CHAPTER 5

SCOPE OF PUBLIC ACCOUNTABILITY

5.1 Introduction

Accountability simply means that if a public officer abuses his office, either by an act of omission or commission, and in consequence of that there is an injury to an individual or the public at large, he must be held responsible for it. Accountability is one of those golden concepts that no one can be against. It is increasingly used in political discourse and policy documents because it conveys an Image of Transparency and trustworthiness.\(^{674}\)

A government can’t act in an arbitrary manner against the people, many scholars link the *magna carta’s* concept of non-arbitrariness to the current Rule of Law concept to the western world of law, the great gift of the *magna carta*, signed in 1215, was the generation that no person shall be secure from the arbitrary exercise of the power of government, the *magna carta* is the spiritual and legal ancestor of the concept of the rule of law.\(^ {675}\)

The word “office” is normally understood to mean “a position to which certain duties are attached, especially a place of trust, authority or service under constituted authority.”\(^ {676}\)

5.1.1 Accountability became Public Accountability

The concept of accountability on its own does not necessarily imply Public Accountability. Here Public word relates to openness or accessible to citizens. For the purpose of this research public word is concentrated to the public sector only. Public officials who spending public money means exercising public authority.\(^ {677}\)


\(^ {677}\) Section 7 of Prevention of Corruption Act, 1988 whoever being , or expected to be public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person , any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to
under public law

Another expression Public duty, it is defined under section 2(b): A duty in the discharge of which the state, the public or the community at large has an interest

**5.1.2 Types of Accountability**

1. Political accountability
2. Legal accountability
3. Administrative accountability
4. Professional accountability
5. Social accountability
6. Public accountability

Public accountability is entirely new emerging issue in India. This kind of accountability come into picture after the judicial activism. Judiciary plays an important role, where all the public servants who performed public duties are personally liable for their actions. This kind of accountability wider in scope and covers all others types also. Accountability is a relationship between actor and a forum, in which the Actor has an obligation to explain and to justify his / her conduct, the forum can pose question and pass judgment, and the actor may face consequences. In this relation between accountability and public, we will find an actor who feels an obligation to explain and to justify his/her conduct to some significant other. Here this relation consist of three stages –

any person or for rendering or attempting to render any service or disservice to any person, with the central government or any state government or parliament government or legislature of any state or local authority, corporation or government company referred to in clause (c) of section 2, or with any public servant, shall be punished with imprisonment not less than 6 months but which may extend to 5 years and shall also be liable to fine.

678 Id., at 684.
679 Supra note 674, at 461.
680 Id., at 450.
5.1.3 Doctrine of Public Accountability

If we consider the administrative problems in India, then we will find three major problems –

1. Faulty planning
2. Corrupt execution
3. Absence of Public Accountability

Out of these three if we consider than Public Accountability is basic, in the sense that if the guilty are liable quickly and adequately, then they will take care of two other problems above mentioned.

5.1.3.1 Origin of doctrine

It is well settled law, that all the discretionary powers must be exercised reasonably and in larger public interest. C.J., Best, stated in a case- Henly v.

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683 Ibid.
Now I take it to be perfectly clear, that if a public officer, abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer. The instance of this are so numerous that it would be a waste of time to refer.\textsuperscript{685}

Every holder of public office is with highest duty to the public of country. Here in this doctrine the basic emphasis is on the reviewability of every action of the state or its instrumentalities. The administrative law test of reasonableness is not by the standards of the ‘reasonable man’ of the torts law. Prof. Wade says\textsuperscript{686}:

\begin{quote}
[T]his is not therefore the standards of “the man on the Clapham Omnibus”. It is the standard indicated by a true construction of the Act which distinguish between what the statutory authority may or may not be authorised to do. It distinguish between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called “Wednesbury unreasonableness”.\textsuperscript{687}
\end{quote}

5.1.3.2 Nature and scope of public accountability

Public Accountability is the Hall mark of Modern democratic governance. Democracy remains a paper procedure if those in power cannot be held accountable in public for their acts and omission, for their decisions, their policies and their expenditure\textsuperscript{688}.

This doctrine of Public Accountability is most important emerging facets of administrative law in recent times. The basic aim of this Doctrine is –

1. To check the growing misuse of power by the administration and

\textsuperscript{684}(1858) 5 Bing 91: 130 ER 995.
\textsuperscript{685}Robert Desty, The Lawyers Reporters Annotated, 453(2008)
\textsuperscript{687}Ibid
\textsuperscript{688}Supra note 674 at 182.
2. To provide speedy relief to the victims of such exercise of power.

Doctrine is based on the premises that, authority given in the hands of Public Authority is on public trust which must be exercised in the best interest of the Public. In every democratic society, it is of utmost importance that the citizens get sufficient information and knowledge about the functioning of the government. Democracy cannot survive without accountability to public. The basic postulate of accountability is openness of the government. The very integrity of judicial system and public confidence depend on full disclosure of facts.\(^ {689}\)

Such a discretionary power which is capable of being exercised arbitrarily is not permitted by article 14 of the constitution of India. While acting article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrary out of several persons falling under the same category. A transparent and objective criteria has to be evolved so that the choice among members belonging to the same class is based on the reason, fair play and non-arbitrariness.\(^ {690}\).

The institution of judiciary in a democratic setup is perhaps one of the most important organs as it is entrusted with the great responsibility of Administration of Justice, which one is the core need of the citizenry. The preamble of the constitution enriches the ideals of securing social, economic and political justice to all its citizens. An independent judiciary can be stated to be the corner stone of a democracy.\(^ {691}\)

Researcher observed that when judiciary don’t limit themselves to only reasonable interest of existing laws, but put one step ahead and starts create law. Such step of judiciary called judicial activism. There are many instances in India


\(^{691}\) It’s a part of the basic structure of the Constitution of India, see also, All India Judge’s Association v. Union of India, (2002) 4 SCC 247; Advocates on record v. Union of India, AIR 1994 SC 268,
where judiciary substitutes their own political opinion for the existing practical applicable law.\(^\text{692}\)

Public accountability is result of when judges act like a legislator (who legislates from bench) rather than like a customary or traditional court. It is one of the example for self- assumption of power of legislature by judiciary. Unfettered discretion is always an issue of contradiction in practical life\(^\text{693}\).

As researchers presume that every legal power must have its own legal limits, otherwise there is a dictatorship and there will no state of democracy. The Courts are the only one who gives protection to the liberty in executive functioning subject against administrative executive arbitrary action\(^\text{694}\).

The judiciary has been vested with enormous power constitutionally. It is the arbiter of dispute between citizens, between the citizens and states and between the states and union. It is vested with the power of judicial review\(^\text{695}\) is a court of record\(^\text{696}\) and acts as a judicial activist under Article 21 & Article 226 of the constitution. It is also with the duty to declare a law\(^\text{697}\).

Judicial quest in administrative matters is to strike the fair balance between the administrative discretion to decide matter as per government policy, and the need of fairness by the concept of personal accountability of public authority. Judiciary has been envisaged as an independent body and independence as a necessary corollary to the functioning of judiciary. The judiciary however faces innumerable problems both internally and externally in view of the allegations of encroachment, corruption and over activism among others.

\(^{692}\) Supra note 690.
\(^{693}\) Ibid.
\(^{694}\) Ibid.
\(^{695}\) The Constitution of India, 1950, art. 137, it is most potent weapon in the hands of the judiciary for the maintenance of the rule of law. It is touch stone of the constitution and for this Supreme Court and High Court are the ultimate authority for interpretation of our constitution.
\(^{696}\) The Constitution of India, 1950, art. 129.
\(^{697}\) The Constitution of India, 1950, art. 141.
Therefore, in the ultimate analysis, courts should have the power to control the administrative arbitrary action and any overt diminution of that power is to be criticized. The principle implicit in the rule of law that the executive must act under the law and not by its own fiat is still a cardinal principle of the common law system, which is being followed by India. In the common law system the executive is regarded as not having any inherent powers of its own, but all its powers flow and emanate from the law. It is one of the vital principles playing an important role in democratic countries like India. There is a thin line between judicial review and judicial activism. Rule of Law serves as the basis of Judicial Review of administrative action. The Judiciary sees to it that the executive keeps itself within the limits of law and does not overstep the same. Judicial Activism is also kept into check. Through the concept of rule of law however there are instances in India where Judiciary has tried to infringe upon the territory of the executive and the legislature.

There are many cases, in which Supreme Court has applied this Principle by granting appropriate relief to the aggrieved parties or by directing the defaulter to pay damages, compensation or costs to the persons who has suffered, here we are mentioning few of them.

*Arvind Dattatraya Dhande v. State of Maharashtra*\(^{698}\), In this case it was held by the Supreme Court that it is most unfortunate that the government demoralise the officers who discharge the duties honestly and diligently and bring to book the persons indulging in black marketing and contra banding the liquor. This is one of the eloquent cases where such a story state of affairs has come to light. The transfer in the present case is nothing but mala fide and arbitrary action at the behest of the persons interested to target the honest officers who efficiently discharge the duties\(^{699}\).

In view of the unimpeachable and eloquent testimony of the performance of the duties, it will be obvious that the transfer is not in public interest but is a

\(^{698}\) (1997) 6 SCC 169

\(^{699}\) Ibid.
case of victimization of an honest officer at the behest of the aggrieved complainants carrying on the business in liquor and toddy. Under these circumstances, as stated earlier, the transfer of the appellant is nothing but mala-fide exercise of the power to demoralise honest officers who would efficiently discharge the duties of public office.

The transfer order of the appellant stands quashed. Order may be communicated to the chief secretary to take appropriate action against the persons responsible for it and the action taken may be informed to this registry.

**5.1.4. Scope of public accountability enhanced by judiciary**

In this concept of personal accountability and responsibility, it is judiciary who plays an important role to provide justice in an informal manner to the victim of abuse of power.

**5.1.4.1 To Pay Cost from Public authority pocket**

Here, in the case, State of Kerala v. Thressia & others, state representing officers not only behaved in an irresponsible way, but actively aided to sabotage the implementation of the orders of the court. Thus this a case of wanton abuse of process of the court without responsibility. Thus researchers find that this is a case where all persons are responsible for taking decision to file special leave petition should bear the burden.

Judiciary accordingly award exemplary cost of Rs 10,000 on them. Due to non-disclosure of name of officer who took decision to file special leave petition judiciary again feels that it is a case where all the personnel responsible for taking the decision to file the special leave petition and the counsel who advised the

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700 Ibid
701 Ibid
704 Ibid
government to file the special leave petition should pro-rata bear the costs\textsuperscript{705}.

So the concept of public accountability come into picture for the abusing the process of court the public officer was held responsible and liable to pay costs from their own pocket\textsuperscript{706}.

5.1.4.2 Personal liability

This concept of personal liability again come out in the case\textsuperscript{707} for the casual approach of officials of development authority and municipal council as a result of which land could be acquired by authority and instead purchased by private builder\textsuperscript{708}.

In absence of sufficient material before the court, chairman of both the authority and the municipal council directed to make an enquiry into the authenticity of the allegations. If the allegations found to be true then the authority as well as municipal council directed to take action against the officials concerned and report compliance of it to the court within six months\textsuperscript{709}.

Another case, \textit{Shiv Sagar Tiwari v. Union of India}\textsuperscript{710}, in this case Minister of urban Development authority allotted shops/stalls to own relatives, employees and domestic servants without following any policy or norms by exercise of discretion power\textsuperscript{711}.

Supreme Court held in case, allotment of shops arbitrary and amounted to misuse of power and misfeasance in public office by public authority\textsuperscript{712}.

Here again in this case Supreme Court gave an exemplary damages (Misfeasance in public office' is a species of tortious liability. A breach of statutory duty does give rise in public law to liability, which has come to known as ‘misfeasance in public office’, and which includes malicious abuse of power) to public authority

\textsuperscript{705} Ibid.
\textsuperscript{706} Ibid.
\textsuperscript{708} Ibid.
\textsuperscript{709} Ibid.
\textsuperscript{710} (1996) 6 SCC 558
\textsuperscript{711} Ibid.
\textsuperscript{712} Ibid.
under the concept of Public accountability\textsuperscript{713}.

Therefore, misuse of power by a public official is actionable in Tort. In such case damages awarded are exemplary\textsuperscript{714}.

The imposition of costs personally against the officers will be counter-productive and officers would desists to pursue genuine cases of public benefits or importance or of far-reaching effect on public administration or exchequer deflecting the course of justice.

The court before imposing costs personally against the officers should be circumspect and keep at the back of its mind the facts and circumstances in each case. Otherwise, public justice will suffer irremediably. Unfortunately, in this case the delay in compliance is of one year and five months and the officer has not explained. The high court was constrained to impose personal costs against the officer\textsuperscript{715}

Mention was made of the judgement in \textit{Lucknow development authority v. M.K Gupta}\textsuperscript{716}, stating that the same approved “misfeasance in Public office” as a part of the law of tort. It was pointed out that public servants become liable in damages for malicious, deliberate or injurious wrongdoing\textsuperscript{717}.

\textbf{5.1.4.3 Responsibility for loss}

\textit{A Regd. Society v. Union of India & others}\textsuperscript{718}, court observed that non – transparency in the system promotes arbitrariness. Even while acting within the guidelines, authority cannot enjoy absolute discretion to pick and choose in arbitrary and discriminatory manner. Where the concept of public accountability come into picture it is again defined by the court as abuse of public office by public servant while exercising discretionary power in granting state largesse in an arbitrary, unjust, unfair and mala-fide manner. Court held the public servant

\textsuperscript{713} \textit{Ibid.}
\textsuperscript{714} \textit{Ibid.}
\textsuperscript{716} (1994)1 SCC 243.
\textsuperscript{717} Shiv Sagar Tiwari \textit{v. Union of India}, (1996) 6 SCC 558.
\textsuperscript{718} (1996) 6 SCC 530.
personally liable for the same under the concept of misfeasance in Public office\(^{719}\). It is high time that all the public servants should be held responsible for their mala-fide acts in the discharge of their functions as a public servants. The Supreme Court in *Lucknow development authority v. M.K Gupta* \(^{720}\) approved “misfeasance in Public office” as a part of the law of tort. Public servants may be liable in damages for malicious, deliberate or injurious wrongdoing. With the change in socio-economic outlook, the public servants are being entrusted with more and more discretionary powers even in the field of distribution of government wealth in various forms. If a public servant abuses his office either by an act of omission or commission, and the consequences of that is injury to an individual or loss of public property, an action may be maintained against such public servant. No public servant can say “you may set aside an order on the ground of mala-fide but you cannot hold me personally liable”, no public servant can arrogate to himself the power to act in a manner which is arbitrary\(^{721}\).

### 5.1.4.4 Personal Responsibility for taking decision in arbitrary manner

This is a classic case\(^{722}\) of not only lack of reasonableness in pursuing the cause, but also the state actively assisting a party who flouts the law and abuses the process of the court.

Thereby as stated earlier the officers concerned representing the state not only behaved in an irresponsible way, but actively aided to sabotage the implementation of the orders of the court. Thus this is the case of wanton abuse of process of the court without responsibility.

Thus court find that this is a case where all the persons responsible for taking decision to file special leave petition should bear the burden. We accordingly award exemplary cost of Rs. 10,000 on them. The Chief Secretary is also directed to send the certificate to the registry of this court to the effect that

\(^{719}\) Ibid.

\(^{720}\) (1994) 1 SCC 243.


the amount was recovered from personnel\textsuperscript{723}.

5.1.4.5 Exemplary damages

A Reference to Wade’s Administrative law shows that a breach of statutory duty does give rise in public law to liability, which has come to be known as “misfeasance in public office”, and which includes malicious. The Supreme Court of Canada in \textit{Pon carelli v. Duplejis}\textsuperscript{724} awarded damages against the prime minister of Quebec personally for directing the cancellation of a restaurant owner’s liquor licence\textsuperscript{725}.

The legal position that exemplary damages can be awarded in a case where the action of a public servants is oppressive, arbitrary or unconstitutional is unexceptionable\textsuperscript{726}.

Hansaria J\textsuperscript{727} opined that:

\begin{quote}
[T]he cases establish that the tort of misfeasance in public offices goes at least to the length of imposing liability on the public officer who does an act which to his knowledge amounts to an abuse of his office\textsuperscript{728}.
\end{quote}

From the aforesaid it is clear that the above has been accepted as a part of the law of tort practically all over the world. What is more, in some countries exemplary damages have been awarded for misuse of public power\textsuperscript{729}.

Another case award for exemplary damages, \textit{Common Cause, A Regd. Society v. Union of India & others}\textsuperscript{730} the question before the court in case was whether the allotments of retail outlets for petroleum products were illegal and as such liable to be quashed\textsuperscript{731}.

\textsuperscript{723} \textit{Id.}, at 452.
\textsuperscript{724} (1996) 6 DLR 689.
\textsuperscript{725} Shiv Sagar Tiwari v. Union of India, (1996) 6 SCC 558.
\textsuperscript{727} \textit{Id.}, at 563.
\textsuperscript{728} \textit{Ibid}.
\textsuperscript{729} \textit{Supra note} 722.
\textsuperscript{730} \textit{Ibid}.
\textsuperscript{731} \textit{Ibid}
This court by the judgement came to the conclusion that all the allotments made were arbitrary, discriminatory, mala-fide, wholly illegal and as such were liable to be quashed\textsuperscript{732}.

Here exemplary damages can be awarded by the court for oppressive, arbitrary and unconstitutional manner, the govt., which is ‘by the people’ has to be compensated\textsuperscript{733}.

Allotment of retail outlets for petroleum products by petroleum minister out of his discretionary quota in favour of person related to politicians / members of oil selection board in cloistered and stereotyped manner without any guidelines or criteria found by Supreme Court as wholly arbitrary, mala fide and unconstitutional.

All these allotments are wholly arbitrary (The Distribution of state largesse is exercise of discretion. Discretion should be transparent, just, fair and non–arbitrary in accordance with set norms, criteria or guidelines. ), nepotistic and are motivated by extraneous considerations\textsuperscript{734}.

It is essential to lay down as a matter of the policy as to how preferences would be assigned between two persons falling in the same category. If there are two eminent sportsman in distress and only one petrol pump is available, there should be clear, transparent and objective procedure to indicate who out of the two is to be preferred\textsuperscript{735}.

Lack of transparency in the system promotes arbitrariness and nepotism. It is absolutely essential that the entire system should be transparent right from the stage of calling for the applications up to the stage of passing the orders of allotment. The names of the allotees, the orders and the reasons for allotment should be available for public knowledge and scrutiny. Without imposing any procedure on the government. It is directed that any procedure laid down by the government must be transparent, just, fair and non-arbitrary. Leaving the

\textsuperscript{732} Ibid
\textsuperscript{733} Ibid
\textsuperscript{735} Ibid.
authority to enjoy absolute discretion even within the guidelines would inevitably lead to gross violation of the constitutional norms when persons for allotment are picked up arbitrarily and discriminatorily\textsuperscript{736}.

Exemplary damages can be awarded by the court for oppressive, arbitrary and unconstitutional action of servants of central/state/local govt. and police\textsuperscript{737}.

In case of misuse of public property by public servants in arbitrary, mala fide and unconstitutional manner, the govt., which is ‘by the people’ has to be compensated. Such allotment found by Supreme Court as wholly arbitrary, \textit{malafide} and that since the concept of absolute liability of public servant for misfeasance has been of recent origin in this country, even while awarding exemplary damages leniency should be shown. Court held, there is some plausibility in the contentions. Considering this aspect as also facts and circumstances of the case, the minister directed to pay a sum of Rs.50 lakhs as exemplary damages to the government exchequer within 9 months\textsuperscript{738}.

On the failure to pay the amount it shall be recovered as arrears of land revenue\textsuperscript{739}.

**5.1.4.6 Disciplinary Action -**

The bureaucracy is also accountable for the acts done in accordance with the rules when judicial review is called to be exercised by the courts. The hierarchical responsibility for the decision is their in-built discipline. But the head if the department/designated officer is ultimately responsible and accountable to the court for the result of the action done or decision taken\textsuperscript{740}.

Despite this, if there is any special circumstances absolving him of the accountability or if someone else is responsible for the action, he needs to bring them to the notice of the court so that appropriate procedure is adopted and action taken. The controlling officer holds each of them responsible at the pain of

\textsuperscript{736} \textit{Supra} note 722.
\textsuperscript{737} \textit{Ibid.}
\textsuperscript{738} \textit{Ibid.}
\textsuperscript{739} \textit{Ibid.}
disciplinary action. The object thereby is to ensure compliance of the rule of law\textsuperscript{741}.

For irregularities committed by the high-ranking officials of public authority resulting in loss to Public and for that Supreme Court held \textsuperscript{742}, disciplinary action for imposing major penalty (except in one case) should be initiated against the officers who indulge in such acts\textsuperscript{743}.

The conclusion arrived by the judiciary, appointed to investigate into the conduct of the officers of Delhi development Authority are entitled to great weight and constitute sufficient basis for initiating disciplinary action against the officers concerned\textsuperscript{744}.

The report of and the material gathered by the judge who conducted the investigation shall constitute the basis for taking the action in these cases. The government of India (department of personnel) shall submit a report of the progress of the disciplinary proceedings at intervals of every three months to the Supreme Court\textsuperscript{745}.

On-going through case researcher finds that the learned judge has taken great pains and extreme care in coming to the conclusions which he did therefore, it is directed that disciplinary action shall be taken against the officers concerned by the government for imposing a major penalty for the irregularities and illegalities committed by them\textsuperscript{746}.

The justice system cannot allow to be soft, spine and spineless. Hence following directions with respect to each of the officers concerned in this case\textsuperscript{747}:

1. Shri V.S Aliawali (IAS), The Government of India (department of personnel) is directed to institute appropriate disciplinary proceedings against him for the irregularities and illegalities committed by him as Vice- Chairman of the Delhi

\textsuperscript{741} Ibid.
\textsuperscript{742} Delhi development Authority v. Skipper construction and another, (1996) 1 SCC 272.
\textsuperscript{743} Ibid.
\textsuperscript{744} Ibid.
\textsuperscript{745} Id., at 273
\textsuperscript{746} Id., at 276-277.
\textsuperscript{747} Ibid.
development Authority as borne out by the report of J. Reddy. He has retired on 31-5-1995. So it is obvious that proceedings taken against him will be directed against the pension and other terminal benefits in accordance with the rules.

2. Shri K.S Baidwan (IAS), He is stated to be holding the post of the Home secretary in government of National Capital Territory of Delhi at present. Disciplinary action shall be taken against him by the Government of India (department of personnel) for imposing major penalty for the irregularities and illegalities committed by him as secretary to the Lt. Governor.

3. Shri R.S Sethi (IAS), He is stated to be holding the post of joint secretary in the ministry of Home Affairs. Disciplinary proceedings for imposing a major penalty for the irregularities and illegalities committed against Government of India (department of personnel).

It is directed that no court or authority shall be competent to interdict or otherwise interfere with the disciplinary or other proceedings that may be taken against the aforesaid authorities pursuant to this order.

The disciplinary proceedings shall be commenced within three months from this date and shall be concluded within one year. The Government of India shall submit a report of the progress of the disciplinary proceedings at intervals of every 3 months to this court. A sum of Rs. 5000 shall be paid by the Delhi development Authority to shri Raju Ramachandran, towards his fee in that matter.

5.1.4.7 Liable to punishment

The court in R.D Shetty v. International Airport Authority of India, held as under:

[I]t must, therefore, be taken to be the law that where the government is dealing with the public, whether by way of giving jobs or entering into
contracts or issuing quotas or licences or granting other form of largesse, the government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in confined and structured by rational, relevant and non-discriminatory standard or norms in any particular case or cases, the action of the government would be liable to be struck down…

None of these cases fall within assume for argument sake that these cases fall in some of those or similar guidelines that exercise the categories placed before this court in Centre for public interest litigation v. Union of India755 but even if we of discretion was wholly arbitrary. Such a discretionary power which is capable of being exercised arbitrarily is not permitted by Article 14 of the constitution of India756.

While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective procedure has to be evolved so that the choice among the members belonging to the same class is based on the same reason, fair play and non-arbitrariness757.

It is essential to lay down as a matter of policy as to how preference would be assigned between two persons falling in the same category. If there are two eminent sportsmen in distress and only one petrol pump is available, there should be clear, transparent and objective procedure to indicate who out of the two is to be preferred. Lack of transparency in the system promotes nepotism and arbitrariness. It is absolutely essential that the entire system should be transparent right from the stage of passing the orders of allotment758.

This court759 has authoritatively laid down in Nilabati Behera v. State of Orissa760.

756 Supra note 754 at 554.
757 Ibid.
758 Ibid.
759 Ibid.
that damages can be awarded by this court in proceedings under Article 32 of the
Constitution of India\textsuperscript{761}.

Learned counsel has taken us through the Privy Council judgement in \emph{Rookes v. Barnard}\textsuperscript{762}, Lord Devlin in his opinion has held that\textsuperscript{763}.

\begin{quote}
[E]xemplary damages can be awarded for oppressive, arbitrary and
unconstitutional action by the servants of the government\textsuperscript{764}.
\end{quote}

Here Learned Counsel has also taken us through the judgement of the court of
appeal in \emph{A.B v. South West Water Service ltd.}\textsuperscript{765} and \emph{Broome v. Cassell}\textsuperscript{766} was
elaborately discussed and relied upon in this judgement. It would be useful to
quote the relevant part of the opinion by Smith, learned J\textsuperscript{767}.

\begin{quote}
[T]he first category is oppressive, arbitrary or unconstitutional action by the
Servants of the Government\textsuperscript{768}.
\end{quote}

It is common ground that this category of persons is not limited to the servants of
central Government, but includes servants of Local Government and the police\textsuperscript{769}.

Lord Wilberforce said\textsuperscript{770}.

\begin{quote}
[T]here is not perhaps much difficulty about category1: it is well based
on the cases and on a principle stated in 1703 – “if Public officers will
infringe men’s rights, they ought to pay greater damages than other men
to deter and hinder others from the like officers\textsuperscript{771}.
\end{quote}

Lord Diplock also observed for the first category\textsuperscript{772}.

\begin{quote}
[I]t would embrace all persons purporting to exercise powers of
\end{quote}

\textsuperscript{760} (1993) 2 SCC 746.
\textsuperscript{761} Supra note 754.
\textsuperscript{762} 2 WLR 269 (1964).
\textsuperscript{763} Supra note 754.
\textsuperscript{764} Ibid.
\textsuperscript{765} QB 507 (1993).
\textsuperscript{766} 2 WLR 645 (1972).
\textsuperscript{767} Supra note 754 at 616.
\textsuperscript{768} Ibid.
\textsuperscript{769} Ibid.
\textsuperscript{770} Ibid.
\textsuperscript{771} Ibid.
government, central or local, conferred on them by statute or at common
law by virtue of the official status or employment which they held773.

5.2 Public Accountability and judicial review

5.2.1 Judicial intervention and administrative action

The present trend of judicial opinion is to restrict the doctrine of immunity from
judicial review to that class of cases. Those who seeks to invalidate or nullify any
act or order must establish the charge of bad faith, or abuse or a misuse by the
authority of its powers. While the indirect motive or purpose774.

It is important to know the scope for judicial interference in the matters of
administrative decisions. Administrative action is stated to be refer able to the
broad area of government activities in which the repositories of power may
exercise every class of statutory function of executive, quasi-legislative and
Quasi-judicial nature. It is trite law that there is manifest error in the exercise of
such power or the exercise of the power is manifestly arbitrarily775.

In all these cases776 the test to be adopted is that the court should consider:

[W]hether something has gone wrong of nature and degree which
requires its intervention.

The principles deducible are in case, Tata cellular v. Union of India,777-

1. The Modern trend points to judicial restraint in administrative action778.
2. The court does not have the expertise to correct the administrative decision. If a
review of the administrative decision is permitted it will substituting its own
decision, without the necessary expertise which itself may be fallible779.
3. The court does not sit as a court of appeal but merely reviews the manner in

773 Ibid.
778 Ibid.
779 Ibid.
which the decision was made\textsuperscript{780}.

4. The government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or Quassi- administrative sphere. However the decision must not only be tested by the application of wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala-fide\textsuperscript{781}.

5. Quashing decisions may impose heavy administrative burden on the administration and lead to increase and unbudgeted expenditure\textsuperscript{782}.

5.2.2 Concept of judicial review

Indian legal system relies upon the both to ensure that governmental actions accord with legal and constitutional limits and effective reviewability will arise in the vagueness and non- delegation context\textsuperscript{783}.

Doctrine of non- delegation, requires that delegation to administrative agencies be accompanied by “intelligible principles” enhance the likelihood of meaningful judicial review by requiring the standards upon which courts can assess compliance.

The power of an independent judiciary to review the decisions of the other two organs of the government is considered an integral aspect of the Rule of Law and the Indian Constitution does everything possible to put in place this mechanism. Judges of the Supreme Court and the High Courts are appointed by the President in ‘consultation’ with relevant judges of these courts\textsuperscript{784}.

Subsequent to the decision in Supreme Court \textit{Advocates on Record Association v. Union of India}\textsuperscript{785}, judges of the higher judiciary are in essence appointed by the judiciary itself.

\textsuperscript{780} \textit{Ibid.}
\textsuperscript{781} \textit{Ibid}
\textsuperscript{782} \textit{Ibid}
\textsuperscript{783} \textit{Supra} note 774.
\textsuperscript{784} The Constitution of India, 1950, articles 124(2); The Constitution of India, 1950, article 217.
\textsuperscript{785} (1993) 4 SCC 441. See also \textit{In Re, Presidential Reference, AIR 1999 SC 1.}
Detailed provisions have also been made to provide judges security of tenure\textsuperscript{786}, and protect their salaries, allowances and privileges\textsuperscript{787}. Legislative bodies are barred from debating the conduct of judges unless dealing with impeachment motions\textsuperscript{788}.

In fact, on a closer look, it seems that the Indian judiciary has become over-independent in that there are not many checks on its powers and the functioning/conduct of judges. The judiciary, for instance, resists any attempt to introduce accountability measures and impeaching judges so far has proved to be an almost impossible even in suitable cases. The remedy to approach the Supreme Court for violation of fundamental rights under Article 32 is in itself a fundamental right\textsuperscript{789}.

**Limitations on the Supreme Court in respect of Judicial Review**

1. The Court does not conduct judicial review over political issues.
2. While declaring a law unconstitutional the Court has to assign reasons and specify the provisions of the Constitution that it violates.
3. The Supreme Court conducts judicial review only in cases actually brought before it. It cannot initiate the process of its own.
4. The law declared invalid ceases to operate for the future. The work already done on its basis continues to be valid.
5. The Court has to demonstrate clearly the unconstitutionality of the law which is sought to be declared invalid\textsuperscript{790}.

**5.2.2.1 Judicial Review of Administrative Action**

The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the court’s ability to quash

\textsuperscript{786} The Constitution of India, 1950, art. 124; the Constitution of India, 1950, art. 218.

\textsuperscript{787} The Constitution of India, 1950, art 125 and The Constitution of India, 1950, art. 221.

\textsuperscript{788} The Constitution of India, 1950, art.121; The Constitution of India, 1950, art. 211.

\textsuperscript{789} A similar (in fact wider) power is vested with the High Courts under Article 226.

an administrative decision on merits. These restraints bear the hallmarks of judicial control over administrative action.\textsuperscript{791}

The famous case commonly known as “The Wednesbury case” is treated as the landmark so far as laying down various basic principles relating to judicial review of Administrative or statutory direction.

Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greece in \textit{Associated Provincial Picture Houses Ltd. v. Wednesbury corpn.}\textsuperscript{792} It read as follow:

[I]t is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word ‘unreasonably’ in a rather comprehensive sense. It has frequently used as a general description of the things that must not be done. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers of the authority….in another, it is taking into consideration, extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another\textsuperscript{793}.

The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. These several principles can conveniently be grouped in two main categories\textsuperscript{794}:

1) Failure to exercise a discretion

2) Excess or abuse of discretionary power.

The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant consideration have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires.

\textsuperscript{791} \textit{Tata cellular v. Union of India}, (1994) 6 SCC 652.
\textsuperscript{792} 1KB 223 (1948): 2 ALL ER 680(CA 1947).
\textsuperscript{793} \textit{Supra} note 790.
\textsuperscript{794} \textit{Indian railway construction co. ltd v. Ajay Kumar} 2003) 4 SCC 581.
The distinction features of some of the recent cases signify the willingness of the courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review:

1. The first ground is illegality
2. The second is irrationality and
3. Third is procedural impropriety.

The court will be slow to interfere in such matters relating to administrative functions unless discretion is tainted by any vulnerability enumerated above: like illegality, irrationality and procedural impropriety. By "irrationality" here means that what can referred to as “Wednesbury unreasonableness”. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

5.2.2.2 Public Accountability concept evolved by judiciary

This doctrine is not available in substantive legislative form, it is a concept who developed or innovated by judiciary from many case laws. Few of them given below –

In Shiv Sagar Tiwari v. Union of India

For abuse of power while exercising discretionary power in granting state largesse in an arbitrary, unjust, unfair and mala fide manner public servant can be held personally liable

In Secretary, Jaipur Development Authority, Jaipur v. Daulat mal Jain & others

795 Id., at 582.
796 Ibid.
797 Matthews Beatson et. al., Administrative Law, 247(2007)
799 Ibid.
800 (1997) 1 SCC 35.
For Misuse of Public Power not only the Minister but also the official working under him will be Personally Liable\(^{801}\)

In *Dutta associates (P) Ltd. v. Indo Mercantiles*\(^{802}\)

[For abuse of power for extraneous reasons in acceptance of tender, held all public officers concerned including minister shall be liable to punishment]\(^{803}\).

It is Judiciary, who in a case *Secretary, Jaipur Development Authority, Jaipur v. Daulat mal Jain & others*\(^{804}\) gave the term “Public officers” meaning in wider spectrum, the minister holds public office through he gets constitutional status and performs functions under the constitution, law or executive policy\(^{805}\).

The acts done and duties performed are public acts or duties as the holder of public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is concerned on the holder of the appointment. The holder of the office therefore, gets opportunity to abuse or misuse the office. They are accountable and answerable to the people. Their powers and duties are regulated by the law and the rules\(^{806}\).

The legal and moral responsibility or liability for the acts done or omissions, duties performed and policy laid down rest solely on the minister\(^{807}\) of the department. The government acts through its bureaucrats, who shape it social, economic and administrative policies to further the social stability and progress socially, economically and politically\(^{808}\).

Another term “Public Authority Action” explained by Judiciary as\(^{809}\)

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\(^{801}\) Ibid.

\(^{802}\) (1997) 1 SCC 53.

\(^{803}\) Ibid.

\(^{804}\) (1997) 1 SCC 36.

\(^{805}\) Ibid.

\(^{806}\) Ibid.

\(^{807}\) He owes the responsibility to the electors for all his actions taken in the name of the governor in relation to the department of which he is the head. He is also bear responsibility for the actions of the bureaucrats who work under him.

\(^{808}\) Supra note 804, at 37

\(^{809}\) Id., at 45.
[A]ctions of the government should be accounted for social morality. Therefore the, actions of the individual would reflect on the actions of the government. The laws or government policy. The ‘action’ therefore bear necessary integral connection between the purpose and the end object of public welfare and not personal gain. The action cannot be divorced from that of the individual actor\textsuperscript{810}.

5.3 Public Accountability & Right to Information

Here the area for research will be about the test- Is this Right appropriate tool to strengthen the Rule of Law

There is no corresponding provision in the Indian Constitution. However, the obligation to give reasons has been given a constitutional sanction by the Supreme Court in its Landmark decision in \textit{S P Gupta v union of India}\textsuperscript{811} there, the court deduced the citizen’s right to know and right to obtain information from the constitutional guarantee of free speech and from the concept of open government inherent in a democratic system. Accordingly, it is the constitutional obligation of authorities and adjudicators to disclose reasons for their orders\textsuperscript{812}.

The right to information is necessary to promote a culture of accountability. Accessibility of information pertaining to finances, proceedings and decisions of all the social actors whose activities have an impact on the public, is guarantees that such actor shall make them accountable. It shall check mismanagement, abuse of discretion, bribery, other forms of corruption and malpractices. Sometimes media reveals a fraud and describe it as a tip of iceberg which means that more facts are necessary to discover the whole picture of the fraud, and it is only when all the information is revealed that the extent of loss of public money can be evaluated and the person be made accountable. The right to information Act, therefore empowers the citizens to make the state and the public sector more accountable to them. This is salutary development. This is a salutary

\textsuperscript{810} \textit{Ibid}.
\textsuperscript{811} 1981 Supp. SCC 87.
development. Secrecy is the main bulwark of inefficient and corrupt administration. Disclosure of reasons makes a wholesome dent in the veil of secrecy. Transparency is the hallmark of honest and efficient administration.\textsuperscript{813}

In case Aniruddh bahl v. state mentioned that-

(E)very citizen has a corresponding duty to expose corruption wherever he finds it and to expose it if possible with the proof so that even if the state machinery doesn’t take action against the corrupt people, when time comes, people are able to take action, either by rejecting them as their representative or by compelling the state by public awareness to take action against them\textsuperscript{814}.

5.3.1 **Right to Information, tool to control arbitrary actions of public authority**

5.3.1.1 **Accessing information not accessible earlier**

The entire structure of governance of India was ruled by the Official Secrets Act, which prohibited a government official from giving out any information unless expressly ordered to do so by a senior authority. The Right to Information Act has now turned that inside out by enabling the citizen to demand any information held by public authorities except for the information outlined by the exemptions under Section 8 of the Right to Information Act\textsuperscript{815}.

As a result, most activities of government have become accessible to the ordinary citizen In fact, a proviso in the exemption section of the RTI Act, states, ‘What cannot be denied to a Member of Parliament or the State Legislature cannot be denied to the citizen.’ In effect, the Act puts the citizen at par with the elected representatives in their right to information. Although the RTI covers almost all aspects of the functioning of the government, non-government, and indirectly even private organizations, it still provides for exemption of certain

\textsuperscript{813} Ibid.
\textsuperscript{814} (2010) 172 DLT, at 269.
information that shall not be disclosed. However, this is not a blanket exemption and clearly provides for a public interest override, thus facilitating access to even such information that ordinarily could not be accessed under this law because of the exemptions of Section 8\(^\text{816}\).

5.3.1.2 Case to Describe the Check on Arbitrary Action of Authority through RTI.

On 10 May 2006, Surup Singh Naik, the former forest minister of Maharashtra was sentenced to one month in prison by the Supreme Court. Two days after he was imprisoned, on 14 May Surupsingh complained of chest pain and was shifted to JJ Hospital’s air-conditioned ICU. Media and citizens suspected that as usual one more powerful criminal was escaping jail\(^\text{817}\).

On 27 May, Shailesh Gandhi filed a RTI application asking for a copy of Surupsingh Naik’s medical records, on the grounds that there was a public interest in verifying whether powerful criminal spent their prison sentences in air conditioned hospitals because there was a medical need, or because of their power\(^\text{818}\).

On 20 June the RTI application was rejected by PIO, without any grounds. A first appeal filed on 21 June, first appeal filed with Dean of JJ Hospital was rejected on 25 July, quoting 4 of the 10 exemption clauses of the RTI Act\(^\text{820}\).

On 30 July a second appeal with the Maharashtra Information Commission. On 29 September the sole Chief Commissioner held the hearing but did not pass the order. Then on 5 March 2007, the full bench of Maharashtra State

\(^{816}\) Ibid.  
\(^{817}\) Ibid.  
\(^{818}\) Ibid.  
\(^{819}\) Ibid.  
\(^{820}\) Ibid.
Information Commission held another hearing and unanimously ordered in a landmark order that the information should be given in seven days. On 13 March, Surup Singh filed a writ petition in the Bombay High Court against the Information Commission’s order. On 23 March after three hearings, the court pronounced its order clearly accepting the Information Commission’s and the applicant’s contention that there was a larger public interest in disclosing a convict’s medical records and hence the information must be given. However, it held that the Commission should have given an opportunity to Surupsingh Naik for a hearing and hence asked the Commission to do so.

On 13 April the Commission bench gave an opportunity to Surupsingh, who came with his lawyer and argued why the information should not be given. The Commission again ruled that information should be given within 3 days of the order issued 16 April. On 18 April 2007 JJ Hospital gave the medical records.

5.3.2 Right to Information, provides Transparency

Transparency therefore promotes accountability and provides information for citizens about what their government and its agents are doing.

All administrative units shall make available all the necessary information on acts and procedures in their respective domains, as well as the information required to assess their management, with a view to enabling those interested to have full access.

Governance has become a fashionable world. In the concise oxford English dictionary, there is a slight difference between the definitions of ‘Government’ (“The act or manner of governing”). This appears to imply that while

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821 Ibid.
822 Ibid.
823 Ibid.
825 Ibid
‘Government’ is what government do, ‘Governance’ is not necessarily restricted to governments\textsuperscript{826}.

‘Governance’ would then continue to include law and order, the assurance of basic needs and services, mechanisms for the settlement of disputes, a good judicial system, and so on, but would be guided by a vision of equality and social justice. It would be firmly wedded not merely to the Rule of Law but also to the protection of civil liberties, and would be an integral part of a democratic system (not necessary of a parliamentary or presidential kind). It would be grounded on a right relationship between the state and civil society\textsuperscript{827}.

The general trend is in favour of the “Right to reason” in administrative determination. It is increasingly realized that it is conclusive to good governance that reasons be given and that omission to do so can result in injustice. This is a salutary development. Secrecy is the main bulwark of inefficient and corrupt administration. Disclosure of reasons makes a wholesome dent in the veil of secrecy. Transparency is the hallmark of honest and efficient administration. Sunlight is a good disinfectant. The effort should be to spread the sunlight in all spheres of administration\textsuperscript{828}.

5.3.2.1 Right to Information also provides Good governance

The access to information is cardinal to good governance and the whole mechanism of governance in the country has been vitiated owing to lack of it. According to a paper prepared by the human rights initiative, good governance has eight major facets. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It is an ideal which is difficult to be achieved in its totality. However, to ensure sustainable human development, action must be taken to work towards this ideal. Access to information is a vital factor for achieving the goals of good governance. It promotes transparency and public accountability in

\textsuperscript{826} Ibid.
\textsuperscript{827} Ibid.
\textsuperscript{828} Supra note 812 at 105.
the working of government functionaries. The end objective of the RTI is also to achieve good governance.\(^{829}\)

In recent years, there has been an almost unstoppable global trends towards the recognition and enactment of right to information (RTI) by various countries. The inter-governmental organizations, civil society and many sections of the people have invariably been behind this trend. It has been widely recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The RTI, is now accepted as a crucial underpinning of participatory democracy. It has now been widely acknowledged as a prerequisite for ensuring accountability and good governance.\(^{830}\)

5.3.2.2 Transparency and Accountability

Generally, “transparency” implies openness, communication and accountability. It is a metaphorical extension of the meaning a “transparent” object is one that can be seen through. With regard to the public services, it means that holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest demands it.\(^{831}\)

5.3.2.3 Public officials and their obligation to give Reason for their decision

In majority of cases, where courts have inferred a duty to give reasons, the functions performed by the tribunal or the authority were judicial or Quassi judicial. It is a moot point whether discharge of administrative functions also entails the obligation to give reason. It is submitted that as a distinction between judicial or Quassi – judicial and administrative functions have been virtually obliterated, the requirement of giving reasons flowing from the principle of fairness should be applicable to decisions or orders of every authority which exercises powers that may prejudicially affect a person.\(^{832}\)


\(^{830}\) *Id.*, at 1.

\(^{831}\) *Supra* note 824.

\(^{832}\) *Supra* note 812, at 104.
5.4 Public Accountability and Good Governance

Good governance is said to exist only when the level and magnitude of corruption is at a tolerably level. A cursory reading of history would reveal that corruption has always existed at any stage of civilization. As a result, the majority of the population has suffered. Kautiliya’s Arthasastra and Aristotle’s discussions highlight that low corruption adversely affects political and economic development and therefore, it is anti-national and anti-poor. Like cancer, it is very much pervasive in our society and it cuts into the employment and income of many deserving people. Like inflation, it also hurts poor people more than anyone else, as they are struggling for basic wage goods and minimum levels of existence and livelihood. Abuse of public office for private gain, eventually inhabits potential investment and thus increases inefficiency.

Thus governance is conceived more as a network of multiple agencies and organizations than a fixed “government” agency or department. Governance in this context stands for establishment, operation and networking of Social institutions. It manifests itself in formal rules and regulations, decision making procedures, and programmatic activities that serve to define social practices. In real life, there are many forms of community organizations or voluntary, collective self-help approaches through which a group of people organize them to achieve common purposes. Thus, it is a way of crafting social institutions as a matter of public concern.

Edmund burke stated as early as 1777:

[A]mong a people generally corrupt, liberty cannot long exist.

In 1978 he observed:

[A]n arbitrary system indeed must always be a corrupt one. There never

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833 Ibid
834 Shiv Sagar Tiwari v. Union of India, 6 SCC 558, 558-564(SC 1996).
835 Ibid.
836 Ibid.
was a man who thought he had no law but his own will, who did not soon find that he had no end but his own profit.\textsuperscript{837}

5.5 Public Accountability and Right to Public Service Legislation

In India comprises statutory laws which guarantee time bound delivery of services for various public services rendered by the Government to citizen and provides mechanism for punishing the errant public servant who is deficient in providing the service stipulated under the statute.\textsuperscript{838} Right to Service legislation are meant to reduce corruption among the government officials and to increase transparency and public Accountability.\textsuperscript{839}

5.5.1 More transparent and Accountable state under Right to service.

Everyone has a right to information affecting their lives but too often government secrecy and lack of accountability ensure that the public are deprived of vital facts.\textsuperscript{840}

Transparency International India (2005) Report Emphasis Indian picture on corruption.\textsuperscript{841}:

[C]ommon citizen of India pay a bribe of Rs. 21,068 Crores while availing one or more of the eleven public servants in a year.

According to this survey: Corruption index\textsuperscript{842}–

1. Police
2. Judiciary (lower courts)
3. Land administrator
4. Government hospital (non-availability of medicine)

\begin{itemize}
\item \textsuperscript{837} \textit{Ibid.}
\item \textsuperscript{839} ‘Corruption watchdog hails Bihar, MP govs as best service-providers’. Times of India.21 April 2011, available at, http://articles.times of india.times.com, accessed on 4 September 2012.
\item \textsuperscript{841} \textit{Legal news & views}, vol 20 No. 02, at 3, Feb, 2006.
\item \textsuperscript{842} \textit{Ibid.}
\end{itemize}
Lack of transparency and accountability encourage the government officials to indulge in corrupt practices, which result in lower investments due to misuse or diversion of funds for private purposes. Due to this government social investment has no benefits to public. Here researcher want to express her views with example.

1. In government hospital, doctor & nurses don’t attend health centers
2. Ration card holders don’t receive subsidized food grains
3. Government teachers don’t teach.
4. Public servants don’t perform their duties.

With the Right to Public Services legislation, there will be unprecedented transparency in the working of public departments. Which results in better decision making & greater accountability of government for its functioning. This all led to reduction in corruption.

In India high levels of corruption in public life and the private commercial sector co-exist with equally high levels of mass poverty, illiteracy, underdevelopment and the increasing criminalization of politics. As a recent editorial in a leading newspaper observed:

[C]orruption in public life is one of the most daunting issues facing the country. Things have come to such a pass the all politicians evoke public ridicule.

Public life in today’s India is dominated with concerns about corruption and the inability of politicians to tackle it effectively. In the last few weeks, scandals have followed scandals: a Cabinet Minister was caught on video accepting a bribe; a legal paper scam involving several states, politicians of many different parties, the police and the criminal underworld has defrauded the treasury of an estimated

843 Ibid
844 Ibid.
846 Ibid.
billion dollars; and regional politician is alleged to have massed nearly $800
million worth of property abroad\textsuperscript{847}.

Such scandals are not the exception but a regular feature of Indian politics,
both at the national and regional levels. The current National Democratic Alliance
central government, which came to power in 1999 as a coalition with difference,
antainted with the previous association with the institutionalized ‘license permit
raj’ of Congress regimes, has not done much better. In the last four years it has
been dogged by one corruption scandal after another to the point where it has now
become embarrassed about its ability to deliver clean government\textsuperscript{848}.

5.5.2 Right to Service in India

5.5.2.1 Introduction

Democracy as defined by Abraham Lincon\textsuperscript{849} –

[I]t is a government by the people, of the people and for the people\textsuperscript{850}.

If we interpret this definition then it is like –‘A government, who is accountable
towards its people ‘But we compare it to practical then it is like – ‘There is
collision between government & democracy, which is the root cause of
corruption’\textsuperscript{851}

It is true that every society has made endeavors for democratizing
knowledge resources by way of putting in place the mechanisms for free flow of
information and ideas so that people can access them without asking for it. They
are thus empowered to make proper choices for participation in development
process\textsuperscript{852}.

Now researcher observed that there are laws provides protection to the
public servants to maintain democracy-

\textsuperscript{847} Ibid.
\textsuperscript{848} Ibid.
\textsuperscript{849} Ibid.
\textsuperscript{850} Ibid.
\textsuperscript{851} Ibid.
\textsuperscript{852} Ibid.
1. Officials secret Act, 1923.
2. Indian evidence Act, section 123 &124
3. Central civil service (conduct) Rules, 1964
4. Right to Public Services legislation

Basic aim of all above mentioned laws to provide maintained secrecy in some particular cases by avoiding people to access of all information through right to information.\textsuperscript{853}

The gap between the ‘law on the books’ and the ‘law on the ground’ is notoriously wide in India. Certificate based public services are no exception to this phenomenon. Whether you are poor and need to be on the Below Poverty Line list, or wealthy and want a driver’s license, there is too often a bribe to be paid, apathetic government officials to navigate, and seemingly arbitrary results.\textsuperscript{854}

During the last two years, over ten Indian states have passed public service guarantee acts, also known as Right to Service acts. The idea is simple: Mandate how many days a government official has to approve or reject an application for a public service (like an income certificate or ration card), and then if that deadline is not met, or the application wrongly rejected, allow for an appeal. Upon appeal, the bureaucrat can be ordered to provide the service and/or fined for not providing the service in a timely manner or for wrongly rejecting an application.\textsuperscript{855}

These Right to Service acts are part of a broader rights-based approach to social policy that has rippled through India over the past decade and a half. The Supreme Court has declared rights to food, health, housing, as well as several other social and economic rights. The Right to Information Act (2005) allows citizens sweeping rights to demand information about the government’s activities. The National Rural Employment Guarantee Act mandates a right to one hundred days of government-sponsored employment for every rural family in India. The Right to Education Act guarantees all children from 6 to 14 years an education in

\textsuperscript{853} Ibid.
\textsuperscript{855} Ibid.
a local school meeting basic minimum standards. The proposed National Food Security Act also adopts a rights based framework.856

Many policymakers and activists are attracted to a rights based strategy in part because they see it as a useful way to reorient the language of governance from ideas of patronage towards the duties of the state and the justified claims of citizens. Some of these proponents of a rights-based strategy have also increasingly grown to distrust other forms of accountability.857 They view both politicians and bureaucrats as part of a corrupt nexus that either will not or cannot exercise control over the lower tiers of the bureaucracy. As a result, they desire to supplement or even replace political or managerial forms of accountability with more legal, and less discretion-based, mechanisms. Rights are seen to fit this goal.858

The government has also been an active supporter of rights-based strategies, although sometimes for different reasons. Rights have grown to be rhetorically synonymous with good governance and so political and bureaucratic efforts to improve administration are often defined in these terms.859 Further, rights not only theoretically empower citizens against the government, but also politicians and senior bureaucrats against the lower bureaucracy. Rights are an administrative tool that helps the government bring new legibility and control over its officials.860 When citizens see their right being violated (such as work not being given or a service not being provided), they can make a claim against the government, alerting higher officials to errant behavior of an official, which can then be sanctioned. Similarly, the right to information allows citizens to more closely monitor government officials, alerting society – including the upper tiers of government.861

856 Ibid.
857 Ibid.
858 Ibid.
859 Ibid.
860 Ibid.
861 Ibid.
When there are breakdowns in the administration. In this way, a rights framework empowers citizens to act as an ally of policymakers against errant lower level officials.\textsuperscript{862}

\textbf{5.5.2.2 Background of Right to Public Service Acts}

The recent spate of Right to Public Service Acts can trace their genealogy to the Citizen’s Charter movement of the late 1990’s and early 2000’s, which saw hundreds of charters promulgated by government departments at the national and state level. These charters detailed what citizens could expect from the government.\textsuperscript{863}

However, many felt these charters lacked the precision necessary to be effective. As a 2008 Administrative Reforms Commission sponsored survey of these charters found, “Almost 41% of the charters under consideration did not indicate any timeframe for redress of public grievances. 61% of them did not indicate any timeframe for acknowledging the receipt of public grievances and nearly 43% of them did not have the timeframe for responding to the petitioners.”\textsuperscript{864}

Right to Public Service Acts in the states has largely been promoted by politicians, especially Chief Ministers, and some top bureaucrats. Civil society, except for at the Centre, has largely played a minor role in proposing or pushing for these acts. This pattern is striking.\textsuperscript{865}

It may be that state Chief Ministers are simply trying to score quick political points. However, this trend may also provide further evidence that many of these acts are best understood not so much as an empowerment of citizens over lower officials, but rather as a tool by which top level officials and politicians can regain control over the lower tiers of the bureaucracy. Hierarchical government control in many Indian states has broken down and these acts are seen as one method to

\textsuperscript{862} Ibid.
\textsuperscript{863} Ibid.
\textsuperscript{864} Ibid.
\textsuperscript{865} Ibid.
5.5.2.3 An Overview of the Acts Implementation Madhya Pradesh

Madhya Pradesh was the first state to implement a right to public service act, passing its Public Service Guarantee Act in August 2010. Many of the later acts passed in other states were modeled on Madhya Pradesh’s Act which covers 52 services from applications for ration cards to income certificates.

A designated public servant is required to either provide the service or deny it with a written explanation within the designated time period (ranging from 3 to 60 days depending on the service). If they fail to do so, the applicant can appeal to an appeal officer (usually a mid-level official such as a sub-divisional officer, and sometimes a higher level official like the district collector) who must decide the appeal within a stipulated time period and can order the public official to provide the service.

The decision of the appeal officer can be further appealed to a second appeal officer (usually a higher level official such as a district collector or, if the first appeal was to the district collector, then to a divisional commissioner). The second appeal officer may fine the designated public official between 500 and 5000 Rs if they feel that they failed to provide the service without “sufficient or reasonable cause.” They may also fine the first appeal officer if they failed to decide the case within the stipulated time period without a “sufficient or reasonable cause.”

As part of the push around the Act, Madhya Pradesh has worked to simplify application procedures. For example, they have created centers in district collector’s offices where one can apply for a whole set of services in one location. (Although, at least in Bhopal, one must visit several counters at the center to complete the process: a counter to receive the application, another to pay the

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\(^{866}\) Ibid.  
\(^{867}\) Ibid.  
\(^{868}\) Ibid.  
\(^{869}\) Ibid.
required fee, and another where documents are verified and a receipt given. At another counter one picks up the completed application at a later date.) There is a somewhat controversial plan to eventually outsource these application centers to small and medium-sized companies. The companies would charge a small fee for processing each application.\textsuperscript{870}

5.5.2.4 An Overview of this Acts on Implementation Bihar

Bihar’s Right to Public Service Act began to be implemented in August 2011. It covers 50 services, including many of the same as Madhya Pradesh. Unlike Madhya Pradesh, it covers land mutation certificates (i.e. proof of the transfer of title from one party to another)\textsuperscript{871}.

This service has proved the most controversial addition in a state where land records have historically been poorly kept and are a source of much litigation. Some have claimed this service should not be included under the Act as it often requires investigation and bureaucratic judgment making it unlike other services that involve far less discretion. Like Madhya Pradesh, under the Act, one may appeal to an appellate authority (often the District Collector) if one has not received the service within the stipulated time or feels one has been wrongly denied a service\textsuperscript{872}.

One can appeal that decision to a reviewing authority (often the divisional commissioner). Bihar’s Act has been implemented by the state government’s General Administration Department with funding assistance from the United Kingdom’s Department for Internal Development (DFID)\textsuperscript{873}.

With the help of this funding the Bihar program was both far better staffed and more computerized than Madhya Pradesh’s from its initiation. In each block, centres have been created where two to four contract employees with an IT degree

\textsuperscript{870} Ibid.
\textsuperscript{871} Ibid.
\textsuperscript{872} Ibid.
\textsuperscript{873} Ibid.
have been hired to accept applications for services covered under the Right to Public Service Act and give applicants computer generated receipts. The receipt confirms in how many days the service must be completed. The applications are then taken by these Department for Internal Development (DFID) funded state employees and given to officials who process them. Unlike Madhya Pradesh there are not multiple counters to go to, but instead a single window where applications.\footnote{\textit{Ibid}}

5.5.2.5 Specific states who implement this Act.

Right to Public Services means a right to obtain the service within the given time limit and the service means any service, where The State Government may, by notification from time to time, notify the services, to which this Act shall apply. Legislation in India comprises statutory laws which guarantee time bound delivery of services for various public services rendered by the Government to citizen and provides mechanism for punishing the errant public servant who is deficient in providing the service stipulated under the statute.\footnote{Rajan Walia, "Chandigarh awaits as Punjab approves as Right to Services Act" 8 June 2011, Available at, http://timesofindia.indiatimes.com/city/chandigarh, accessed on 4 September 2012.}

Right to Service legislation are meant to reduce corruption among the government officials and to increase transparency and public accountability.\footnote{"Corruption watchdog hails Bihar, MP Governments as best service-providers", Times of India. 21 April 2011. Available at, http://timesofindia.indiatimes.com/india/Corruption-watchdog-hails-Bihar-MP-govts-as-best-service-providers/articles, 4 December 2011.}

Madhya Pradesh became the first state in India to enact Right to Service Act on 18 August, 2010 and Bihar was the second to enact this bill on 25th July 2012.\footnote{"Right to Service Act to come into force from tomorrow". 14 August 2011. Hindustan Times, available at http://www.hindustantimes.com/patna/right-to-service-act-to-come-into-force-from-tomorrow/story, accessed on, 4 December 2011.}

5.5.2.6 State Legislation on Right to Time-Bound Delivery of Service

In 2010, the Government of Madhya Pradesh passed the Public Service Guarantee Act or Lok Sewaon Ke Pradan Ki Guarantee Adhiniyam. In 2011,
eight more States\(^1\) enacted similar legislation guaranteeing citizens the right to public services within a stipulated time frame. Similar legislation is on the anvil in at least eight other states. At the national level, the Department of Administrative Reforms and Public Grievances has circulated a Draft Citizens Right to Grievance Redress Bill, 2011, for comments and suggestions\(^878\).

Name of eight states and their legislation are given below\(^879\):

1. Bihar (Bihar Right to Service Act, 2011);
2. Delhi (Delhi [Right of Citizen to Time Bound Delivery of Services] Act, 2011);
3. Himachal Pradesh (Himachal Pradesh Public Services Guarantee Act, 2011);
4. Jammu & Kashmir (Jammu & Kashmir Public Services Guarantee Act, 2011);
5. Punjab (Punjab Right to Service, 2011);
6. Rajasthan (Rajasthan Guaranteed Delivery of Public Services Act, 2011);

These Acts come in the wake of a widespread recognition that public services in India are failing. By clearly articulating citizen entitlements and building internal checks and balances through effective grievance redressal mechanisms, they represent an effort by State governments to build a new model to address service-delivery failures.

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\(^{879}\) Ibid
5.5.2.7 Right to Service Commission

The states of Punjab and Uttarakhand have provided for a Right to Service Commission to be constituted by the State Government. The functions of the Commission include ensuring of “proper implementation” of the Act and making “suggestions to the State Government for ensuring better delivery of services.” In furtherance of this, these Commissions have been tasked with the responsibility of entertaining and disposing revisions of orders passed by the SAA and have also been equipped with suo motu powers to look into failure to deliver service and refer the matter to authorities under the Act for disposal. Civil court powers of inquiry have been provided to the Commissions to enable them to undertake inquiry. Further, they can inspect offices responsible for delivery of services including the offices of FAA and SAA, recommend departmental action against officers who have failed to discharge their functions and make recommendations for transparent and easier procedures and services that should be notified. Under the Punjab Act, the Commission can also issue instruction that will guide the working of the authorities under the Act.881

5.5.2.8 An analysis of the Act.

The Right to Public Services legislation, if effectively implemented could change the nature of governance in the nation. The process of transparency and accountability in the government institutions should be initiated on priority, which
would bring a sense of empowerment to the citizens as to verify the government’s performance and accountability. The implementation of the Law on the right to know for setting up information regime therefore argues well for strengthening the knowledge society as well as for increasing the accountability of public bodies.

It is true that the Right to Public Services legislation has become a weapon in hands of common man to stop corrupted bureaucrats. This Right to Public Services legislation created a positive impact on accountability & transparency in the governance of democratic nation. it has just begun to happen for the first time for establishing an open and participatory governance system that protects and promotes the socio-economic interests of every citizen, particularly the poor, who are receiving the benefits of development as per the entitlements. As the functioning of public authorities becomes more transparent and ensure proactive disclosure of the policies, Programmes and their outcomes, there would be greater participation by people in every sphere of development 882.

The Right to Public Service Acts being passed and implemented in different Indian states deserve attention. Their existence points to a crisis in the implementation of laws and policies by the bureaucracy in India. These acts can be part of a combination of measures to overcome such implementation failures. Their shock value and high-profile nature might make them an effective mechanism for jolting the bureaucracy out of the status quo or focusing public attention on service delivery reform. However, these acts are likely neither a necessary measure to improve public service implementation, or that effective in the long-term. Possible adverse consequences, such as demoralization of officials and overemphasizing some government tasks over others, need to be weighed when reflecting upon whether to adopt such an act 883.

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882 Supra note 181.
883 Ibid.
5.6 **Relation between accountability and responsibility**

Thus, accountability and relational responsibility are related as part to whole. Accountability refers to one aspect, the calling to account and acceptance of oversight, of one type of responsibility, where there is relational responsibility to someone else. Some analyses prefer to see accountability as distinct from, and contrasted with, responsibility.

For instance, while identifying accountability with its root meaning of being called to account, confines responsibility to the free exercise of discretion. In this sense, the responsibility of public officials, their freedom to act, tends to be curbed by the requirements of accountability, their obligation to report and be audited. However, this narrowing of the concept of responsibility, especially in hierarchical contexts, to exclude the requirements of accountability seems somewhat paradoxical.

At any rate, the difference, it should be noted, is over the scope of responsibility rather than the meaning of accountability itself. Like relational responsibility, accountability involves a relationship of authority and therefore, normally, a relationship of inequality between two parties. Those who are accountable are in some sense subordinate to those who oversee their activities and to whom they must give account.

Accountability is thus a common feature of asymmetric authority relationships, such as that of supervised and supervisor, agent and principal, representative and those represented. People of equal status, such as professional colleagues or partners, may be accountable to one another but only as part of a mutual authority relationship in which each accepts the authority of the other over certain matters.

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5.7 Limitations of Administrative accountability

Public servants feel primarily accountable to their agencies or superiors, whereas the public’s problem is to hold them accountable. Now to what extent and in what ways administrative accountability would be achieved is a matter of legal-institutional arrangements as well as political and social culture. As we all know the working of the process of accountability is not simple and easy, there are, however, some limitations to administrative accountability⁸⁸⁸:

1. Accountability, being culture oriented operates within the cultural atmosphere of a political system. The nature and meaning of administrative accountability, to a large extent, are therefore, defined by it.

2. Administrative accountability is conditioned by the political structure of a country. Here for example, the nature and extent of administrative accountability will be different in the unitary system from that in a federal system. In India the problem is more complicated where personnel of the All India Services (IAS/IPS/IFS) are recruited and regulated by the Union Government but work under State Governments, Corporation, autonomous agencies etc. So they cannot be held fully accountable to the latter because they remain under the disciplinary power of the former⁸⁸⁹.

3. When government enters into business or manufacturing i.e. public enterprises and undertakes some commercial activities, new problems of administrative accountability of the managers arise. Infact administrative accountability needs to be specially defined as the pattern and practices of management have to be different from those of a typical government department⁸⁹⁰.

4. Sometimes administrative accountability is limited in situations which may be called ‘non-administration’. In fact, it is really very hard to insure administrative accountability where there is hardly any administration worth the name. In those administrative systems where decisions are taken by bypassing the formal

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⁸⁸⁹ Ibid
⁸⁹⁰ Ibid
administrative institutions and procedures, it is almost next to impossible to expect proper kind of administrative accountability.  

5. Lastly, sometimes even professional ethics of a person may come into conflict with his administrative ethics. This is particularly so where technical specialists or professionals are employed in government services. To conclude, it may be stressed that government and administrative accountability in a democratic country like India is of great significance. Administrative accountability has to be insured through dynamic role of legislature, executive, electorates, professional bodies, judiciary, political parties, press and the public. Therefore making administration honest, accountable and responsive, public should not only be aware of policies but should also be active, aware, vigilant, intelligent, enthusiastic and cooperative. Beside administrative accountability also depends on the administrative culture of the country.

5.8 Conclusion

In all societies, the formation of public governance is largely dependent on its contextual parameters, including social structure, economic condition, political atmosphere, cultural pattern and technological trends. The nature of governance often changes depending on the intensity and speed of transition in some of these surrounding factors. In the current age, one of the most significant phenomena affecting public governance is the revolution in information, which researcher believes a good tool to ensure accountability of public authorities.

As India is one of the leading countries venturing into e-governance. Recently, the Indian government has set the target of delivering at least 25 percent of its dealing and service electronically.

It is very true that public servants are accountable directly to members of the public themselves and on occasion to their own professional consciences.

\[891\] Ibid
\[892\] Ibid
\[894\] Ibid.