The Assam Legislative Assembly has passed the Assam Right to Information Act, 2001 (Act No. IX of 2002) and received the assent of the Governor on the 1st day of May, 2002. This Act has 11 sections in all. This Act has no standard format of exceptions but there are provisions relating to an appeal to Controliing Officers as well to the Administrative Tribunal. The Assam Act provides
that where any Incharge of the Office, without any reasonable cause fails to supply the information sought for within the period specified under this Act or furnishes information which is false with regard to any material and which he knows or has reasonable cause to believe to be false shall be liable to disciplinary action by Disciplinary Authority under the relevant service rules governing the services of the officer concerned.

vii. Maharashtra Right to Information Act, 2002

In 2000, a sustained advocacy campaign by social activist Anna Hazare forced the Maharashtra Government to pass the Maharashtra Right to Information Act 2000. However, civil society groups were unhappy with the Act, criticising it for being too weak and demanding that it be replaced with better legislation. In 2001, the Government formed a committee comprising senior serving and retired bureaucrats, such as former Union Home Secretary Dr. Madhav Godbole, eminent jurists and Shri Anna Hazare, to prepare a draft of a Freedom of Information Bill. Before the Committee could release its draft Bill, the Maharashtra Government repealed the Maharashtra Right to Information Act 2000 and replaced it with the Right to Information Ordinance 2002. The Ordinance was promulgated on 23rd September, 2002. However, the Ordinance lapsed on 23rd January, 2003 because, in accordance with Article 213(2) of the Constitution of India, an Ordinance must be converted into an Act within 6 weeks of the commencement of the next session of the Legislative Assembly following the enactment of an Ordinance. In this instance, the Maharashtra Government did not convert the Right to Information Ordinance in the winter session of the Legislative Assembly; hence it lapsed. Public pressure to enact a law on right to information continued. Consequently, in the budget session of the legislature in March 2003, the Maharashtra Government passed the Maharashtra Right to Information Act which it then sent to the President of India for assent. The Act stalled, as no action was taken for months. Finally, on 1st August, 2003, Anna Hazare wrote a letter to Mr L.K. Advani, the Deputy Prime Minister of India requesting him to advise the Honourable President to give his assent to the Maharashtra Right to Information Act. Failing such action, Sri Hazare warned that he would commence a fast unto death. No action was
taken, and on 9th August, 2003 Anna Hazare started his fast. Within one day, the Government responded. On 10th August, 2003, the President of India gave his assent to the Maharashtra Right to Information Act, 2002 and on 11th August, 2003 the Maharashtra Government notified the Act in the Government Gazette. The Maharashtra Right to Information Rules, which were initially prepared under the Maharashtra Right to Information Ordinance, are equally applicable to Maharashtra Right to Information Act, 2002.124 The Maharashtra Right to Information Act has only nine sections in all and appears to be the most restrictive State Law. This Act brings not only Government and Semi-Government bodies within its purview but also State Public Sector Units, Cooperatives, Registered Societies (including educational institutions) and Public Trusts. It means that this Act extended the scope of public authorities and includes within its definition bodies that have received government land at a concessional rate or have received monetary concessions like tax exemptions etc. The Act further provides that PIO’s who fail to perform their duties may be fined upto Rs. 250 for each day’s delay in furnishing information. Where an information officer has wilfully provided incorrect and misleading information or information that is incomplete, the Appellate Authority hearing the matter may impose a fine upto Rs. 2000. The information officer concerned may also be subject to internal disciplinary action. The Act even provides for the setting up of a Council to monitor the working of the Act. The Council shall be comprised of senior members of Government, Members of the Press and Representatives of NGO’s. They are to review the functioning of the Act at least once every six months. Exclusion clause has been reduced to barely ten.

viii. Madhya Pradesh Right to Information Act, 2003

Madhya Pradesh was one of the first States in India to actively engage in securing the right to information for the public. In October 1996, the Commissioner of Bilaspur Division, Mr Harsh Mander, issued executive orders to give people in the Districts of Bilaspur, Raigarh and Sarguja the right to scrutinise Government records pertaining to the public distribution system. In May 1997, at the same time that Tamil Nadu and Goa were passing right to information laws, the Madhya Pradesh Government also drafted a

Right to Information Bill. On 30\textsuperscript{th} April, 1998 the assembly passed the Bill by voice vote. Significantly, after passing the Bill in the State Assembly, the Government chose to send the Bill to the President of India for assent. Unfortunately, it appears that due to a disagreement about whether the states or the Centre have competence to enact right to information laws, Presidential assent was denied to the Bill and it was shelved. As a solution, the State Government issued a number of Executive Orders from February 1998 which operated to allow access to information from close to 50 departments. The series of Executive Orders have been compiled by the Department of General Administration in a book titled ‘Janane Ka Haq’. The Executive Orders specifically identified a number of topics on which Departments were required to provide information to the public. The Orders also provided for appeals on non-disclosure decisions and penalties in accordance with the MP Civil Services Conduct Rules 1965 and the MP Civil Services Classification Control and Appeal Act 1966. Despite the existence of the Executive Orders, the Madhya Pradesh Government in 2003 again decided to pursue legislation on the right to information in order to set up a more comprehensive access to information regime. Ultimately, on 24\textsuperscript{th} January, 2003 the Madhya Pradesh Jankari Ki Swatantrata Adhiniyam, 2002, received the assent of the Governor and on 31\textsuperscript{st} January, 2003 was published in the Madhya Pradesh Gazette.\textsuperscript{125}

This Act has 14 sections in all. The Madhya Pradesh Act does not envisage judicial or quasi-judicial forum for hearing appeals in the matters like if any person is aggrieved by an order of the competent authority as to the refusal of any information and lays down that appeal can be made to the State Government. This provision violates a fundamental principle of natural justice of administrative law. There are provisions of disciplinary action against erring officials.


The Jammu and Kashmir Right to Information Act 2004 (Act No. I of 2004) was passed by the State Legislature on 18\textsuperscript{th} December, 2003 and notified in the Government Gazette on 7\textsuperscript{th} January, 2004. Notably, due to the special constitutional position occupied by Jammu and Kashmir, the Central Right to Information Act 2005 is not

\textsuperscript{125} Ibid.
applicable in Jammu and Kashmir. Civil society groups, activists and advocators of transparency and accountability had been advocating for the adoption of a progressive information access law in J&K. CHRI has worked closely with Government and civil society organizations and activists in the campaign for enacting an Information Access Law in J&K.\textsuperscript{126} This Act has 15 sections in all. Any person responsible for providing any information under this Act shall be personally liable for furnishing information within the period specified under this Act. This Act has standard format of exceptions, third party information. In this Act there are appeal provisions to Controlling Officers as well to the Government. The Assam Act provides that where any Incharge of the Office, without any reasonable cause fails to supply the information sought for within the period specified under this Act or furnishes information which is false with regard to any material and which he knows or has reasonable cause to believe to be false shall be liable to disciplinary action for imposition of such penalty as may be determined by the Disciplinary Authority under such rules.

Again the Jammu and Kashmir Right to Information Act, 2009 was passed by the State Legislature and it received the assent of the Governor on 20\textsuperscript{th} March, 2009. This law replaces an earlier law called the Jammu and Kashmir Right to Information Act passed by the State Legislature on 18\textsuperscript{th} December, 2003 and notified in the Government Gazette on 7\textsuperscript{th} January, 2004.

No doubt these States like Goa, Tamilnadu, Karnataka, Rajasthan, Delhi and Maharashtra have passed Right to information laws in their States, however there is criticism that the working has not been satisfactory.\textsuperscript{127}

\textbf{3.3.8 Other Legislations on Right to Disclosure of Information}

In India, disclosure of information is not the new concept; this concept is also reflected in various other laws provided for the right to access information in specific contexts.

3.3.8.1 The Indian Evidence Act, 1872

Section 76\textsuperscript{128} of the Indian Evidence Act, 1872, contains what has been termed as freedom of information act in embryonic form. This provision requires public officials to provide copies of public documents to anyone who has a right to inspect them.

3.3.8.2 The Factories Act, 1948

Section 41B\textsuperscript{129} of the Factories Act, 1948 (as amended by the Factories Amendment Act, 1987) provides for compulsory disclosure of information by the occupier to the

\textsuperscript{128} Certified copies of public documents: Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written at the foot of such copy that it is a true copy of such document of part thereof, as the case may be, and such certificate shall be dated and subscribed by such document of part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies so certified shall be called certified copies. Explanation – Any officer who, by the ordinary course of official duty, is authorized to deliver such copies, shall be deemed to have the custody of such documents within the meaning of this section.

\textsuperscript{129} Factories Act, 1948 (Act No. 63 of 1948) [As amended by the Factories (Amendment) Act, 1987] Chapter IVA, Provisions relating to Hazardous Processes, Section 41B deals with compulsory disclosure of information by the occupier provides that:

1. The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situate and the general public in the vicinity.
2. The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority and, thereafter, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy.
3. The information furnished under sub-section (1) shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal.
4. Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.
5. Every occupier of a factory shall,-
   a. if such factory engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987, within a period of thirty days of such commencement; and
   b. if such factory proposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process, inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed.
6. Where any occupier of a factory contravenes the provisions of sub-section (5), the license issued under section 6 to such factory shall, notwithstanding any penalty to which the occupier of factory shall be subjected to under the provisions of this Act, be liable for cancellation.
7. The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicize them in the manner prescribed among the workers and the general public living in the vicinity.
factory workers regarding hazardous/risky/dangeous to the health of the workers and the suitable measures to overcome such hazardous acts arising from their exposure to dangerous material.

3.3.8.3 The Environment (Protection) Act, 1986

The Environment (Protection) Act, 1986 (No. 29 of 1986) enacted with the main aim to provide for the protection and improvement of environment and for matters connected there with; provides that whereas the decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment; and whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property.\textsuperscript{130} Section 3\textsuperscript{131} of the Environment (Protection) Act, 1986, provides

\textsuperscript{131} Power of Central Government to take measures to protect and improve environment:

(1) Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:

(i) co-ordination of actions by the State Governments, officers and other authorities-

(a) under this Act, or the rules made there under, or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
power of Central Government to take measures to protect and improve environment. It also provides that it is the responsibility of the concerned authorities to collection and dissemination of information in respect of matters relating to environmental pollution. Further, Section 9 of the Environment (Protection) Act, 1986 provides for the furnishing of information to the authorities and concerned agencies by those who are discharging any environment pollutant in excess of the prescribed standards. The authorities and concerned agencies shall, as early as practicable, cause such remedial measures to be taken as necessary to prevent or mitigate the environmental pollution. Section 20 of the Environment (Protection) Act, 1986 provides that, the Central Government may, in relation to its function under this Act, from time to time, require any person, officer, State Government or other authority to furnish to it or any prescribed authority or officer any reports, returns, statistics, accounts and other information and such person, officer, State Government or other authority shall be bound to do so.

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;
(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;
(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

(3) The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

132 Furnishing of information to Authorities and Agencies in certain cases:
(1) Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which such discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith--
(a) intimate the fact of such occurrence or apprehension of such occurrence; and
(b) be bound, if called upon, to render all assistance, to such authorities or agencies as may be prescribed.

(2) On receipt of information with respect to the fact or apprehension on any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the authorities or agencies referred to in sub-section (1) shall, as early as practicable, cause such remedial measures to be taken as necessary to prevent or mitigate the environmental pollution.

(3) The expenses, if any, incurred by any authority or agency with respect to the remedial measures referred to in sub-section (2), together with interest (at such reasonable rate as the Government may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by such authority or agency from the person concerned as arrears of land revenue or of public demand.
Thus every citizen has the right to know the chemicals to which they may be exposed in their daily living and also has the corresponding duty to provide information regarding environment pollution.

### 3.3.8.4 The Water (Prevention and Control of Pollution) Act, 1974

Section 25(6) of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) provides that every State Board shall maintain a register containing particulars, of the conditions imposed under this section and so much of the register as relates to any outlet, or to 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, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.\(^{133}\)

### 3.3.8.5 The Representation of the People Act, 1951

Section 33A\(^{134}\) of the Representation of the People Act, 1951 provided that:

(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) or section 33, also furnish the information as to whether –

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form the information specified in sub-section (1).


\(^{134}\) Inserted by Act 72 of 2002, s. 2 (w.e.f. 24-8-2002).
(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.\textsuperscript{135}

3.3.8.6 The Official Secrets Act, 1923

The Official Secrets, Act 1923 is India’s anti-espionage Act held over from British colonization. It states clearly that any action which involves helping an enemy state against India. It also states that one cannot approach, inspect, or even pass over a prohibited government site or area. According to this Act, helping the enemy state can be in the form of communicating a sketch, plan, model of an official secret, or of official codes or passwords, to the enemy.\textsuperscript{136}

The Indian bureaucracy has inherited administrative culture of secrecy as a colonial and feudal legacy. Secrecy has been the most common feature of bureaucratic culture. As Max Weber observed: in so far as it can, bureaucratic administration “hides its knowledge and actions from criticism… the concept of the official secret is the specific invention of bureaucracy….” Secrecy was the “order of the day” due to hurdle created by the pre-constitutional law.\textsuperscript{137} Section 3\textsuperscript{138} and Section 5\textsuperscript{139} of the Official Secrets

\textsuperscript{135} Retrieved from <http://lawmin.nic.in/legislative/election/volume%201/representation%20of%20the%20people%20act,%201951.pdf> visited on 17-08-2011.


\textsuperscript{138} Penalties for spying: (1) If any person for any purpose prejudicial to the safety or interests of the State-
(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or
(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or
(c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy [or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States]; he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defense, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Government or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section 10[***] ; it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be
Act, 1923, provides that wherein if any person having in his possession or control any secret official code, password, plan, model, article, note, document or any kind of official information, voluntarily misuses that information. i.e. that the disclosure of that information which is likely to affect the sovereignty and integrity of India, the security of the State, or friendly relations with foreign States, is punishable under this Act. This section makes both the giver as well as taker of the information liable. It is worth convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and form the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document, secret official code or password shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the state.  

Wrongful communication etc. of information: (1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India the security of the State or friendly relations with foreign states or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract—
(a) willfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorized to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State his duty to communicate it; or
(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or
(c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or willfully fails to comply with all directions, issued by lawful authority with regard to the return or disposal thereof; or
(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or password or information;
He shall be guilty of an offence under this section.
(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable grounds to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.
(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty, of an offence under this section.
(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.
important to mention here that the word ‘secret’ or ‘official secrets’ has not been defined anywhere in the Act. The only thing which is clear is that the Act applies only to official secrets and not to secrete of a private nature. As there is no definition of secret in the Act, it is for the Government to decide what it should treat as a secret or not, which essentially gives the Government a carte blanche to decide upon what should be classified as a secret. Therefore, in theory, the Government has the discretion to classify anything and everything as a secret as per the Official Secrets Act.\textsuperscript{140}

### 3.4 CONCLUSION

Keeping in view the above discussion, the researcher has concluded that it is evident from the facts that there is a trend world-wide to have increasing openness, transparency and accountability in the system of governance. There are number of factors, which are responsible for movement of freedom of information at international as well as national level like increased awareness in public about their rights, the need to have a fully accountable and responsive administration and growing public opinion.