Chapter-6

Conclusion and Suggestions Conclusion
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“Let the people know the facts, and the country will be safe.”

– President Abraham Lincoln

CONCLUSION

In a democratic republic country, the Government is of the people, by the people and for the people. The will of the people in a democratic republic is paramount. But there can be no Government by the people if they are ignorant of the issues to be resolved, the arguments for and against different solutions and the facts underlying those arguments. The business of Government is not an activity about which only those professionally engaged are entitled to receive information and express opinions. It is, or should be a participatory process. Government in the democratic set up is the servant of ‘we the people’ and finds itself under an inescapable responsibility to seek the legitimacy from its citizens. Therefore, the rights of citizens against the Government are absolute. However, this is the theory and in practice Government is the legal guardian of the larger public interest and because of this, it often violates citizen’s right under the pretext of ‘public interest’. In Part III of the Constitution, the fundamental rights have been guaranteed essentially to protect the rights and liberties of the people against the encroachment of the power delegated by them to their Government. Article 19(1)(a) of the Constitution guarantees to all citizens the right to ‘freedom of speech and expression’. The freedom of speech and expression means the right to express one’s views, convictions and opinions at any issue freely through any medium, e.g. by words of mouth, writing, printing, films, pictures, movies etc. The expression ‘freedom of speech and expression’ in Article 19(1)(a) has been held to include the right to acquire information and disseminate the same. It includes the right to communicate it through any available media whether print, electronic, or audio-visual, such as, advertisement, movie, article or speech, etc. Thus, the Rights to Information Act flows out from the

fundamental right of freedom of speech and expression. The Right to Information Act, 2005, has provided for setting out the practical regime of right to information for citizens, to secure access to information under the control of every public authority, to promote transparency and accountability in the working of every public authority and to ensure informed citizenry and transparency in governance. However, openness, transparency, accountability and fairness demands equality. The public authorities should provide complete information to its citizens, which is the first human right. It serves three purposes; firstly, evaluation of the Government by citizens, secondly, their participation in the decision making and thirdly, it casts a duty on the electorates to keep eye on the deeds of its representatives and not sit idle for years after exercising their franchise. It has been rightly observed by Henry Clay that:

“Government is a trust, and the officers of the Government are trustees. Both the trust and trustees are created for the benefit of the people.”

The Right to Information Act is a powerful tool in the hands of the citizens for exercising the fundamental right to speech and expression. It empowers the citizens and ensures transparency in the administration. The study shows that the RTI Act has gone considerably farther that in number of areas including independent appeals, penalties for non-compliance, clarity and simplicity of access process. The ground realities and experiences reveal that though the RTI Act has given vast powers to the public yet the problems exist in the implementation of various provisions of the Right to Information Act viz. suo motu, pro-active disclosure of information, excess exemption from disclosure of information, monitoring and reporting, prepare awareness programmes and overriding effects of certain laws. The Act has also caused discomfort to administrators for supplying the information of a long back period. There is an apprehension that the RTI Act may not be allowed to work in its true spirit. The study reveals that public access to information is very limited because of the fact that mechanism is not so effective and man’s brain deliberatively holds back information.

Though the Right to Information Act, 2005, is an effective law of the Parliament but prejudiced its effective implementation due to lack of awareness and education in the

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2 Lovekesh Jain, “The Information Gleaner” Capital Law House, Delhi, p. 3.
masses who are to use it for their welfare. It must be remembered that even such a trial-blazing legislation like the Right to Information Act cannot succeed because people are not vigilant and conscious of their rights and do not make use of this Act dynamically. The Government should take effective steps to ensure that majority of the masses are educated for the survival of the RTI Act for a longer period to serve the masses of the country. The judicial activism is also very necessary for the true implementation of the RTI Act. By this way it will definitely succeed in its purpose and increase public participation. The citizens who are well known of the right to information will perform their duties in a better way. RTI Act in this way can help to build the nation by cooperation of the public and the Government.

According to Fitzgerald Report, 1989, “Information is a lynch-pin of the political process. Knowledge is, quite literally, power. If the public is not informed, it cannot take part in the political process with any real effect.”\(^3\)

The Right to Information Act is a very powerful legislation made by the Parliament based on fundamental right. This Act empowers the citizens to collect information from any department of the Central or the State Government or other private institution those who are substantially financed by the Government. But the implementation of this Act is hindered by the problem that more than 35% population of India is illiterate. Most of the people have not financial resources for obtaining the information from the public authorities. Apparently the fees for obtaining information by the applicant from the Public Information Officer (PIO) is very small. If the information is not supplied properly by the PIO then he has to spend more money for writing/typing, photostat expenses and postage expenses for making appeal to the First Appellate Authority and again if the First Appellate Authority does not supply correct information then again he has to spend the above said expenses. At many times, it delays the information and the purpose for which the information is obtained suffers badly because it takes a process of months together.

The corruption prevailing in the society and in the working of the Government cannot be eradicated without the transparency and openness in the working of Government. A

corrupt administration is the worst enemy of a state, and a corrupt government that rejects both transparency and accountability is not likely to respect human rights. The right to information is a fundamental human right, which is crucial to human development and, therefore, is important for every human being. It is essential that people have as much information about Government as possible. The Right to Information Act is an effective tool in the hands of the people to eradicate corruption. The implementation of the Right to Information Act, 2005, will bring transparency and accountability in the working of all the departments of the Government. In this way RTI is an essential tool in the hands of the citizens to restore accountability and well governance in the working of the Government and to prevent them doing any act detrimental in the functioning of the Government. However, it is needed to be born in mind that the confidential information for the efficient and smooth functioning of the Government cannot be divulged to the public. The Right to Information Act seeks to identify and classify such information that may be readily made available to the public. In this way it would help the public to have access to information and to preserve the true worth of democratic ideals.

The State or Central Governments have provided several facilities through various schemes like food, shelter and education to the poor people. Several times, it has been seen that the people are not well conversant with the intricacies of various schemes and their entitlement under these schemes. In this way they will be forced to accept less than their entitlement or allocation. In addition to the above, the records are sometimes tempered with as no one has any access to the Government records.

In a democratic country, the Government is formed through voting of the people. The trust between the society and the Government is required to be maintained. The free flow of information from the Government can build the trust between the Government and society in a very effective manner. It also improves communications between the Government to make the public administration more efficient and effective. No Government can survive without the support of the public in a democratic country. It is utmost necessity that whatever the ideas or information of the Government is, should flow to the public. This will help the society to grow and flourish in a decent manner in the democratic country. The Right to Information Act is an essential and vital tool to ensure transparency and accountability in governance.
The study also reveals that most of the persons appointed on the post of Chief
Information Commissioner and other Commissioners both at the Centre and the State
level are retired bureaucrats who have generally in the habit of storing the information
rather than disseminating the information.

The common citizen of the country cannot be expected to enjoy this right through the
provisions of the Act, because of the fact that a selective class of people has the reasons
and the mindset to resort to the legal provision envisaged under the Act. Actually, the
educated class and the persons who are financially strong can be benefitted by this Act
for obtaining the information from the concerned public authorities. They have many
sources with them viz. taking the advice of the advocates, good drafting and to the point
information. Those people who have strong financial and political background or
approaches would be able to obtain the information easily by obliging the public
authorities under the table.

The researcher feels that non-supply of information, wrong-supply of information,
incomplete information or delay in providing the information by the public authorities
can violate the right to information and forfeit the purpose for which the RTI Act has
been enacted. There is no remedy in real sense provided against the violation of the
right to information which flows from the fundamental freedom of speech and
expression under Article 19(1)(a) of the Constitution. If there is no source of
information, how can this be passed on to others. The right to know, receive and impart
information being the fundamental right, the constitutional remedies under Articles 32
and 226 of the Constitution of India are though available but in a restricted way after
exhausting all the channels available under the Act or in case there is no alternative
remedy. Because one-sided information, dis-information, mis-information, incomplete
information and non-supply of information, all equally create uninformed citizens
which makes democracy a farce when medium of information is monopolized either by
an adherent central authority or by private individuals or obligatory organizations.

The right to information flows from the fundamental freedom of speech and expression
under Article 19(1)(a) of the Constitution of India and falls in the category of
fundamental rights. The Supreme Court first time in *State of Uttar Pradesh v. Raj*
Narain\textsuperscript{4} has held that Article 19(1)(a) not only guarantees freedom of speech and expression but also ensures and comprehends the right of citizens to know, the right to receive information regarding matters of public concern. In \textit{S.P. Gupta v. Union of India}\textsuperscript{5} the Supreme Court has held that \textit{right to information is a fundamental right} and is closely connected with other fundamental rights, such as right to equality before law, freedom of speech and expression, protection in respect of conviction and offences, right to life and liberty, protection against arrest and detention in certain cases. All these rights shall be unfulfilled if right to information is not granted ahead of all rights. In \textit{Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal}\textsuperscript{6} the Supreme Court further reiterated the proposition that the freedom of speech and expression guaranteed by Article 19(1)(a) includes the right to acquire information and to disseminate the same. In \textit{Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers (Bombay) Pvt. Ltd.}\textsuperscript{7} the Supreme Court recognized the right to know as emanating from right to life under Article 21 of the Constitution. The Court declared that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broaden horizon of the right to live in this age on our land under Article 21 of the Constitution.

Right to information as part of the fundamental right of freedom of speech and expression is well established in our constitutional jurisprudence. Any restriction on the fundamental rights of the citizens in a democratic polity is always looked upon with suspicion and is invariably preceded by a great deal of thought and reasoning. Even the Parliament, while restricting any fundamental rights of the citizens, is very wary. Therefore, the Commission is of the view that the Commission, an adjudicating body which is a creation of the Act, has no authority to import new exemptions and in the process curtail the fundamental right to information of citizens.\textsuperscript{8}

\textsuperscript{4} AIR 1975 SC 865, 884.  
\textsuperscript{5} AIR 1982 SC 149.  
\textsuperscript{6} AIR 1995 SC 1236.  
\textsuperscript{7} AIR 1989 SC 190.  
\textsuperscript{8} Mangla Ram Jat v. PIO, Banaras Hindu University, Appeal No. CIC /OK/A/2008/00860 dated 31\textsuperscript{st} December, 2008.
The Supreme Court in *K.K. Kochuni v. State of Madras*⁹ held that the existence of an alternative relief is no ground for the refusal to the grant of remedy under Article 32. The Court further held that though the existence of an adequate legal remedy was a thing to be taken into consideration in the matter of granting prerogative writs. This was not an absolute ground for refusing a writ petition under Article 32 of the Constitution, because the powers given to the Supreme Court under Article 32 were much wider and were not confined to the issue of prerogative writs only. However, the Supreme Court ordinarily insists that the alternative remedy should be availed of, unless it is of no avail to the petitioner.¹⁰ In *T.K. Rangarajan v. Government of Tamil Nadu*¹¹ refusal to entertain writ petition on the ground of existence of alternative remedy, in very exceptional situation, has been held to be unjustified. The Supreme Court in *Shiv Shanker Dal Mills v. State of Haryana*¹² has held that the writ petition cannot be turned down on the negative plea of alternative remedy and it must be sustained on the basis of the rule ‘*ubi jus ibi remedium*’ and ‘*equity*’. The Supreme Court in *Namit Sharma v. Union of India*¹³ has observed that:

“Under the scheme of the Act of 2005, it is clear that the orders of the Commissions are subject to judicial review before the High Court and then before the Supreme Court of India. In terms of Article 141 of the Constitution, the judgments of the Supreme Court are law of the land and are binding on all courts and tribunals. Thus, it is abundantly clear that the Information Commission is bound by the law of precedence, i.e., judgments of the High Court and the Supreme Court of India. In order to maintain judicial discipline and consistency in the functioning of the Commission, we direct that the Commission shall give appropriate attention to the doctrine of precedence and shall not overlook the judgments of the courts dealing with the subject and principles applicable, in a given case. It is not only the higher court’s judgments that are binding precedents for the Information Commission, but even those of the larger Benches of the Commission should be given due acceptance and enforcement by the smaller Benches of the Commission. The rule of precedence is equally applicable to intra appeals or references in the hierarchy of the Commission.”

⁹ AIR 1960 SC 1080.
¹⁰ Y. Theclamma v. Union of India, AIR 1987 SC 1210.
¹¹ AIR 2003 SC 3032.
¹³ Writ Petition (Civil) of 210 of 2012 decided on 13th September, 2012.
In the light of the above mentioned cases the researcher argues that right to information is a fundamental right and in case non-supply of the information demanded, delay in providing the information, wrong supply of information, rejection of the application without assigning any reasons by the Public Information Officer at the first stage should be treated as violation of the fundamental right to information under Article 19(1)(a) of the Constitution and remedies under Articles 32 and 226 of the Constitution of India should also be granted.

The study of Chapter II titled “Concept, Meaning and Scope of Freedom of Speech and Expression” reveals that the freedom of speech and expression is a very important fundamental right. It is indispensable for the development of one’s own individuality and for the success of parliamentary democracy. The freedom of speech is regarded as the first condition of liberty. It occupies a preferred and important position in the hierarchy of the liberty. It is truly said about the freedom of speech that it is the mother of all other liberties. In a democracy the right to free expression is not only the right of an individual but rather a right of the community to hear and be informed. The Universal Declaration of Human Rights particularly in its Article 19 states that everyone has right to freedom of opinion and expression. This right includes freedom to hold opinion without interference and to seek, receive and import information and ideas through media and regardless of frontiers. Part III of the Constitution of India under Article 19(1)(a) provides fundamental freedom of speech and expression which means the right to express one’s conviction and opinions freely by words of mouth, writing, printing, pictures, photographs, cartoons or any other mode. It means freedom of speech and expression is to express one’s convictions and opinions or ideas freely, through any communicable medium or visible representation, such as gestures, signs and the like. It means to freely propagate, communicate or circulate one’s opinion or views. The Indian Judiciary has done a marvelous job by expanding the horizon of freedom of speech and expression under Article 19(1)(a) of the Constitution. Indian Judiciary has included freedom of press, right to reply or answer the criticism against one’s views, right to fly national flag, right to remain silent, right against noise pollution and right to information etc. under the ambit of Article 19(1)(a) of the Constitution by pronouncing various judgments. Whenever the laws were warranted, the judiciary has tried to fill the gaps by a liberal interpretation of the existing laws in force.
In modern State, it has been realized that freedoms cannot be guaranteed in absolute terms and cannot be uncontrolled. For an organised society it is a pre-condition for civil liberties. While absolute power results in tyranny, absolute freedoms lead to ruin and anarchy. Justice Patanjali Shastri observed that:

“Man as a rational being desires to do many things, but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals.”

The limitations imposed by Articles 19(2) to 19(6) on the freedoms guaranteed by Articles 19(1)(a) to (g) of the Constitution serve two fold purposes, viz.,

i) They specify that these freedoms are not absolute but are subject to regulations;

ii) They put a limitation on the power of a legislature to restrict these freedoms. A legislature cannot restrict these freedoms beyond the requirements of Articles 19(2) to 19(6).

It is necessary to maintain and preserve freedom of speech and expression in a democracy, so also it is necessary to place some curbs on this freedom for the maintenance of social order. Article 19(2) specifies the grounds to which reasonable restrictions on the freedom of speech and expression can be imposed viz. security of State, friendly relations with foreign States, public order, decency or morality, contempt of Court, defamation, incitement to an offence, sovereignty and integrity of India.

In spite of constitutional provisions, which guaranteed fundamental rights, there is a need for separate law on freedom of information because the provisions of Part-III are not only providing the fundamental rights, these are just the enabling clauses authorizing the Parliament to enact laws for creating the provisions for interpretation of various fundamental rights enshrined in Part III of the Constitution of India. Our society needs comprehensive legislation on each and every right guaranteed under Part III of the Constitution. That is why, right to information must be guaranteed by a strong legislation and the process of law-making itself must be participatory.

The study of Chapter III titled ‘Genesis of Right to Information: International and National Perspective’ reveals that right to information is not a new concept. It has a long history. 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 phrase ‘freedom of information’ originated in the United States. But Sweden, in 1766, was the first to enshrine a right to access to information in its laws. From the very beginning, freedom of information was recognized as a fundamental right within the United Nations (UN). On 14th 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:

“Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated.”

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10th December, 1948. 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.”

American Declaration of the Rights and Duties of Man of 1948, Rome Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, International Covenant on Civil and Political Rights of 1966, African Charter on Human and Peoples’ Rights of 1981, Rio Declaration on Environment and Development of 1992, and many more conventions and declarations emphasised on the freedom of information. 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. In India, the need for Right to Information
has been widely felt in all sectors and this right has received judicial recognition through some landmark judgments of Indian Courts. A Supreme Court judgment\textsuperscript{15} delivered by Justice Mathew is taken as a milestone. In this case the Court held that the people of this country were entitled to know the particulars of every public transaction in all its bearing. But, the right to information campaign in India began in the remote village Dendungri in Rajasthan during 1987 with Mazdoor Kisan Shakti Sangathan (MKSS) movement to bring transparency in accounts. The movement soon spread across India. In 1993, a draft RTI Law was proposed by the Consumer Education and Research Council, Ahmedabad (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. Information that cannot be denied to Parliament or State Legislatures cannot be denied to a citizen either. The draft was updated and renamed as Freedom of Information Bill, 1977. Unfortunately, it was not seriously considered by the Government. Meanwhile MKSS gave rise to the National Campaign on Peoples Right to Information (NCPRI), which was formed to advocate for the right to information at the national level. Constituted in 1996 in New Delhi, the NCPRI aims to provide active support to grass root level struggle for the right to information. In 1997, in a Conference of Chief Ministers, efforts to legislate for the right to information, at both the State and National levels, quickened. A working group under the chairmanship of Mr. H. D Shourie 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. Notably, the draft law was criticized for not adopting a high enough standard of disclosure. Eventually the Shourie Committee draft law was reworked into the Freedom of Information Bill 2000 an even less satisfactory Bill than the Shourie Committee’s recommendations, which consulted with civil society groups before submitting its Report in July 2001. The Committee recommended that the Government addressed the flaws in the draft Bill pointed out by the civil society. Unfortunately, the Government did not implement those recommendations to the

The National Freedom of Information Bill 2000 was introduced in Parliament in 2002. It was passed in December 2002 and received Presidential assent on January 2003, as the Freedom of Information Act, 2002. Unfortunately, a date for the Bill coming into force was never notified, such that it never actually came into operation. On 10th May, 2005 the RTI Amendment Bill, 2005, was tabled in the Lok Sabha. The Bill was passed very quickly. It was approved by the Lok Sabha on 11th May, 2005 and by the Rajya Sabha on 12th May. On 15 June 2005, President gave his assent to National Right to Information Act, 2005. With presidential assent, the Central Government and State Governments had 120 days to implement the provisions of the Bill in its entirety. The Act formally came into force on 12th October, 2005 (120th day of its enactment on 15th June, 2005). 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.

The study of Chapter IV titled ‘Analysis of Right to Information Act, 2005’ reveals that the Right to Information Act is one of the strongest indications of India’s growing strength and reputation as democratic country.

In this chapter analysis of various definitions of the RTI Act, 2005 has been made, inclusive as well as in exclusive way, which reveals that as far as the Right to Information is concerned, a body which is neither a ‘State’ for the purpose of Article 12 of the Constitution of India nor a body discharging public functions for the purposes of Articles 32 & 226 of the Constitution of India might still be a ‘public authority’ within the purview of section 2(h)(d)(i) of the Right to Information Act, 2005. To explain further it will be noticed that in all the decisions concerning the interpretation of the word ‘State’ under Article 12 of the Constitution, the test evolved is that of ‘deep and pervasive’ control whereas in the context of the RTI Act, there are no such qualifying adjectives ‘deep and pervasive’ vis-a-vis the word ‘controlled’.
The President of the United States, James Madison said that:

“A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”

The Hon’ble Mr. Justice Badar Durrez Ahmed and Ms. Justice Veena Birbal of Delhi High Court have observed in Delhi Development Authority v. Central Information Commission\(^\text{16}\) that:

“Thus the flow of information is not to be an unregulated flood. It needs to be controlled just as the flow of water is controlled by a tap. Those empowered to handle this tap of information are imbued with great power. Under the said Act, this power is to be exercised by the Information Commissions (State and Central). But, the power is clearly not plenary, unrestricted, limitless or unguided. The Information Commissions are set up under the said Act and they have to perform their functions and duties within the precincts marked out by the legislature.”

The study also reveals that no doubt, Parliament has passed the Right to Information Act with the objective to bring transparency, openness and accountability in the working of the public authorities, but general public is still facing the number of problems in accessing the information. These are from both sides i.e. administrative and public. The problems are, no proper training to the Public Information Officers, poorly maintained official record, culture of secrecy prevalent in the Government offices, rude attitude of the officers, poor quality of information provided, no stick rules for suo moto dissemination of information, corruption, less deterrent penal provisions, lack of awareness and illiteracy etc.

The study of Chapter V titled ‘Role of Judiciary for the Protection of Right to Information in India’ reveals that right to information is known as the brain child of Indian Judiciary and found its existence in the realm of rights in India through various decisions of Judiciary. It reveals that the judiciary has played a very active role for the protection of right to information in India. The judiciary has expanded its role for the protection of right to information into different horizons viz. Right to Information as a

\(^{16}\) Writ Petition (Civil) No. 12714 of 2009 decided on 21\(^{st}\) may, 2010.
part of Article 19(1)(a) of the Constitution, Right to Information as a part of Article 21 of the Constitution, Right to Information and Freedom of Press, Right to Information nexus with Prisoner’s Right, Voter’s Right, Consumer’s Right, Environment related rights, Rights of the Arrested Persons and Student’s Rights etc. Journey of judiciary for the protection of right to information since State of U.P. v. Raj Narayan till Subhash Chandra Aggarwal and Others v. Indian National Congress (INC)/All India Congress Committee (AICC) and Others have been analyzed by the researcher in this study.

SUGGESTIONS

The researcher has attempted to analyse upon the statutory provisions as well as the judicial decisions pertaining to the Right to Information Act, 2005, and the challenges that come up in the enforcement and implementation of such a law which has far-reaching consequences. The researcher has tried to suggest some modifications and possible amendments to the Right to Information Act, 2005, which are as follows:

1. Need to include Private Bodies in the meaning of Public Authorities

In the current scenario, the privalization and liberalization of all the public works have immensely increased. The Government has shifted their responsibilities to private sector in a large scale mostly in all the departments of the Government. Under the Right to Information Act, 2005, information can be accessed from private bodies or non-

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17 State of U.P. v. Raj Narayan, AIR 1975 SC 865. Also see Tamil Nadu Road Development Co. Ltd. v. Tamil Nadu Information Commission, AIR 2009 (NOC) 542 (Mad.).
18 Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay P. Ltd., AIR 1989 SC 190.
19 Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal, AIR 1995 SC 1236.
21 Dinesh Trivedi, M.P. v. Union of India, (1997) 4 SCC 306. Also see People’s Union for Civil Liberties v. Union of India, AIR 2003 SC 2363.
23 Bombay Environmental Group and Others v. Pune Cantonment Board, AIR 1982 SC 149
26 AIR 1975 SC 865.
27 Complaint No. CIC/SM/C/2011/001386 and CIC/SM/C/2011/000838 dated 3rd June, 2013. (Complaint against six major political parties of India)
governmental organizations who are substantially financed directly or indirectly by funds provided by the appropriate Governments. Thus, information related to private bodies can be accessed only in a limited way. In the era of privatization and liberalization, the Government projects are generally provided to the private companies. Our country is a democratic republic. The people should have an access to all the acts and deeds of the private companies where the interest of the Government is involved. Private bodies should not be kept out of the purview of the RTI Act for supply of every information to the public. To achieve this purpose there is a strong need to include the private bodies in the Right to Information Act, 2005 by making amendments in the Act.

Justice Prabha Sridevan, in her lecture delivered at the Law Faculty in the University of Madras on 29th March, 2007, highlighted the importance of RTI Act and its necessity to apply in the Non-Governmental Organisations in the following lines:

“Ideally the new Act, Right to Information Act should apply to all the sections of society and not actually to the governmental sector. Non-Governmental Organisations Charitable Trusts or Trade unions should be just as accountable and as transparent as the Government in developing democracy. There should be proactive distribution of information.”

It would be pertinent to submit here that on 16th October, 2011, at the Sixth Annual Convention of the Central Information Commission, Bihar Chief Minister, Nitish Kumar made a strong push for expanding the scope of Right to Information (RTI) Act, demanding that corporate sector and public-private-partnership (PPP) projects be brought under the ambit of the RTI Act. He also emphasized that corporate sector and public-private-partnerships have shareholders money as well as investment from institutions and they should not hesitate to supply information to the public as they have the right to know what is going in the corporate sector.28

2. Word ‘Person’ should be substituted in place of ‘Citizen’

To expand the sphere of RTI Act, it is necessary that the word ‘person’ should be substituted in place of ‘citizen’ in the RTI Act, 2005. As it is clear from the ruling made

in Treesa Irish v. Central Public Information Officer the Court held that the right to information is not merely a statutory right created by the RTI Act, 2005. It is essentially a fundamental right guaranteed by the Constitution of India. The freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution includes within its ambit the right to know, receive and disseminate the same. Again in Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay it was clearly affirmed by the Court that the people at large have right to know and right to know is also a basic right under Article 21 of the Constitution. Article 21 of the Constitution says that ‘no person shall be deprived of his life or personal liberty except according to procedure established by law’. In Article 21 word ‘person’ has been used rather than citizen. Thus, the fundamental right guaranteed under Article 21 equally applies to non-citizens i.e. foreigners. It is evident from the various cases decided by the Apex Court that non-citizens are also entitled to the protection of Article 21. This word ‘person’ is being used in various Freedom of Information Acts of other countries instead of the word ‘citizen’. Thus, the amendment in the RTI Act is essential for expanding the sphere of right to information for its applicability to large number of people.

3. Suo Motu or Pro-active Disclosure of Information

Section 4 of the RTI Act is very important which imposes certain obligations on the public authorities to disclose certain information which are basic for the fair treatment in the office. The terminology used in section 4 of the Act that ‘every public authority shall’ explicitly imposes mandatory obligation on the public authority. It means every public authority is bound to maintain and computerise their records for wide dissemination and to pro-actively publish certain categories of information so that the citizens need minimum recourse to request for information formally. The Supreme Court in the case of Central Board of Secondary Education and Another v. Aditya Bandopadhyay and Others held that the provisions of the Act should be enforced

29 2010 (3) KLT 965.
30 AIR 1989 SC 190.
31 UK provides this right to any person except ‘alien enemies’.
strictly and all efforts should be made to bring into light the necessary information under section 4, which relates to securing transparency and accountability in the working of public authorities and in discouraging corruption. The main objective of section 4 is to make the information available by a public authority at the doorstep of the citizens. Under section 4(1)(a) of the RTI Act, every public authority is required to maintain all its records duly catalogued, indexed, systematically placed and as far as possible to computerize and section 4(1)(b) prescribes as many as 17 manuals in which complete information regarding the functioning of every department and public authority has to be published on the public domain within the stipulated time period and update the said data on periodical basis as per the provisions of the Act.

Now the question is how many public authorities have published these particulars through various means of communication including websites, periodicals, records and notice boards etc. These public authorities are also bound to update the data at regular intervals as prescribed under the Act. There is no provision incorporated under section 4 of the RTI Act, in case the public authority fails to observe the provisions of section 4 of the Act viz. maintain, publish and update the records etc. The maintenance of the records by the public authority is an essential requirement under the provisions of section 4 of the RTI Act. This will help the PIO and the Appellate Authority to provide the information to the applicant or general public correctly without loss of precious time and money. Failure to follow the statutory provisions of the Act should not be taken lightly by the Government. It requires that every statutory provision must be followed and implemented in letter and spirit. The Government should make some provisions in the Act for periodical review to know the functioning of every Government department and for penalizing those officials/officers who do not follow the provisions laid down under section 4 of the Act. The amendment is required to be made under section 4 of the RTI Act by the Parliament.

4. Training to Public Information Officers (PIOs)

The researcher has observed that mostly the Public Information Officers appointed are not fully conversant with the rules and orders of their departments due to lack of proper training. Either they provide incorrect information or they do not supply the information
to the applicant. The applicant then approaches to the next appellate authority for compliance of the correct information. Thus, in most of the cases the real purpose is defeated emensely. Apart from this, the applicant has to spend more money and time to collect the correct information from the concerned authority.

The Public Information Officer plays an important role in the hierarchy of the Right to Information Act for its smooth functioning. In the RTI Act the information is called for from the public information officer at the first instance. If the PIO is fully trained and well conversant of the rules and orders prevalent in the department, he will be able to provide the information to the applicant in time. By this way, the department will save time and energy of the Government and the applicants. The appropriate Government should design such training programmes for the public information officers, so that they are made fully aware of the mechanism of their department. Thus, they will be able to give correct information called for under the Right to Information Act, 2005, at the first instance to the applicant. This will enable to save the time and energy of both the ends.

5. Grounds of Exemption from Disclosure of Information should be Reduced

The Right to Information Act, 2005, is a more expressive and explicit Act casting not only more onerous duties on Government authorities but also more explicit instructions to the government officials. The exemptions or limitations inherited by the Right to Information Act, 2005 are very wide and vague. Because of this, the State restricts the person to get information from the restricted areas. The object of the RTI Act to supply the information to the citizens will suffer badly due to the long list of exemptions laid down in the Act.

The list of exemptions from disclosure of information has been enumerated under section 8 of the RTI Act, 2005. It is a known fact that right to information flows from the fundamental freedom of speech and expression under Article 19(1)(a) of the Constitution. The reasonable restrictions or limitations or exemptions imposed on fundamental freedoms have also been provided under Article 19(2) of the Constitution viz. security of state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, incitement to an offence, sovereignty and
integrity of India. The long list of exemptions from disclosure of information laid down under sections 8, 9 and 24 should be reduced to the level of reasonable restrictions provided under Article 19(2) of the Constitution of India. The Government should take effective steps for making suitable amendments under the provisions of the RTI Act.

6. Grass Root Level Awareness

Our country has the largest number of illiterate people as per the official records. Large number of people do not have access to basic education. These masses cannot fully use their entitlements under the different laws of the country due to lack of education. The Government endeavourment towards providing basic education to all these people are meagre and slow. The Government must take effective steps to provide basic education throughout the country to make use of their entitlements and rights under different laws. The researcher feels that a person who is ignorant of their rights due to lack of education, how he can exercise his rights and duties. The Government should take effective steps for imparting education and awareness among the people to effectively implement the Right to Information Act. Right to Information Act is still in its infancy. There is an urgent need to build awareness on this issue of demand for information. The right to information is a fundamental human right, which is crucial to human development and is important for the every human being. It is essential that people have as much information about Government as possible. Section 26 of the Right to Information Act indicates a long list of activities to be undertaken by the Government to make the Act really functional and to enable the right to information to grow and flourish. The people have to be educated by way of various programmes to be conducted by the Government. Those people who are living in remote corners, especially of the illiterate class, need to be enlightened about its utility. They need to be encouraged to come forward and get their personal problems mitigated through its use. For this purpose both public and the Government have to be acquainted with new procedure and proceedings to educate the people and to impart training to the Government officials to meet with the new challenges. The Government officials have to be trained to play a pro-active role in this matter. They have to be more open and participative to ensure dissemination of information timely and in an effective manner.
Thus, grass root level awareness about the Right to Information should be provided in the real sense to the weaker sections of the society. The Government should play a pivotal role to make the masses aware of their right to information through awareness programmes viz. T.V. programmes, puppet shows, dramas, awareness camps, designed syllabi for the students, nukad shows etc. The researcher feels that the press and the media can also play an effective role to create awareness among the public of their right to information. Media is an effective instrument with the help of which the important information can be got delivered to the public. Moreover, civil society organisations, as watchdogs of the political process, should also show their importance to use this Act to obtain and disseminate information that is of interest to the public at large. The researcher thinks that the Non-Governmental Organisations should be given vast powers to access information from the Public Departments on behalf of the educationally, economically and socially weaker section of the country.

7. Bringing First Appellate Authority under the Penal provisions of the RTI Act

Section 20(1) of the Right to Information Act provides that where the Central/State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central/State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under subsection (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees.

The Right to Information Act has provided three channels for exhausting the process of supplying the information to the citizens viz. Public Information Officer (PIO), First Appellate Authority (FAA) and Central/State Information Commission (CIC/SIC). The main responsibility lies on the PIO to accept the application and provide the correct information to the applicant. The researcher has seen that the First Appellate Authority
is the higher official authority of the PIO. The Appellate Authority generally does not scrutinize the information supplied by the PIO whether it is correct or needs some correction before disposing of the first appeal by him. He often tries to save the PIO and does not care whether the PIO has supplied the information correctly to the applicant or not. Generally, he is required to scrutinize the information supplied by the PIO thoroughly before deciding the First Appeal under the RTI Act but he does not take effective steps to remove the shortcomings of the reply made by the PIO. To bring the transparency, openness and accountability in deciding the appeal by the First Appellate Authority (FAA), the researcher strongly recommends that the First Appellate Authority should also be included within the penal provisions of the RTI Act to safeguard most effectively the interests of the citizens.

8. Amendments in Overriding Acts upon RTI Act

Section 22 of the RTI Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. These Acts have not been revoked but the same have been superseded to the extent that these Acts come into conflict with the provisions of this Act. In other words, these Acts shall remain in force in statute books but shall cease to operate to the extent to which they are inconsistent with the provisions of RTI Act. The RTI Act is a very useful tool in the hands of the citizens and this Act has been creating supremacy over the other legislations with the motive that the scheme is not subverted through the operation of other minor Acts. For instance, any provision of the Official Secrets Act, 1923, which prohibits the disclosure of certain information and if the same is allowed under the RTI Act, 2005, the information shall be disclosed notwithstanding the provisions otherwise provided under the Official Secrets Act, 1923.

The Shourie Committee has recommended a comprehensive amendment of section 5(1) of the Official Secrets Act, 1923, to make the penal provisions of the Official Secrets Act (OSA) applicable only to violations affecting national security. However, the Ministry of Home Affairs, on consultation expressed the view that there is no need to amend OSA as the RTI Act has overriding effect. Even the Fifth Pay Commission in its
report in 1997 advocated amendment in Official Secrets Act to ensure transparency in Government functioning. The United Front Government constituted a committee to look into the matter and give necessary recommendations. However, nothing concrete came out of it.

The researcher feels that the Government should make amendment in section 5 of the Official Secrets Act, 1923, mainly when there is right to information available at present. The researcher recommends that all the overriding Acts which are not inconsistent with the Right to Information Act should be amended with the motive to bring uniformity in these Acts.

9. Word ‘to the extent availability of financial and other resources’ should be substituted by the word ‘provide sufficient funds and other resources’ under section 26(1) of the RTI Act, 2005

Non-availability of funds by the Government will also hinder the implementation of the Right to Information Act for its smooth and real functioning. This section indicates a long list of activities to be undertaken by the Government to make the Act really functional and to enable the right to information to grow and flourish. The adequate funds are essential requirements for developing and organizing educational programmes, promote timely and effective dissemination of accurate information by public authority and to train public information officers. The Parliament while drafting the RTI Act has shown its cleverness that the Governments have been given the excuse of non-availability of sufficient funds to prepare programmes for smooth functioning of the Act. The appropriate Government should supply sufficient funds and other resources to achieve the objects mentioned under section 26 of the RTI Act. The opening line of section 26(1) of the RTI Act needs to be amended and substituted with the word ‘provide sufficient funds and other resources’ instead of ‘to the extent availability of financial and other resources’. This will help to obtain full results for the proper implementation of the RTI Act in the real sense. A budget should also be sanctioned or allotted for Right to Information Act, so that publicity can be made effectively.
10. Safeguards for Whistleblowers

A whistleblower is a person who raises a concern about wrongdoing occurring in an organization or body of people. Usually whistleblowers are from the same organization. The revealed misconduct may be classified in many ways like a violation of a law, rule, regulation and/or a direct threat to public interest, such as fraud, health/safety violations and corruption. Whistleblowers may make their allegations internally (for example, to other people within the accused organization) or externally (to regulators, law enforcement agencies, to the media or to groups concerned with the issues). The whistleblower is considered a hero or a traitor, a do-gooder or a crank, a role model or a non-conformist troublemaker depending on one’s point of view. Whistleblowing is a universal phenomenon. It is true that under normal circumstances, an organisation is entitled to total loyalty and confidentiality from its employees. But when there is serious malpractice or when people’s lives are at stake, as corruption and fraud in defence procurement; deaths in ‘encounter’ of innocent persons; toxic leaks from a chemical factory; non-adherence to flight safety standards by an airline; creative accounting and false declarations by a company. Whistleblowers have been murdered for exposing scams across the country. Thus, there is a great need to enact whistleblowers’ safeguards law for the good governance of the Government. The amendment should be made in the Right to Information Act for safeguards of the whistleblowers who put their life in risk to disclose the malpractices, mismanagement, corruption and inefficiency in the Government and public sector departments.

Whistleblower protection in India refers to provisions put in place in order to protect someone who exposes alleged wrongdoing. The wrongdoing might take the form of fraud, corruption or mismanagement. Initially, India did not have a law to protect whistleblowers; however, the Public Interest Disclosure and Protection to Persons Making the Disclosure Bill, 2010, was approved by the Cabinet of India as part of a derive to eliminate corruption in the country’s bureaucracy.33

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33 The Anti-Corruption, Grievance Redressal and Whistleblower Protection Bill, 2011.
11. Misuse of RTI Act

The Government has implemented the Right to Information Act, 2005 for transparency, openness and accountability for the good governance and transmission of the acts of the Government to the public. It is just like a fundamental right of the citizens to obtain the information from the public and private authorities. It has been observed from the various instances occurred where the information was obtained by the applicant under the RTI Act and mis-used for their purpose to blackmail the concerned person and damage his reputation before others. The society suffers badly for the misuse of the information obtained. This results in wastage of Government time and money and no object is achieved. The researcher strongly recommends that in case any information obtained under the RTI Act is misused by the applicant to damage the reputation of other persons for nothing but to achieve their misgoal, the Government should consider this important aspect for making amendments in the Act and to impose suitable penalty to the mis-user of the Right to Information. The imposition of penalty will create fear among the applicants who misuse the information.

The study can be concluded with the following observation of the father of the nation, Mahatma Gandhi:

“The real Swaraj will come not by the acquisition of authority by a few but by the acquisition of capacity by all to resist authority when abused.”

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