Chapter-4

RIGHT TO INFORMATION UNDER OTHER STATUTORY LAWS

4.1 INTRODUCTION

In India, the right to information has been developed through diverse strands for almost the entire period of the country's independent history. Only now are these strands coming together to form the 'critical mass' needed to crystallise the issue into positive action on the part of the people as well as the government.\(^1\) India is a vast and densely-populated country with a variety of different cultures, customs and languages. The problems which beset this huge nation range from low literacy rates, high birth and infant mortality rates, social and economic tensions ranging from differing levels of development to class, caste and communal conflicts, gender discrimination and a relatively poor record of civil rights.\(^2\) The last few years have also seen political instability, with frequent elections and governments with small parliamentary majorities.\(^3\)

Despite these problems, India has a dynamic Constitution, a dogged commitment to democracy and a large number of civil society groups working on a diverse range of issues including health, education, civil and political rights, communalism and empowerment of women.\(^4\) India shares with other Commonwealth countries a colonial past and much of the legal framework derives from this period. Having gained Independence in 1947, and in 1950 India adopted its own Constitution setting up a federal parliamentary democracy with universal adult franchise.\(^5\) Importantly, the Constitution enshrined a Bill of Rights,\(^6\) which has been instrumental

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6. A list of most important rights to citizens of a Country, it originates from England.
in protecting basic human rights. India has a bicameral central legislature, or Parliament, and mainly unicameral State Legislative Assemblies. A third tier has recently been added in the form of local government, including the important village-level Gram Panchayats, elected directly by the local people and now vested with wide powers including control over development funds and powers in relation to revenue collection and generation. The civil administration is run along much the same lines as during the colonial period – through a network of powerful, centrally-controlled bureaucracies supported by the State. For administrative purposes, the country is divided into a number of districts, each headed by a senior bureaucrat called the District Magistrate or the Collector.

All these different levels of administration affect people directly and it is primarily at the local level that ordinary people find themselves grappling with issues of access to information. This study traces developments regarding the right to information both in the social and legal spheres, as well as demonstrating the relevance of the right to information to the entire spectrum of rights. Developments regarding the right to information have taken place at a number of levels and around many issues, all of which now complement each other in a forceful campaign for greater openness and transparency. Over the last years, more frequent interventions regarding transparency and access to information across a range of issues have brought it into sharp focus.

4.2 INFORMATION: WHAT IT MEANS AND TO WHOM

The phrase 'freedom of information' has itself become a subject of debate in India. Many local activists and legal experts prefer to use the term 'right to information' as they see 'freedom' as signifying mere

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prohibition of government interference, whereas applying the term 'right' imposes a positive duty on government to disseminate information to the people.\textsuperscript{13} In the Indian Constitution, most of the freedoms enumerated in Article 19, which guarantees freedom of expression, require the State to refrain from interfering. A 'right', on the other hand, is understood in India as placing a positive duty on the State to take steps to ensure its fulfilment.\textsuperscript{14} Madhav Godbole,\textsuperscript{15} says in his critique of the Freedom of Information Bill, 2000, "Since the Bill makes it a point to talk only about \textit{freedom} of information as opposed to \textit{right} to information, it has lent itself to some clumsy construction ... all citizens have a right to information."

Two aspects of the right to information are particularly important to the current debate: information to which access must be given upon request; and information which must be published and disseminated \textit{suomotu} (proactively) by public authorities, including information which would affect fundamental rights such as food, environment and civil liberties.\textsuperscript{16} Particular emphasis is being paid to \textit{suomotu} publication, given the background of illiteracy and poverty that prevails in most parts of the country. Although 'information' in the current debate refers primarily to information held by public authorities, strong arguments can be made to extend the scope of the term to certain kinds of information held by private parties.\textsuperscript{17} The right to information would then become a right to seek and receive information from public authorities, as well as a right to access certain kinds of information from private actors.\textsuperscript{18}

The right to information derives from the democratic framework established by the Constitution and rests on the basic premise that since government is 'for the people', it should be open and accountable and should have nothing to conceal from the people it

\begin{thebibliography}{9}
\bibitem{13} P.K. Dass, \textit{Right to Information laws} 89 (2005).
\bibitem{14} Naresh Kumar, \textit{Right to Information in India} 234 (2005).
\bibitem{15} Ex. Union Home Secretary and Right to Information Activist.
\bibitem{16} The Right to Information Act, 2005 (22 of 2005).
\bibitem{17} N.K. Acharya, Commentary on the Right to Information Act, 2005
\bibitem{18} P.C. Majmudar, \textit{Right to Information law and practice} 56 (2005).
\end{thebibliography}
purports to represent. In this context, the following observation seems to sum up the philosophical basis of the right to information: In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy the common routine business, is not in the interest of the public. Such secrecy can seldom be legitimately desired.

4.3 HISTORY OF SECRECY IN INDIA

Democracy, it has been said, exposes its sores, while autocracy whitens its sepulchers. Whether under democracy or autocracy, a substratum of administrative secrecy is essential. This has been so in all countries and in all conditions. There is, however, a difference under autocracy. The administration uses secretiveness and censorship as weapons and does not allow what is known as a free press, if it does allow a press Under democracy, conditions are not ideal, unless it is an ideal democracy, but the political climate is different and the conditions of public life are liberal. Freedom of expression is relatively greater. Democracy too differs from country to country. India, following the British principle that the liberty of the journalist and the press is no greater, if no less than that of the

19 Dr. Madhabhushi Sridhar, Right to Information Law & Practice 16 (2006).
21 P.M. Bakshi, Constitution of India 49 (2009).
average citizen, based her Official Secrets Act, 1923 on the British Act of 1911, based on earlier Acts. This Act does not exhaust all the usual methods of administrative secrecy, it deals only with the more serious aspects of the vital interests of the state.\textsuperscript{26} It is generally recognized that highly secret information about vital interests of the state must not be allowed to be disclosed and this limitation on the right of freedom of speech and expression was recognized both by the United Nations Council on Freedom of Information and by the Council of Europe.\textsuperscript{27} The Indian press has not claimed any right to publish information likely to be useful to the enemy in times of war or armed rebellion.\textsuperscript{28} Confidential Government information likely to imperil public safety in times of emergency. It would not, however, accept the claim that any circular or note or instruction becomes a prohibited secret because it is marked 'secret' or 'confidential'.\textsuperscript{29} The press has claimed the right to publish confidential government information when its publication is in the public interest and the two basic limitations do not apply.\textsuperscript{30} It is a matter of professional honour and distinction for newspaper to expose secret moves when public interest justifies such exposure.\textsuperscript{31}

The press Laws Enquiry Committee held that the necessity of guarding state secrets was not confined to an emergency and that it was not practicable to define which confidential information should be published in the interest of the public and without prejudice to the interest of the state.\textsuperscript{32} The First Press Commission did not suggest any changes in the law because of the reasonable manner in which the Act had been administered, though it agreed with the contention

\textsuperscript{26} Justice Ruma Pal, “Information and Fundamental Right”\textsuperscript{45} (2006).
\textsuperscript{27} S. Misra, ‘Public Accountability and Administrative Efficiency through Right to Information: Opportunities and Challenges’ in Indian Journal of Public Administration, 55: 3 (July-Sept., 2009), pp. 523-532.
\textsuperscript{28} Vikrant Narayan Vasudeva, "Right to Information: Paradigm Shift from Representative to Participatory Government" 132 (2006).
\textsuperscript{29} The Hindustan Times, May 12, 2005.
\textsuperscript{30} The Times of India, August 20, 2006.
that merely because a circular is marked secret or confidential, it should not attract the provisions of the Act, if its publication is in the interest of the public.\textsuperscript{33}

\textbf{4.3.1 Administrative Secrecy}

The need for administrative secrecy cannot be denied, but the interests of the public must be paramount in a democracy and the U.S. approach to the problem has been more positive.\textsuperscript{34} The basic principle is freedom of information not administrative secrecy, public interest and not the passing whims of a party administration.\textsuperscript{35} Where the government, usually belonging to a party, can be distinguished from the administration, it has a right to preserve some vital secrets, not what it considers to be secrets but what public opinion and the supreme legislature of the nation consider to be secret.\textsuperscript{36}

In India, the first Official Secrets Act, 1889 was passed with very little debate or opposition. It was concerned with espionage and notion of unlawful disclosure of information.\textsuperscript{37} It also deals with the concept of breach of official trust.\textsuperscript{38} As introduced, the Bill included no public interest defence. However, the Government amended the legislation in response to objections. The fact that the Bill would penalize the disclosure of information contrary to the interests not only of the state but also any part of government; criticism of a government department which might in many instances be for the benefit of the state would become a crime.\textsuperscript{39} The bill was changed to include a public interest defence and there have been reconsiderations and moves for liberalization on the basis of the Franks and other reports.\textsuperscript{40}

The Indian Act stands where it was. It would be unfair to keep it

\textsuperscript{34} K.G. Robertson, \textit{Secrecy and Open Government} 89 (1999).
\textsuperscript{35} Ibid.
\textsuperscript{36} Patrick Birkinshaw, \textit{Freedom of Information: The Law, the Practice and the Ideal} 79 (2001).
\textsuperscript{37} Section-1 of the Official Secrets Act, 1889.
\textsuperscript{38} Section-2 of the Official Secrets Act, 1889.
\textsuperscript{39} Clive Ponting, \textit{The Right to Know} 16 (1985).
\textsuperscript{40} Franks Report 1972, to review the operation of section 2 of the Official Secrets Act 1911 and to make recommendations. Lord Frank was appointed as Chairman.
as it is when the British Act is sought to be revised and when it is known that, while British statutes have been copied, British is practice has not been. An open government means the public's right to information, and there is a rising demand for openness of government, which means that minister and civil servants should accept as a matter of course that they must give full reasons for their decisions and must provide all relevant information about policies and proposals. The citizen's view of the U.S. Government has been summarized as: The people to a far greater extent than their leaders regard government secrecy as a prime obstacle to responsiveness. But both agree that openness and honesty officials records a prerequisite to successful contacts between leaders and the led.

4.3.2 Secrecy in Government of India

All Governments have been practicing studied concealment of information from the people, although the degree, extent nature of such reticence would necessarily vary both synchronically and diachronically. Yet it is only recently that demand for openness in the system of governance has been made. What is more, this agitation has acquired an aim international dimension, sweeping across all the democratic countries of the world. The debate, understandably, started the west, and India could not remain completely untouched. India has had its own reasons for feeling concerned over secrecy in government. The Country knows too well and too bitterly that only recently the political executive of the land was indulging in the most reprehensible behaviour, all this rendered possible by its habit of not letting the people know about its doings. The Shah Commission of Inquiry (1977-78) has rightly cautioned:

It has been established that more the effort at secrecy the greater the chances of abuse of authority by the fuctionaries.

44 Angela Wader, Global Source Book on Right to Information 321 (2005).
45 Ibid.
4.3.3 Secrecy by persuasion

Secrecy in Indian Government has indeed long history - longer than in many other countries. As early as August 1843 the Central Government in India issued a notification asking its personnel not to communicate to the outside world any paper or information in their possession.\(^{47}\) What was happening at the time was that some civil servants were supplying information on matters relating to government to the press, which had begun emerging in India around this time - a practice causing occasional embarrassment to the Government.\(^{48}\) It was precisely this indulgence which was sought to be curbed by this notification, which read:

Some misconception appearing to exist with respect to the power which officers of both services (i.e. civil and military) have over the documents and papers which come into their possession officially, the Governor General in Council deems it expedient to notify that such documents and papers are in no case to be made public, or communicated to individuals, without the previous consent of the government to which alone they belong.\(^{49}\)

Four years later, the Government of India felt compelled to reissue the earlier notification as the practice of purveying governmental information to the press and to other had not only not subsided but had in the meantime become more widespread\(^{50}\). Some civil servants were even connected with the press in India.\(^{51}\)

In July 1875 the Central Government laid down detailed instructions in a bid to regulate the contemporary administrative behaviour in relation to the emerging press in India.\(^{52}\)

Under these rules, no public functionary was permitted,

\(^{49}\) Government of India, Home Department, Public Proceedings, August 1884 p. 213-220.
\(^{51}\) Ibid.
without the previous sanction in writing of the government under which he immediately served, to become the proprietor, either in whole or in part, of any newspaper or periodical.\(^\text{53}\) It was laid down that such sanction was to be given in the case of newspapers or publications mainly devoted to the discussion of topics not of a political character;\(^\text{53}\) but such, for instance, as art, science, or literature. The sanction; moreover, was liable to be withdrawn at the discretion of the government.\(^\text{54}\)

Secondly, public personnel were not absolutely prohibited from contributing to the press; but the government wanted them to confine themselves within the limits of temperate and reasonable discussion. They, moreover, were prohibited from making public, without the previous sanction of the government, any documents, papers, or information of which they might have become possessed in their official capacity.\(^\text{55}\)

Thirdly, it was the government that decided, that in case of doubt, whether any engagement of civil servants was consistent with the discharge of their duties to the employer.\(^\text{56}\)

These orders were widely circulated in 1875, but the leakage happening within the bureaucracy did not completely stop. They indeed became a cause of concern for the government. As the business that began to pass through the public offices became more important subsequently the government felt compelled in December 1878.\(^\text{57}\)

To remind all officers of the government that information received, by them in their official capacity, whether from official sources or otherwise, which is not from its nature obviously intended to be made public, cannot be treated as if it were at their personal disposal.\(^\text{58}\) yet the new resolution did not depart from the basic


\(^{56}\) Ibid.

\(^{57}\) Angela Wadia, *Global Sourcebook on Right to Information* 213 (2005).

pattern of the earlier notification. The Resolution of 1878 did not entirely prohibit the disclosure, without special authority, of any information received officially. The government still preferred to trust the discretion and intelligence of the public functionaries holding places of trust.  

To sum up, the existing arrangements prohibited making public, without the previous sanction of government of any documents, papers or information acquired in an official capacity. Any information received in an official capacity, whether from official sources or otherwise, not from its nature obviously intended to be made public, could not be treated as if at the personal disposal of the recipient. Furthermore, public personnel were charged to use discretion and intelligence in disclosing information received officially, and, in case of doubt, to apply to the higher authority. The weaknesses of these orders and the official circular of 1884 began to be realized in the next few years. These rules applied to the formal direct and avowed communication to the press and public official information. None of these orders, for instance, prohibited "the mischief of unguarded oral discussion of pending questions of importance, in the course of which item of information not designed for publication are allowed to get out." This had to be plugged and was done through a resolution issued on 3 June, 1885. Resolution is important for two reasons. First, it consolidated the earlier orders and circulars on the subject and thus became document which was at once most comprehensive as well authentic on secrecy in government. Secondly, it was itself marked 'confidential', and was specifically forbidden publication in the gazette. This sets it apart from the earlier orders which were all published in the gazette.  

60 M.C. Jain Kagzi, the Indian Administrative Law 175 (2001).  
The introduction in 1853 of telegraphic communication in India had the effect of shattering the country's isolation. Hitherto, newspapers published in India were neither numerous nor widely circulated. Now, every statement, however inaccurate incomplete, could be reported from one end of India to the other and from India to Europe in the course of a few hours. Journalists as a class are always interested in scraps of official gossip about men and matters under discussion in the bureaucracy, for all this make juicy stories for the papers. In India, moreover, public administration was the only institution capable of providing the press with the daily pabulum requisite for the nourishment of its, enterprise and maintenance of its character. The journalistic pressure on the Government was thus immense, which, in the latter's eyes, needed to be regulated. This it sought to do by the Resolution. No officer of Government not specially authorized in that behalf, is at liberty to communicate to the press, either directly or indirectly, information of which he may become possessed in the course of his official duty. A similar professional reticence should be exercised by all officers of Government in their private and unofficial intercourse with non-official persons, and even with officers of Government belonging to other Departments. When an officer has in the course of his duty become possessed of special information not yet made public, he should always be strictly on his guard against the temptation of divulging it, even other servants of Government, when these are not officially entitled to his confidence. Officers of Government are bound to be as reserved in respect to all matters that may come within their cognizance during the discharge of their public duties as lawyers, bankers or other professional men in regard to the affairs of their clients.

While promoting secrecy, the government was also in a way

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66 Ibid.
68 Government of India, Home Department, (Public), Resolution on No. 22A (3rd June 1885).
alive to its responsibility for flow of what it considered as legitimate information to outsiders, especially to the press.\textsuperscript{69} It made departmental arrangements for communicating to the press such information as it might unobjectionably be given. The government had appointed in 1877 a press commissioner\textsuperscript{70} to liaison with the press and through whom official papers or information of value were given.

**4.3.4 Secrecy by Statute - Official Secrets Act, 1889**

It must also be noted that hitherto the disclosure of the confidential information of government to unauthorized persons was punishable under the disciplinary rules, but it was not a penal offence as such. It attracted penal punishment since 1889 when the Indian Official Secrets Act\textsuperscript{71} was passed.

Britain passed its first Official Secrets Act in 1889, and a unique feature of this statute was that it was applicable to 'any part of Her Majesty's dominations' including India. This flowed from the overriding British belief that secrets were imperial in nature and thus the statute enforcing it must be applicable to the empire.\textsuperscript{72}

Section 5 of the English Official Secrets Act, however, provided:

\begin{quote}
If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to Her Majesty the Queen to be of the like effect as those contained in this Act, Her Majesty may, by Order in Council suspend the operation within such British possession of this Act, or of any part thereof, so long as such law continues in force there, and no longer, and such order shall have effect as if it were enacted in this Act.\textsuperscript{73}
\end{quote}

In other words, the (British) Official Secrets Act, 1889 given an option to India: 'You take this Act, or you frame a similar Act'. The English statute was already in force in India, but it was thought

\textsuperscript{69} Aravind Menon, “Successful Right to Information-Essential Condition” \textsuperscript{324} (2006).
\textsuperscript{70} Roper Lethbridge, the first press Commissioner, A distinguished civil servant
\textsuperscript{71} An Act to prevent the disclosure of official documents and information.
\textsuperscript{73} Dhaka, Rajiv S., 'Right to Information Act and Good Governance: Operational Problems and Road Ahead', Indian Journal of Public Administration, 55: 3 (July-Sept.,2009), pp. 534-61.
desirable to place it also on the Indian statute book in order to give it
greater publicity and secondly, - even more importantly - to bring its
provisions into complete harmony with India's own system of
jurisprudence and administration.\textsuperscript{74} In other words, the English
statute was re-enacted for India with such adaptations of its language
and penalties as the nomenclature of the Indian statute book
required.\textsuperscript{75}

The Indian Official Secrets Act was thus passed in 1889. It was
a brief one consisting of only five sections.\textsuperscript{76} But it covered a much
wider area than the Resolution of 1885. The Indian Official Secrets
Act, 1889 was amended in 1904, and as a result, it became a
devastatingly severe piece of legislation. Indeed, the amendment was
so harsh that it was described as an attempt to 'Russionize the Indian
administration'.\textsuperscript{77} In the place of the provision that a person who
entered an officer for the purpose of wrongfully obtaining information,
was liable to be punished under the Act, it was enacted that whoever
'without lawful authority or permission (the proof whereof shall be
upon him)', went to an office, committed an offence under the Act.
Secondly, the amendment made all offences under the Act cognizable
and non-bailable.\textsuperscript{78}

\textbf{4.3.5 Official Secrets Act, 1923}

In 1911 Britain replaced its Official Secrets Act, 1889 by the
Official Secrets Act of 1911. As with its predecessor, the act of 1911
was automatically applicable to India unless India enacted a similar
legislation for itself.\textsuperscript{78} This was a period of political uncertainty, even
expectancy for India, and it was felt that this country stood on the
threshold of a new political career. The Government of India,
therefore, decided not to follow on the footsteps of Britain immediately

\textsuperscript{74} Ibid.
\textsuperscript{75} Goel, S.L., "Right to Information and Administrative Reforms", \textit{Indian Journal of Public
\textsuperscript{76} Section-1 of Official Secrets Act 1889, was concerned with espionage and the notion of unlawful
disclosure of information. Whereas section 2 deals with concept of breach of official trust.
\textsuperscript{77} The Official Secrets Act, 1911 repealed the 1889 Act.
\textsuperscript{78} Ibid.
but to wait till such time as the political picture became clearer. The Government of India Act, 1919 laid down the new framework of governance for the country and it was only after this constitution was put into operation that the task of updating the arrangements lack in & fully understand regarding official secrecy was taken in hand. The Official Secrets Act, 1923 assimilated the relevant law in India in Britain.

The Official Secrets Act, 1923 makes provisions against two sets of events. It is, first, directed against espionage and in this respect has left nothing to chance. The provisions covering espionage are made extremely favourable to the state, and an individual can be punished even on faint evidence. For instance, the Act says that it shall not be necessary to show that the accused person was guilty of any particular act prejudicial to the safety or interests of the state; he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appeared that his purpose was prejudicial to the safety or interests of the state. What is more, the Act says that a person may be presumed to have been in communication with a foreign agent if he has, either within or without (India), visited the address of a foreign agent or either within or without India, the name or address of, or any other information regarding, a foreign agent has been found in his possession. The second set of events covered by the Act relates to communication of official information to outsiders. The Act makes it a penal offence for any person holding office under the government willfully to communicate any official information to any person, other than person to whom he is authorized to communicate it. What is more, it

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83 Ibid.
is equally an offence for any person to receive such information. In other words, the statute sets out to punish both the 'thief' and the 'receiver of the stolen goods'! This is contained in the Official Secrets Act, 1923\textsuperscript{84}, which is an exact replica of the British Official Secrets 1898 Act\textsuperscript{85}. All this could be understood if one was aware of the contemporary ecology of Indian public administration. The nationalist movement was striking deeper roots in the country and there were also the extremist and terrorist forces at work. The colonial administration was naturally too anxious not only to keep itself insulated from the people but also to install and maintain a sprawling network of checks and counter checks within the administrative system too.\textsuperscript{86} The then ecology induced the rulers to view utmost secrecy as but an integral part of colonial survival.\textsuperscript{87}

4.3.6 Independence and Official Secrets Act

The Official Secrets Act has thus kept the people in the dark about what has been happening within the government. It was the catch all provisions of this statute which encouraged the political leadership to pursue courses of action highly detrimental to public morality.\textsuperscript{88} The country's leadership could commit with impunity all kinds of wrong, and the device that came handy was to keep the affairs secret from the outside world.\textsuperscript{89} Since the mid-sixties, particularly, since the early, seventies, there began to take place 'scandals', but these were prevented from coming to full light by

\textsuperscript{84} Section 5 of the Official Secrets Act,1923- states that if any person having in his possession or control any secret official code or password or information which relates to or is used in a prohibited place or relates to anything in such a place, or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of the Act, or which has been entrusted in confidence to him by any person holding office under Government.

\textsuperscript{85} Section 2 of the Official Secrets Act, 1898- deals with concept of breach of official trust.


\textsuperscript{87} Ibid.


\textsuperscript{89} Ambrish Saxena, RTI & FOP 7 (2004).
concealing information about them from the people.\textsuperscript{90} If the government were more open, the scandals would not have been possible, and the nightmare of the internal emergency would have perhaps been avoided.\textsuperscript{91} The present scenario does not purport to suggest a complete abolition of the Official Secrets Act. So long as national sovereignties exist and national flags fly, a measure of secrecy in government must be considered to be legitimate.\textsuperscript{92} Besides, information on matters constituting what is called privacy and personal life of citizens must not be publicly paraded or even shared with other collateral agencies. In short, both national sovereignty and civilization point to the continued need for a measure of secrecy in government matters relating to national security and defence, internal law and order, external relations, etc, are obvious examples of areas in public administration where secrecy is warranted, at least for quite some time to come.\textsuperscript{93} In this category can also fall negotiations with international organizations as well as between the centre and the units in a federal set-up economic intelligence about citizens, matters having high commercial value, etc\textsuperscript{94}

4.4 RIGHT TO INFORMATION AND THE PRIVACY ACT THE INTER-RELATIONSHIP\textsuperscript{95}

Although it is contended that the two Acts come in close conflict with each other and the one negates the purpose of the other, the experience in America suggests a close inter-relationship between the two. The privacy Act governs the manner in which the federal government collects and uses certain information about individuals and grants individuals a right of access, subject to certain exceptions,
to records pertaining to them. Either the Privacy Act or RTI or both may be used by an individual seeking access to information about himself in agency records. But the two Acts differ considerably in purpose, scope, procedures, and effects. The two Acts also are different in scope: all agency records are under RTI, but only the records in a 'system of records' are subject to the privacy Act. A 'system' is defined as a group of records from which information is retrieved by the individual's name, social security number, or the like. Also, the concepts of 'records under the two Acts are different. Under RTI a record is a repository of information, while under the Privacy Act a record is defined, in effect, as an item of information about an individual that has been recorded.

The two Acts provide different procedures as to fees, time limits, judicial review and other matters. They also provide different source of guidance: the Justice Department provides guidance agencies on RTI, while the office of Management and Bud provides guidance on the Privacy Act, though with le assistance from justices.

4.5 FREEDOM OF INFORMATION- OFFICIAL SECRECY

"SAVOIREST POUVOIR" [knowledge is power] What is the rationale of the right to information, the Right know? The answer lies in the basic postulate of the democratic system, namely, that government shall be based on the con of the governed. That is its turn implies that consent shall, both free and informed and should be the outcome of the widest possible dissemination of information from diverse and antagonistic sources. Thereby the citizen is enabled to make informed and antagonistic sources. Thereby the citizen is

96 Slane Bruce, Freedom of Information and Privacy 45 (2002).
enabled to make informed and intelligent decisions.\textsuperscript{102} The quality of governmental decisions is improved not only by the public's contribution to the decision-making process but also by the knowledge of the decision-makers that they are acting in the public view in the light of publicity. It is only then that citizens can fulfill their role and make democracy real and participatory.\textsuperscript{103} Otherwise, as Madison\textsuperscript{104} warned, "a popular government without popular information, or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both."

There is another dimension of the Right to know. Our Founding fathers after full debate and deliberation adopted the democratic form of government in which citizens periodically have the right to decide by whom and how they will be governed, and to call upon their rules to account for their conduct. Accountability is the sine qua non of democracy and the basic premise of accountability is that the people should have information about the working of government.\textsuperscript{105}

Since the right to information has been accorded constitutional status by the judgment of the Supreme Court\textsuperscript{106} an amendment of the Constitution, involving the special procedure requisite for effecting constitutional amendments is unnecessary, Besides a constitutional amendment can do no more than expressly, declare the right to information as a Fundamental Right. It is not the function of the Constitution to spell out the several details, modalities and procedures for working out and implementing the right in its various facets.\textsuperscript{107} For that purpose legislation providing for Freedom of Information is necessary, which would cover classification of information, access to materials, exemptions and exceptions, procedure for grant or refusal of request for information, remedies in

\textsuperscript{102} Calland, The Right to Know and Access to Information 125 (2002).
\textsuperscript{103} David, Access to Government Information Laws 213 (2006).
\textsuperscript{104} James Madison, an American statesman, political theorist and the fourth President of United States.
\textsuperscript{105} Dr. Madhabushni Sridhar, Right to Information Law & Practice 26 (2006).
\textsuperscript{106} S.P. Gupta v. Union of India, AIR 1982 SC 149.
respect of adverse orders and other such matters.  

One important objective of any freedom of information legislation should be the protection of the rights of individuals by giving citizens right of access to information about themselves held in government or other official files, and the right to correct that information if it is misleading or untrue. The U.S. experience of the abuse of Freedom of Information laws by business competitors should be kept in mind.  

Next, it should ensure wider dissemination of information gathered at the public expense on topics such as product safety, land records, health and environmental hazards, ecological data and so on. And perhaps the most important of all: it should throw the spotlight of public scrutiny on policy formulation and administration and thereby improve the quality of decision-making.  

Above all, access to information should be within easy reach and at affordable cost. Time-consuming and cumbersome procedures would defeat the very objective of the legislation. There can be no absolute to have access to information, any more than there is an absolute right to freedom of speech and expression. The usual exemptions permitting government to withhold access to information are generally in respect of the following matter:

I. International relations and national security;
II. Law enforcement and prevention of crime;
III. Internal deliberations of the government;
IV. Information obtained in confidence from some source outside the government;

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V. Information which, if disclosed, would violate the privacy of an individual;
VI. Information, particularly of an economic nature, which if disclosed, would confer an unfair advantage on some person or subject some person or government to an unfair disadvantage;
VII. Information which is covered by legal professional privilege, like communication between a legal adviser and his client;
VIII. Information about scientific discoveries and inventions and improvements, essentially in the field of weaponry.

These categories are broad and information of every kind in relation to these matters cannot always be treated as secret. There may be occasions when information may have to be disclose in the public interest, without compromising national interests or public safety.

Similarly, activities of a government in the field of foreign relation especially those which may affect vital issues of peace and war of the utmost concern to the public, Citizens, surely, have a right to information about the possibility of a war because, in the memorable words of Thomas Jefferson, "it is their sweat which is to earn all the expenses of the war and their blood which is to flow in expiation of the cause of it."

The crux of the problem is to ensure that legitimate protection of information is not made a pretext for a wholesale cover-up operation. Classification of documents must bear a real and proximate, not a far-fetched and fanciful, nexus to the head of exemption. The aim should be to achieve what Edward Shils described as "an acceptable equilibrium between the claims for

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116 Thomas Jefferson was an American founding father, the principal author of the declaration of independence and the third president of the United States. He was a spokesman for democracy and the rights of man with worldwide influence.

117 A distinguished sociology professor at the university of Chicago.
secrecy and the demands of the public for disclosure.\textsuperscript{118}

Freedom of information legislation must respect the individual’s right, to privacy, the right to be let alone which, in the classic words of the great American Judge, Louis Brandeis\textsuperscript{119}, is “the most comprehensive of rights and the rights most valued by civilized men.” Since there can be no unrestricted right of access to information, secrecy cannot be banished altogether. Indeed, James Madison, to whom secrecy was anathema, defended the decision of the Philadelphia Convention in 1787\textsuperscript{120} to conduct the debate on the framing of the United States Constitution “with closed doors”. Why? ....Because opinions were so various and had the members committed themselves publicly at first they would have afterwards supposed consistency required them to maintain their ground, whereas by secret discussion no man felt himself obliged to retain his opinions any longer than he was satisfied of their propriety and truth, and was open to the force of the argument."

Freedom of information, as Norman Marsh\textsuperscript{121} has aptly pointed out, “is not meant to provide open government in the sense of the whole administrative, business of government being carried on in the market place. There is what is called the 'privacy of the government decision-taking. Whilst there can be no doubt about the public’s entitlement to know what is decided on its behalf, the right to know cannot always be extended to the internal deliberations of government.\textsuperscript{122}

The Official, Secrets Act, 1923 is a telling example. In its present form it is an anachronism. Its real vice lies in the wide net cast by section 5\textsuperscript{123}, the catch-all provision, which ropes in all kinds

\textsuperscript{119} Louis Brandeis was an American lawyer and associate justice in the Supreme Court of United States from 1916 to 1939.
\textsuperscript{120} Philadelphia Convention1787, or the grand convention at Philadelphia took place from may 25 to September 17, 1787 in Philadelphia to address problems in governing the United States of America. The result of the convention was the creation of the United States Constitution.
\textsuperscript{121} Norman Marsh, was a distinguished law reformer and a founding member of Law Commission.
\textsuperscript{122} Sheridan Gavin, Freedom of Information and Privacy 165 (2010).
\textsuperscript{123} Section 5 of the Official Secrets Act, 1923- states that if any person having in his possession or control any secret official code or password or information which relates to or is used in a
of official documents and information without distinctions of kind or degree.

The other serious infirmity in the existing Official Secrets Act is the absence of any defence on the ground of public interest. In the ultimate analysis, public interest ought to be the overriding and decisive consideration and therefore a defence on that ground should be made available in a prosecution for disclosure of official secrets. Openness of governmental processes is conducive to good government and that all said and done, is the compelling justification for Freedom of Information.

4.6 FROM SECRECY TO THE FREEDOM OF INFORMATION – A RELUCTANT TRANSITION

For over fifty years, secrecy has been the norm in the working of the Government, and transparency, the exception. In the guise of protecting the State’s interest, secrecy in public affairs has been a shield for those in Government, a means of concealing their actions from public scrutiny. Access to information, on the other hand, is power in the hands of the electorate. It demands accountability. This is fundamental to the functioning of any truly democratic society. The hallmark of a meaningful democracy is the institutionalisation of transparent and participative processes which gives the electorate access to information about the Government it has brought to power, and enables it to make an informed decision to remove that Government from power, if it so chooses. Just as

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Secrecy undermines democracy, information is a threat to authoritarianism.

Laws that licence secrecy are a colonial legacy and were adopted by totalitarian regimes to legitimize suppression of information about its functioning. Secrecy in public affairs is anathema to the very notion of democracy. Yet laws favouring governmental secrecy have dragged on for hail a century alter India became a democratic republic. Scandinavian and USA\textsuperscript{129} enacted laws giving the citizen statutory right information as early as the 1960s. It was not for over another forty years, that a bill called the Freedom of Information Bill, 2002 finally came to be introduced in the Indian Parliament.\textsuperscript{130} This step came as a breath of fresh air in an otherwise cagey and inaccessible system.

Old habits die hard, especially when vested interests are involved. Even as the Freedom of information Act, 2002 came into force on 6th January, 2003 the Government continued to grope for pretexts to, justify withholding information from the citizen.\textsuperscript{131} A classic instance was the Government's response to the Supreme Court's judgment in \textit{Union of India v Assn For Democratic Reforms}.\textsuperscript{132} In May 2002, the Supreme Court passed a landmark judgment on the right 'of the voter to information about the antecedents of electoral candidates. The Court directed that all candidates for election to Parliament and to the legislative assemblies were required to furnish information about the candidate's criminal record, if any, his or her assets and liabilities and educational qualifications. The Court held that the requirement to disclose this information arose from every citizen’s fundamental right to information which flows from the right to free speech and expression under Article 19(l)(a) of the Constitution. The Court relied on a number of previously decided


\textsuperscript{130} Ibid.

\textsuperscript{131} Saxena, P., "Public Authority and the RTI, Economic and Political Weekly, 44: 16 (April. 2009), pp.13-16.

\textsuperscript{132} (2002) 5 SCC 294.
cases where the Supreme Court interpreted the right to free speech and expression to include the public's right to knowledge of public affairs.\footnote{Indian Newspaper (Bombay) Private Ltd. v. Union of India (1985)1 SCC 641.} Similarly the Apex Court in \textit{T N Sheshan, Chief Election Commissioner of India v. Union of India}\footnote{(1995)4 SCC 611.} observed that preamble of the Constitution proclaims that we are in a democratic republic. Democracy being the basic structure of our Constitution set up. Hence the right of voter to know the biodata of candidate is the foundation of democracy.

The Government of India in 2002 become more sensitized on right to information and promptly responded with an Ordinance 12 professing to introduce electoral reform but which was really aimed at undoing the effect of the Supreme Court judgment. The Representation of People Act, 1951 was added with two new provisions section 31A and section 31B.\footnote{Rajiv Dhaka, 'Right to Information Act and Good Governance: Operational Problems and Road Ahead', in \textit{Indian Journal of Public Administration}, 55:3 (July-Sept., 2009), pp. 534-61.}

Enacted on the pretext of introducing electoral reform, the new law gave every candidate a legal right to suppress vital information about his antecedents. The amendment did away entirely with the court-mandated and constitutionally justified requirement for a candidate to disclose his educational qualifications and his assets and his liabilities\footnote{Ibid.}. Further, a candidate was not required to disclose his entire criminal record, but only (a) if he had been convicted and sentenced to imprisonment for at least one year\footnote{Section 33A (I)(ii) of the Representation of the People (Third Amendment) Act, 2002.}, or (b) was accused of a crime punishable with imprisonment for at least two years and charges in the matter had been framed by a court of competent jurisdiction. Given the law's delays, it often takes years for the charges to be framed\footnote{Ibid.}. Meanwhile, voters were to be kept blissfully unaware of their candidate's antecedents. Section 33B of the Act provides that Notwithstanding anything contained in any judgment,
decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rule made thereunder."

Section 33-B of the Ordinance granted complete immunity to the candidate from furnishing any further information other than that specified under section 33-A. Our lawmakers were quick to realize that if the Court's directives were to be implemented and a few unsavoury truths revealed, they may find it difficult to be re-elected and a vast majority of them may never themselves in Parliament again. Arguably, the Court's requirement that a candidate disclose pending cases might be abused by detractors filing frivolous criminal cases. However, there was absolutely no justification for exempting the disclosure of assets, liabilities or educational qualifications. Oddly, Representation of peoples Act, makes it necessary for an elected candidate to disclose his assets and liabilities. What use is this information to the voter after he has cast his vote and cannot change his mind for another five years? The provision defeated the very idea behind the Supreme Court's directions: (that the voter must be able to make an informed choice) the Supreme Court's directions did not disqualify candidate on the basis of the information disclosed. Yet the unseemly haste with which political parties reacted was as much a telling indication of the real power of franchise and the vital importance of public information as it was a damning indictment of elected representatives. Fortunately, the matter did not end there. The Supreme Court came to the rescue of citizens once again and struck down the amendment under Section 33-B. In People's Union for

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139 Section 33B of the Representation of the People (Third Amendment) Act, 2002.
141 Section-75A of the Representation of the People (Third Amendment) Act, 2002.
142 Ibid.
Civil Liberties v. Union of India\footnote{144} the Supreme Court ruled that the legislature’s power to interfere with a fundamental right under Article 19(1) (a) was limited to the grounds provided under Article 19(2) and that Section 33-B was beyond legislative competence. It was further held that the legislature can remove the basis of a decision rendered by a competent court thereby rendering that decision ineffective but the legislature has no power to ask the instrumentalities of the State to disobey or disregard the decisions given by the court. A declaration that an order made by a court of law is void is normally a part of the judicial function. The legislature cannot declare that decision rendered by the court is no binding or is of no legal effect\footnote{145}.

It is true that the legislature is entitled to change the law with retrospective effect which forms the basis of a judicial decision. This exercise of power is subject to constitutional provision, therefore, it cannot enact a law which is violative of fundamental right.\footnote{146} "If the legislature in utter disregard of the indicators enunciated by this Court proceeds to make a legislation providing only for a semblance or pittance of information or omits to provide for disclosure on certain essential points, the law would then fail to pass the muster of Article 19(l)(a) though certain amount of deviation from the aspects of disclosure spelt out by this Court is not impermissible, a substantial departure cannot be countenanced\footnote{147}."

"When the right to secure information about a contesting candidate is recognised as an integral part of fundamental right as it ought to be, it follows that its ambit, amplitude and parameters cannot be chained and circumscribed for all times to come by declaring that no information, other than that specifically laid down in the Act, should be required to be given\footnote{148}. When the legislation delimiting, the areas of disclosure was enacted, it may be that

\begin{itemize}
\item \footnote{144}{(2003) 4 SCC 399.}
\item \footnote{145}{Right to Information and Empowerment of people, 36(20) Mainstream 10, (2000).}
\item \footnote{146}{AIR 2002 SCW 2186.}
\item \footnote{147}{Anil Monga and A. Mehta’ Right to information Act, 2005: Key for Effective Implementation’ in Indian Journal of Public Administration, Vol.IV, No.2 (2008), April-June, pp. 297-314.}
\item \footnote{148}{Right to Information and Empowerment of people, 36(20) Mainstream 10, (2000).}
\end{itemize}
Parliament felt that the disclosure on other aspects was not necessary for the time being\textsuperscript{149}.

Assuming that the guarantee of right to information is not violated by making a departure from the paradigms set by the Court, it is not open to Parliament to stop all further disclosures concerning the candidate in future. In other words, a blanket ban on dissemination of information other than that spelt out in the enactment; irrespective of the need of the hour and the future exigencies and expedients is, in my view, impermissible.\textsuperscript{150}

It must be remembered that the concept of freedom of speech and expression does not remain static. The felt necessities of the times coupled with experiences drawn from the past may give rise to the need to insist on additional information on the aspects not provided for by law\textsuperscript{151}. New situations and the march of events may demand the flow of additional facets of information.\textsuperscript{152} The right to information should be allowed to grow rather than being frozen, and stagnated; but the mandate of Section 33-B\textsuperscript{153} prefaces by the non obstante clause impedes the flow of such information conducive to the freedom of expression."

\section*{4.7 RIGHT TO INFORMATION UNDER ALLIED STATUTORY PROVISIONS}

Information is power for development. For this reason, the right to information is an important human right. There is an exciting global trend towards recognition of the right to information by States, intergovernmental organisations, civil society and the people. The spirit of Universal Declaration of Human Rights,1948\textsuperscript{154} and the

\begin{footnotesize}
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\item Dhaka, Rajiv S., ‘Right to Information Act and Good Governance: Operational Problems and Road Ahead’, \textit{Indian Journal of Public Administration}, 55: 3 (July-Sept.,2009),
\item Section-33B of Representation of People Act, 1951, candidate to provide information only under the Act and rules and no candidate shall be liable to disclose or furnish any such information which is not required to be disclosed.
\item The Universal Declaration of Human Rights, 1948 is a declaration adopted by the United Nations General Assembly on 10\textsuperscript{th} December1948 at Palais de Chaillot, Paris. The Declaration arose
\end{enumerate}
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Preamble of the Constitution of India\textsuperscript{155} and its Article 19(1)(a)\textsuperscript{156} which guarantees to the citizen, the freedom of speech and expression and the Swiss Government\textsuperscript{157} being the first enactor in the world are the foundation of the right to information in India and elsewhere. There is a growing body of authoritative statements supporting the right to information, made in the context of official human rights mechanisms, including at the United Nations, the Commonwealth, the Organisation of American States and the Council of Europe. Numerous laws giving effect to this right have, in the last few years, been adopted in all regions of the world. Many intergovernmental organizations and professional organizations now have in place information disclosure systems which are reviewed and updated on a regular basis. The right to information has been recognised as a fundamental human right, intimately linked to respect for the inherent dignity of all human beings.\textsuperscript{158} Freedom of information, including the right to access information held by public bodies, has long been recognized not only as crucial to democracy, accountability and effective participation, but also as a fundamental human right, protected under international and constitutional law.\textsuperscript{159}

\textbf{4.7.1 International Declarations and Efforts}

A number of international bodies with responsibility for promoting and protecting human rights have authoritatively recognized the fundamental and legal nature of the right to freedom of

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\item Preamble of the Constitution of India- \textit{WE THE PEOPLE OF INDIA}, having solemnly resolved to constitute India into a \{Sovereign Socialist Secular Democratic Republic\} and to secure all its citizens: \textbf{JUSTICE}, social, economic and political; \textbf{LIBERTY} of thought, expression, belief, faith and worship; \textbf{EQUALITY} of status and of opportunity; and to promote among them all \textbf{FRATERNITY} assuring the dignity of the individual and the \{unity and integrity of the nation\}; \textbf{IN OUR CONSTITUENT ASSEMBLY} this twenty sixth day of November, 1949, do \textbf{HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.}

\item Article -19 of the Constitution of India,1950- Protection of certain rights regarding freedom of speech, etc.

\item In the year 1766, the then King, enlightenment thinker and political philosopher of Switzerland Mr.Anders Chydenius enacted “The Freedom of Writing and Press Act. In 2006 i.e. after 240 years it led to “The Global Openness Movement (GOM) taking RTI as human rights into its ambit.

\item Kanwal D.P. Singh, “Right to Information Act, 2005 - A Result of Community Movement” Nyayadeep Volume VI, Issue 4, October 2005, pp.110-120, at p. 111

\item Ann Florini, \textit{The Right to Know: Transparency for an Open World} 234 (2007).
\end{enumerate}
\end{footnotesize}
information, as well as the need for effective legislation to secure respect for that right in practice. These include the United Nations, the Commonwealth, the Organisation of American States and the Council of Europe. Collectively, this amounts to a clear international recognition of the right. There are lot of nations passed right to information bills or acts which are not covered in this chapter.

i) The United Nations

Within the United Nations, freedom of information was recognized early on as a fundamental right. In 1946, during its first session, the UN General Assembly adopted Resolution 59(1) which stated: Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated. In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR). Article 19, which guarantees freedom of opinion and expression as follows:: 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 (UN Universal Declaration of Human Rights). The International Covenant on Civil and Political Rights (ICCPR), a legally binding treaty, was adopted by the UN General Assembly in 1966. In 1993, the UN Commission on Human Rights established the office of the UN Special Rapporteur on Freedom of Opinion and Expression, and appointed Abid Hussain to the post. The UN Special Rapporteur further developed his commentary on freedom of information in his 2000 Annual Report to

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160 The United Nations officially came into existence on 24 October 1945. The purpose of the United Nations is to bring all nations of the world together to work for peace and development, based on the principles of justice, human dignity and the well-being of all people.

161 The Commonwealth of Nations is a voluntary association of 54 independent states, of which India is a member.

162 The United Nations officially came into existence on 24 October 1945. The purpose of the United Nations is to bring all nations of the world together to work for peace and development, based on the principles of justice, human dignity and the well-being of all people. It affords the opportunity for countries to balance global interdependence and national interests when addressing international problems. The United Nations has achieved considerable prominence in the social arena, fostering human rights, economic development, decolonization, health and education. There are currently 192 Members of the United Nations. They meet in the General Assembly, which is the closest thing to a world parliament. Each country, large or small, rich or poor, has a single vote, however, none of the decisions taken by the Assembly are binding. Nevertheless, the Assembly’s decisions become resolutions that carry the weight of world governmental opinion.
the Commission, noting its fundamental importance not only to democracy and freedom, but also to the right to participate and realisation of the right to development.\textsuperscript{163} In his 2000 Annual Report, the UN Special Rapporteur elaborated in detail on the specific content of the right to information. The United Nation\textsuperscript{164} has also recognised the fundamental right to access information held by the State through its administration of the territory of Bosnia and Herzegovina.

\textbf{ii) The Commonwealth}

The Commonwealth\textsuperscript{165}, a voluntary association of 54 countries based on historical links, common institutional and legislative frameworks and shared values, has taken concrete steps during the last decade to recognise human rights and democracy as part of its fundamental political values. In 1991, it adopted the Harare Commonwealth Declaration, which enshrined its fundamental political values. These include fundamental human rights and the individual's inalienable right to participate by means of free and democratic processes in framing his or her society. In 1980, the Law Ministers of the Commonwealth, meeting in Barbados, stated, "public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information." More recently, the Commonwealth\textsuperscript{166} has taken a number of significant steps to elaborate on the content of that right.

\textsuperscript{165} The Commonwealth of Nations is a voluntary association of 54 independent states, of which India is a member. The member states cooperate within a framework of common values and goals which include the promotion of democracy, human rights, good governance, the rule of law, individual liberty, egalitarianism, free trade, multilateralism, and world peace. The Commonwealth is not a political union, but an intergovernmental organisation through which countries with diverse social, political, and economic backgrounds are regarded as equal in status.
In March 1999, a Commonwealth Expert Group Meeting in London adopted a document setting out a number of principles and guidelines on the right to know and freedom of information as a human right, including Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions. These principles and guidelines were adopted by the Commonwealth Law Ministers at their May 1999 Meeting.

iii) Organization of American States

In 1948, the Organization of American States (OAS) adopted a seminal human rights declaration, the American Declaration of the Rights and Duties of Man. Article IV guarantees freedom of investigation, opinion and expression. This was followed in 1969 by the adoption of a legally binding international treaty, the American Convention on Human Rights (ACHR). In a 1985 Advisory Opinion, the Inter-American Court of Human Rights, interpreting Article 13(1), recognised freedom of information as a fundamental human right, which is as important to a free society as freedom of expression. In 1994, the Inter-American Press Association, a regional

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168 The American Convention on Human Rights (also known as the Pact of San José) is an international human rights instrument. It was adopted by the nations of the Americas meeting in San José, Costa Rica, in 22 November 1969. It came into force after the eleventh instrument of ratification (that of Grenada) was deposited on 18 July 1978. In 1969, the guiding principles behind the American Declaration of the Rights and Duties of Man, 1948, were taken, reshaped, and restated in the American Convention on Human Rights. The Convention defines the human rights that the states parties are required to respect and guarantee. The bodies responsible for overseeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, both of which are organs of the Organization of American States (OAS).
nongovernmental organisation (NGO), organised the Hemisphere Conference on Free Speech, which adopted the Declaration of Chapultepec, a set of principles on freedom of expression. The Heads of State or Governments of 21 countries in the Americas, as well as numerous other prominent persons, have signed the Declaration. In October 2000, the Commission approved the Inter-American Declaration of Principles on Freedom of Expression, which is the most comprehensive official document to date on freedom of information in the Inter-American system. It is, therefore, clear that in the Inter-American system, freedom of information, including the right to access information held by the State, is a guaranteed human right.169

iv) Council of Europe

The Council of Europe (COE)170 is an intergovernmental organisation, composed of 43 Member States. It is devoted to promoting human rights, education and culture. One of its foundational documents is the European Convention on Human Rights (ECHR), which guarantees freedom of expression and information as a fundamental human right at Article 10. In 1979, the Parliamentary Assembly recommended that the Committee of Ministers, the political decision-making body of the Council of Europe (composed of the Ministers of Foreign Affairs from each Member


170 In 1945, at the end of the Second World War, Europe was marked by unprecedented devastation and human suffering. It faced new political challenges, in particular reconciliation among the peoples of Europe. This situation favoured the long-held idea of European integration through the creation of common institutions. Thus, the Council of Europe was founded on 5 May 1949 by the Treaty of London. The Council of Europe is an international organisation promoting co-operation between all countries of Europe in the areas of legal standards, human rights, democratic development, the rule of law and cultural co-operation. It has 47 member states and is an entirely separate body from the European Union (EU), which has only 27 member states. Unlike the EU, the Council of Europe cannot make binding laws. The two do however share certain symbols such as the flag of Europe. The Council of Europe has nothing to do with either the Council of the European Union or the European Council, which are both EU bodies. The best known bodies of the Council of Europe are the European Court of Human Rights, which enforces the European Convention on Human Rights, and the European Pharmacopoeia Commission, which sets the quality standards for pharmaceutical products in Europe. The Council of Europe's work has resulted in standards, charters and conventions to facilitate cooperation between European countries.
State), that invite member states which have not yet done so to introduce a system of freedom of information. The Committee of Ministers responded two years later by adopting Recommendation No. R(81)19 on the Access to Information Held by Public Authorities. In 1994, the 4th European Ministerial Conference on Mass Media Policy adopted a Declaration recommending that the Committee of Ministers instruct its Steering Committee on the Mass Media to consider "preparing a binding legal instrument or other measures embodying basic principles on the right of access of the public to information held by public authorities." This was followed by a study for the Steering Committee on the Mass Media, which noted the need for a binding legal instrument on public access to official information.

4.7.2 Indian Context

Since India is a welfare state, so it is the duty of the Government to protect and enhance the welfare of the people. It is obvious from the Constitution of India that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing. The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of government. It is only if people know how government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy. "Knowledge", said James Madison, "will forever govern ignorance and a people who meant to be their own governors

175 An American statesman, political theorist and fourth President of America.
must arm themselves with the power knowledge gives. A popular government without popular information or the means for obtaining, it is but a prologue to farce or tragedy or perhaps both." The citizens’ right to know the facts, the true facts, about the administration of the country, is, thus, one of the pillars of a democratic State and that is why the demand for openness in the government is increasing growing in different parts of the world.

Law is a regulator of human conduct but no law can indeed effectively work unless there is an element of acceptance by the people and the society. No law works out smoothly unless the interaction is voluntary. In order that human conduct may be in accordance with the prescription of law it is necessary that there should be appropriate awareness about what the law requires and what would be the effect of its disobedience to create an element of acceptance that the requirement of law is grounded upon a philosophy which should be followed. This would be possible only when steps are taken in an adequate measure to make people aware of the indispensable necessity of their conduct being oriented in accordance with the requirements of law. In a democratic polity dissemination of information is the foundation of the system. Keeping the citizens informed is an obligation of the government. It is equally the responsibility of society to adequately educate every component of it so that the social level is kept up.

(A) Laws That Licence Secrecy

Ancient India had a feudal culture and hierarchical social structure. The Maharaja’s, the Mughals and the British Rulers defended themselves behind ramparts of secrecy. The Indian Legal System, largely being a colonial vintage, stresses on secrecy laws and such provisions are contained besides, Official Secrets Act 1923, in

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177 People Union for Civil Liberties v. Union of India AIR 2003 SC 2363.
180 P.M. Bakshi, Constitution of India 49 (2009).
the Indian Evidence Act 1872\textsuperscript{182} (Chapter IX sections 121 to 131), the infamous Rowlatt Act 1919\textsuperscript{183} and Bengal Criminal (Amendment) Act 1925 etc. However, we find free India still suffocated by various secrecy laws. In this context reference may be made to Articles 74 and 163\textsuperscript{184} of the Constitution. Similarly some provisions of the Central Civil Services (Conduct) Rules, 1964, the Atomic Energy Act 1962, the Bureau of Indian Standards Act,1986, the Competition Act 2002, the Indian Evidence Act, 1872 also stress on secrecy.

\textbf{(i) The Official Secrets Act, 1923}

To protect the official secrets in India, the Indian Official Secrets Act, 1889 was enacted and it was amended by the Indian Official Secrets (Amendment) Act, 1904. Later, the Official Secrets Act, 1911, a British Act, was brought into force in India, but difficulties arose in applying it because of the use in it of English common law terms and so on. For these reasons it was felt desirable to enact a consolidated Act applicable to Indian conditions\textsuperscript{185}. To achieve this objective the Official Secrets Act, 1923 was passed. The Act makes provisions against espionage and makes it a penal offence for any person holding office under the Government to willfully communicate any official information to anyone other than an authorized person. It is equally an offence for any person to receive such information. It is, however, significant that the grounds on which action may be taken under the Official Secrets Act are limited to those specified under Article 19(2)\textsuperscript{186}. The Official Secrets Act, 1923, a legacy of British rule in India, contains several provisions prohibiting the flow of information

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\textsuperscript{182} Chapter IX sections 121 to 131 of Indian Evidence Act 1872.

\textsuperscript{183} The Rowlatt Act was passed by the Imperial Legislative Council in London on 10\textsuperscript{th} March 1919. It was passed on the recommendations of the Rowlatt Committee, named after its President, British Judge, Sir Sidney Rowlatt. This Act effectively authorized the government to imprison for up to two years without trial any person suspected of terrorism.

\textsuperscript{184} Article 74, there shall be a Council of Ministers with the Prime Minister as the head to aid and advise the President and such advise shall not be inquired into in any Court. Article 163 there shall be a Council of Ministers with the Chief Minister as the head to aid and advise the Governor and such advise shall not be inquired into in any Court.


\textsuperscript{186} Arunya Roy, Shanker Singh, Nikhil Dey, A Fight for Right to Know, Yojana, January 2006,. pp 2-8.
from the Government to ordinary people. It was enacted to protect against spying\textsuperscript{187}, but its provisions are far-reaching. They serve not only to restrict access to information, but also to punish the disclosure of certain kinds of information, by any person. The Official Secrets Act still penalizes the giver, taker, possessor of the categorized information besides a spy. It can be said that from the time immemorial certain journalists, bureaucrats and corporate giants has to face this draconian law. In the case of \textit{Central Bureau of Investigation v. Abhishek Verma},\textsuperscript{188} the CBI registered case against Abhishek Verma and other officials of ministry after a formal complaint was received from defence ministry stating that documents purportedly provided by US based attorney Allen were classified and violated section 3 of the Official Secrets Act, 1923. In June 2002, Iftikhar Gilani, a journalist and the delhi bureau chief of Kashmir times was arrested for violation of the Official Secrets Act, 1923.\textsuperscript{189} The Delhi Court summons Ambani’s in connection with the case pertaining to alleged procurement of classified government documents.\textsuperscript{190} In a major boost to freedom of press the Court ruled that the publication of a document merely labelled secret shall not render the journalists liable under Official Secrets Act, 1923.\textsuperscript{191} A person guilty of an offence under section 5 of the Act\textsuperscript{192} shall be punishable with imprisonment for a term which may extend to five years, or if such offence is committed with intent to assist any country committing external aggression against India or to wage war against India, with death or imprisonment for life or imprisonment for a term which may extend to ten years and shall, in either case, also be liable

\textsuperscript{187} Section-3 of the Official Secrets Act, 1923.
\textsuperscript{188} AIR 2009 SC 2399.
\textsuperscript{189} The Times of India, June 2002.
\textsuperscript{190} The Times of India, May 2003.
\textsuperscript{191} The Times of India, Feb 2009.
\textsuperscript{192} Section 5 of the Official Secrets Act,1923 states that if any person having in his possession or control any secret official code or password or information which relates to or is used in a prohibited place or relates to anything in such a place, or which is likely to assist, directly or indirectly, an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of the Act, or which has been entrusted in confidence to him by any person holding office under Government.
to fine. Under Section 6 of the Act person who are held guilty shall be punishable with imprisonment for a term which may extend to three years or with fine, or with both

The Supreme Court in Sama Alana Abdullah v. State of Gujarat\(^{194}\) held that the test of whether certain disclosure compromised a secret depended on whether an official code or password had been divulged in terms of section 5 of the Official Secrets Act 1923. The Courts liberal interpretation lessons the scope for misuse of the Act by the official machinery as it makes a sharp distinction between a secret document or report dealing with day-to-day routine affairs and one containing information on the sensitive issue of national security. The qualifying word secret has to be read in respect of an official code or password for Official Secrets Act, 1923 to be applicable and not just because it says secret. Similarly in the case of R.R. Gopal and Another v. State of Tamil Nadu\(^{195}\) The Apex Court held that the Official Secrets Act or any similar enactment or provision having the force of law does not bind the press or media. There is no law empowering the state or its officials to prohibit the parameters of the right of the press to criticize and comments on the acts and conduct of public officials. The Supreme Court in Dinesh Trivedi v. State of Madhya Pradesh and others\(^{196}\) held that section 5 of the Official Secrets Act, 1923 is overbroad, unreasonable and unconstitutional and ought to be supplanted by the formulation of new law.

(ii) The Central Civil Services (Conduct) Rules, (Manual of Office Procedure for the Central Government)\(^{196}\)

The Officers of All India Services, working under the State Governments, are required to abide by the Central Civil Service

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\(^{193}\) Section-6 of The Official Secrets Act,1923 states that if any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety to the State uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission.

\(^{194}\) AIR 1996 SC 569.

\(^{195}\) AIR 1995 SC 264

\(^{196}\) JT 1997 (4)SC 237.
Conduct Rules 1964, which forbid the unauthorized communication by a public servant to the citizens and considers it a punishable offence.\textsuperscript{197} Though it was also felt that in view of these rules the enactment of a Right to Information law in the States or at the Centre improve the state of transparency in governance before the citizens\textsuperscript{198} As per this Manual, only Ministers, Secretaries and other officials specially authorized by the Minister are permitted to meet the representatives of the Press and to give them information. In case of any dispute concerning the unauthorized communication, the Principal Information Officer of Government of India is the final arbiter.\textsuperscript{199} Keeping the Minister at the head of the information regime and living the matters relating to information to the discretion of the Minister means dividing the system of governance of an inbuilt and inherent mechanism to freely and timely respond to and interact with the citizenry day today, which is the hall mark of a democratic polity\textsuperscript{200}.

Unless and until the existing top down system of information administration as ordained by the manual of office procedure is replaced by a system in which every layer of governance is equally transparent, responsive and accountable to the citizens in their respective spheres, no enactment of Right to Information law would be able to effect a modicum of change in the present situation of secrecy and suspicion\textsuperscript{201}.

The Civil Services Rules still rule the reign of secrecy by punishing the employees for any leak of official information into media or outside world. The oaths of secrecy are provided with a constitutional format, and the important office holders take an oath not to reveal. Rule 11 of the Central Civil Services lays down that "No


\textsuperscript{199} Ibid.


government servant shall, except in accordance with any general or special order of Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any, part thereof or information to any government servant or any other person to whom he is not authorized to communicate such document or information."

**iii) The All India Services (Conduct) Rules, 1968**

The All India service rules enacted by the Central Government in exercise of its powers after consultation with the governments of the state makes such rules that still rule the reign of secrecy by punishing the employees for any leak of official information into media or outside world. The oaths of secrecy are provided with a constitutional format, and the important office holders take an oath not to reveal. The rules further states that no member of the Service shall except in accordance with any general or special order of the Government or in the performance in good faith of duties assigned to him, communicate directly or indirectly any official document or part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.

**(iv) The Atomic Energy Act, 1962**

The Central Government has general powers to protect the national nuclear policy of India and as such declare any information as “restricted information” which is not so far published or otherwise made public relating to the theory, design, construction and operation of nuclear reactors etc. For proper enforcement of these matters the

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202 Ibid.
204 Section-9 of the All India Services (Conduct) Rules, 1968.
205 Section-3(c) of the Atomic Energy Act, 1962 states that the Central Government shall have power to declare as “restricted information” any information not so far published or otherwise made public relating to - (i) the location, quality and quantity of prescribed substances and transactions for their acquisition, whether by purchase or otherwise, or disposal whether by sale or otherwise; (ii) the processing of prescribed substances and the extraction or production of fissile materials from them; (iii) the theory, design, construction and operation of plants for the treatment and production of any of the prescribed substances and for the separation of isotopes; (iv) the theory,
present Act was enacted and for above mentioned matters certain provisions of the Act may impose restrictions that no person shall disclose or obtain any information which is restricted or disclose, without the authority of Central Government, any information obtained in the discharge of any functions under this Act or in the performance of his official duties.\textsuperscript{206}

\textbf{(v) The Bureau of Indian Standards Act, 1986}

The Bureau of Indian Standards (BIS) is the national standards body of India working under the aegis of Ministry of Consumer Affairs, Food & Public Distribution, Government of India. It is established by the Bureau of Indian Standards Act, 1986 which came into effect on 23 December 1986. The organization was formerly the Indian Standards Institution\textsuperscript{207} (ISI), and the ISI was registered under the Societies Registration Act, 1860.

As a corporate body, it has 25 members drawn from Central or State Governments, industry, scientific and research institutions, and consumer organizations. Its headquarters are in New Delhi, with regional offices in Kolkata, Chennai, Mumbai, Chandigarh and Delhi and 20 branch offices. The Bureau of Indian Standards Act, 1986 states that, any information obtained by an inspecting officer or the Bureau from any statement made or information supplied or any design, construction and operation of nuclear reactors; (v) research and technological work on materials and process involved in or derived from items (i) to (iv).\textsuperscript{206}

Section- 18 of the Atomic Energy Act, 1962 provides for restriction on disclosure of information-

(1) The Central Government may by order restrict the disclosure of information, whether contained in a document, drawing photograph, plan, model, or in any other form whatsoever, which relates to, represents or illustrates- (a) an existing or proposed plant used or proposed to be used for the purpose of producing, developing or using atomic energy, or (b) the purpose or method of operation of any such existing or proposed plant, or (c) any process operated or proposed to be operated in any such existing or proposed plant. (2) No person shall- (a) disclose, or obtain or attempt to obtain any information restricted under sub-section (1), or (b) disclose, without the authority of the Central Government, any information obtained in the discharge of any functions under this Act or in the performance of his official duties. (3) Nothing in this section shall apply- (i) to the disclosure of information with respect to any plant of a type in use for purposes other than the production, development or use of atomic energy, unless the information discloses that plant of that type is used or proposed to be used for the production, development or use of atomic energy or research into any matters connected therewith; or (ii) where any information has been made available to the general public otherwise than in contravention of this section, to any subsequent disclosure or that information.

\textsuperscript{206} Section- 18 of the Atomic Energy Act, 1962 provides for restriction on disclosure of information.

\textsuperscript{207} Indian Standards Institute(ISI) mark is a certification mark for industrial products in India. The mark certifies that a product conforms to the Indian standard, mentioned as IS:xxxx on top of the mark developed by the Bureau of Indian Standards(BIS), the national standards body of India.
evidence given or from inspection made under this Act shall be treated as confidential.208

(vi) The Competition Act, 2002

In the context of new economic policy paradigm, India has chosen to enact a new Competition law called the Competition Act 2002. The Monopolies and Restrictive Trade Practices (MRTP) Act, 1969 has metamorphosed into this new law which is in line with the international developments of this field. The new Act is a modern competition legislation, and it covers four main areas:- It prohibits anti-competitive agreements (including cartels) which determine prices, limit or control or share markets, or resort to bid rigging, etc.

It prohibits abuse of dominant position through unfair or discriminatory prices or conditions (including predatory pricing), limiting or restricting production or development, denying market access, etc.,

It regulates combinations, (i.e., mergers, acquisitions, etc.) that cause or are likely to cause an appreciable adverse effect on competition209.

In addition, the Act gives the Commission the responsibility of undertaking competition advocacy, awareness and training about competition issues. The Competition Act mandates the Competition Commission of India (CCI) to prevent anti-competitive practices, promote competition, protect the interests of consumers and ensure freedom of trade210. The Competition Act, 2002 lays down that, no information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission for the purposes of this Act, shall, without the previous permission in writing of the

208 Section-30. Certain matters to be kept confidential- any information obtained by an inspecting officer or the Bureau from any statement made or information supplied or any evidence given or from inspection made under this Act shall be treated as confidential: Provided that nothing in this section shall apply to the disclosure of any information for the purpose of prosecution under this Act.


210 Ibid.
enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.  

(vii) The Medical Termination of Pregnancy Regulations, 2003

Abortion is the willful termination of pregnancy. As a social issue, abortion has elicited great concern and debate across the globe. Whereas some countries allow abortion, others do not. Even where abortion is allowed, some restrictions may be seen depending on the countries constitutional provisions. In exercise of powers conferred by the Medical Termination of Pregnancy Act 1971, the Central Government shall make the regulations that every head of the hospital or owner of the approved place shall maintain a register for recording there in the details of the admissions of women for the termination of their pregnancies and keep such register for a period of five years from the end of the calendar year it relates to. The entries in the Admission Register shall be made serially and a fresh serial shall be started at the commencement of each calendar year and the serial number of the particular year shall be distinguished from the serial number of other years by mentioning the year against the serial number. Admission Register shall be a secret document and the information contained therein as to the name and other particulars of the pregnant woman shall not be disclosed to any person.  

The admission register shall be kept in the safe custody of the head of the hospital or owner of the approved place, or by any person

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211 Section-57 of the Competition Act, 2002. Restriction on disclosure of information- No information relating to any enterprise, being an information which has been obtained by or on behalf of the Commission or the Appellate Tribunal for the purposes of this Act, shall, without the previous permission in writing of the enterprise, be disclosed otherwise than in compliance with or for the purposes of this Act or any other law for the time being in force.

212 Ibid.

213 Section-5 of the Medical Termination Of Pregnancy Regulations,2003, Maintenance of Admission Register- (1) Every head of the hospital or owner of the approved place shall maintain a register in Form III for recording therein the details of the admissions of women for the termination of their pregnancies and keep such register for a period of five years from the end of the calendar year it relates to. (2) The entries in the Admission Register shall be made serially and a fresh serial shall be started at the commencement of each calendar year and the serial number of the particular year shall be distinguished from the serial number of other years by mentioning the year against the serial number, for example, serial number 5 of 1972 and serial number 5 of 1973 shall be mentioned as 5/1972 and 5/1973. (3) Admission Register shall be a secret document and the information contained therein as to the name and other particulars of the pregnant woman shall not be disclosed to any person.
authorized by such head or owner and shall not be open for inspection by any person except under the authority of law.\textsuperscript{214}

The Supreme Court in \textit{Kharak Singh v. State of Uttar Pradesh}\textsuperscript{215} has certainly recognized that a person has complete rights of control over his body organs and his person under article 21 of the Constitution of India. The Supreme Court upheld the right to privacy and held if right to privacy means anything it is the right of the individual married or single to be free from unwanted government intrusion into matters so fundamentally affecting a person as the decision to bear or beget a child.

\textbf{(viii) The Indian Evidence Act, 1872}

The Law of Evidence is the most important branch of adjective law. It is to legal practice what logic is to all reasoning. Without it trials might be infinitely prolonged to the great detriment of the public and vexation and expense of suitors. The chapter IX of Indian Evidence Act mentions three kinds of communications as privileged from disclosure such as :-

1. Matrimonial communications;
2. Official communications; and
3. Professional communications.

\textbf{1. Matrimonial Communications}\textsuperscript{216}:

A person cannot be compelled to disclose any communication made to him or her during marriage by any person to whom he or she is or has been married; nor will such communication be permitted to

\textsuperscript{214} Section-6 of the Medical Termination Of Pregnancy Regulations,2003. Admission Register not to be open to inspection- The admission register shall be kept in the safe custody of the head of the hospital or owner of the approved place, or by any person authorized by such head or owner and save as otherwise provided in sub-regulation (5) of regulation 4 shall not be open for inspection by any person except under the authority of law: Provided that the registered medical practitioner on the application of an employed woman whose pregnancy has been terminated, grant a certificate for the purpose of enabling her to obtain leave from her employer: Provided further that any such employer shall not disclose this information to any other person.

\textsuperscript{215} AIR 1963 SC 1295

\textsuperscript{216} Section-122 of the Indian Evidence Act,1872, Communications during marriage-No person who is or has been married shall be compelled to disclose any communication made to him during marriage by any person to whom he is or has been married; nor shall be permitted to disclose any such communication, unless the person who made it, or his representative in interest, consents, except in suits between married persons, or proceedings in which one married person is prosecuted for any crime committed against the other.
be disclosed except in the following three cases, if the person who made it, or his or her representative in interest, consents; or in suits between married persons; or in proceedings in which one married person is prosecuted for any crime committed against the other.

Under these provisions only husband or wife who is protected but not a third person. In the course of the trial an incriminating letter sent by the accused to his wife and found by police in search of her house, is tendered in evidence by the prosecution. The letter is admissible in evidence against the accused.217 The Supreme Court in *Channo v. State of Haryana*,218 observed that there is no reason for false deposition by wife where she give evidence against her accused husband. Such evidence of wife can be relied for conviction.

**ii. Official communications**219:

The provisions of the Act relating to official communications can be discussed under the following two heads, viz.:

(a) Evidence as to affairs of State lays down that no one can be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who may give or withhold such permission as he thinks fit. Under this section, the question whether the production of the document in question would be injurious to public interest is to be determined, not by the judge, but by the head of the department having custody of the document.220 Commenting on this privilege, the Privy Council has remarked that the privilege regarding production of State papers is a narrow one, which must be exercised most sparingly. The principle and foundation of the rule is concern for public interest, and the rule cannot be applied any further than the attainment of the object requires.221

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217 Q.E. v. Donoghue, 22 Mad. 1.
218 1996 Cri LJ 2514.
219 Section-123 of the Indian Evidence Act, Evidence as to affairs of State- No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.
220 Beatson v. Skene, 1860 L.J. Ex. 430
221 Henry Greer v. State, 1931 PC. 254
Supreme Court in the case of *State of Punjab v. S.S. Singh*,\(^{222}\) held that if it comes to the conclusion that document relates to the affairs of state, it should leave to the head of the department to decide whether he should permit its production or not. In holding an enquiry into the validity of the objection under this section, the court cannot permit any evidence about the contents of the document. Similarly in the case of *State of Punjab v. Surjit Singh*,\(^{223}\) The Court held that the carrying on of the public administration in a proper manner cannot but be regarded as an “affairs of state”, and, therefore, documents which are maintained for the purpose of so carrying on the administration would relate to “affairs of state”. In this regard the Supreme Court in the case of *State of Uttar Pradesh v. Chandra Mohan Nigam*,\(^{224}\) has held that where an officer compulsorily retired alleged malafide, that the State cannot claim this privilege in refusing to disclose his service record.

The Act does not lay down as to what documents are to be regarded as unpublished official records relating to affairs of State or communications made to an officer in his official capacity. It is not every official record or register or every official communication which can be regarded as privileged. The principle to be applied in every case is that documents otherwise relevant and liable to production must not be produced if the public interest requires that they should be withheld\(^{225}\). This test may be found to be satisfied either (a) by having regard to the contents of the particular document, or (b) by the fact that the document belongs to a class which, on ground of public interest, must as a class be withheld from production. The following are examples of unpublished records of State, viz.-

a) Document exchanged between two States;

b) Document exchanged between the State and its own subjects;

\(^{222}\) AIR 1961 SC 493.

\(^{223}\) AIR 1975 P&H 11.

\(^{224}\) (1977)4 SCC 345.

c) Document exchanged between Heads of Department of another State;

d) Document exchanged between Heads of Department or between Ministers.

e) Disclosure of communications made in official confidence

f) No public officer can be compelled to disclose communications made to him in official confidence, if he considers that the public interest would suffer by the disclosure. The question that arises under this section is whether the communication in question was made to the public officer in his official capacity. This is a condition precedent which must be satisfied before the privilege can be claimed, and this question is primarily to be decided by the Court before which the privilege is claimed.

Courts have adopted a basic principle for deciding whether a particular document is a communication made in official confidence to a public officer or not, namely, whether the document produced was under a process of law or not. If the former is the case, it would be difficult to say that the document produced under the process of law is a communication made in official confidence. If, on the other hand, a document is produced in a confidential departmental enquiry, not under the process of law, but for gathering of information by the department for guiding them in future action, if any, which they have to take, it would be a case of communication made in official confidence.

iii). Professional communications

A professional communication means a confidential communication between a professional legal adviser and his client.

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226 Section-124 of the Indian Evidence Act-, Official Communication- No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.


228 Killi Suryanarayana, AIR 1954 Mad 278.

229 Section -126 of Indian Evidence Act, Professional Communication- No barrister, attorney, pleader or vakil, shall at any time be permitted, unless with his client’s express consent, to disclose any communication made to him in the course and for the purpose of his employment.
made to the former in the course, and for the purpose, of his employment as such advisor\textsuperscript{230}. The privilege attaching to confidential professional disclosures is confined to the case of legal advisers, and does not protect those made to clergymen, doctors, etc.

A professional legal adviser means a barrister, attorney, pleader or vakil. A client cannot be compelled, and a legal adviser cannot be allowed, without the express consent of his client, to disclose the oral or documentary communications passing between them in professional confidence. Similarly, an interpreter, clerk or servant of such legal adviser cannot disclose such communication.

The Bombay High Court in the case of \textit{Municipal Corporation of Greater Bombay v. Vijay Metal Works},\textsuperscript{231} has held that a salaried employee who advises his employer on legal matters is entitled to the same protection as other advisers like a barrister, attorney or pleader, under Sections 126 and 129 of the Act. Therefore, any communication made in confidence to him by his employer seeking his legal advice would be protected under Section 126 and 129, provided that such communication is not made in furtherance of any illegal purpose.

Further, the provisions of the Act,\textsuperscript{232} \textit{interalia}, says that the court shall decide the validity of any objection to the admissibility of a document and that unless the document refers to matters of state, the court may inspect such a document. In \textit{State of Punjab v. Sukhdev Singh}\textsuperscript{233} In this case it was held that authorities claiming privilege of secrecy can be permitted if injury may be caused to the public interest by such disclosure and even court is restrained from inquiring into the possibility of such disclosure Court could enquire into question as to whether evidence concerned was related to affairs of the State but could not inspect the document itself to determine the validity of the

\textsuperscript{230} Ibid.
\textsuperscript{231} AIR 1982 Bom 6.
\textsuperscript{232} Section -162 of Indian Evidence Act, Production of documents- A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court.
\textsuperscript{233} AIR 1961 SC 493.
privilege claimed. This settled rule was given go by Kerala High Court in the case of *State of Kerala v. Midland Rubber & Prochice Co*\(^ {234}\) by rejecting the Governments privilege claim court itself inspected the documents itself and weighed the competing interests and ruled that they were routine communications and their disclosure in no way should affect the public interest. Supreme Court reconsidered the issue of documentary privilege in *State of U.P. v. S. Raj Narain*\(^ {235}\) and observed that the policy of law contained in Section 123 and 162 of the Evidence Act, was that public interest should not be injured by the disclosure of governmental documents and if the court was not satisfied with the affidavit claiming privilege and reason set out therein, court might inspect the document itself. Under the veil of secrecy, government cannot be permitted to cover its common routine business which is not in the interest of public. Such secrecy can seldom be legitimately desired. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.\(^ {236}\)

In *L.K. Koolwal v. State of Rajasthan*,\(^ {237}\) the Rajsthan High Court held that the state can impose and should impose reasonable restrictions on the rights where it affects the national security or any other matter affecting nation’s integrity. But this right is limited and particularly in the matter of sanitation and other allied matters, every citizen has a right to know how the state is functioning and why state is withholding information in such matters.

**(B) Laws which Facilitate Disclosure of Information**

For over fifty years, secrecy has been the norm in the working of the Government, and transparency, the exception. In the guise of protecting the State's interest, secrecy in public affairs has been a shield for those in Government, a means of concealing their actions

\(^{234}\) AIR 1971 Ker 228.

\(^{235}\) (1975) 4 SCC 428.


\(^{237}\) AIR 1988 Raj 2.
from public scrutiny\(^{238}\). Access to information, on the other hand, is power in the hands of the electorate. It demands accountability. This is fundamental to the functioning of any truly democratic society\(^{239}\). The hallmark of a meaningful democracy is the institutionalisation of transparent and participative processes which gives the electorate access to information about the Government it has brought to power, and enables it to make an informed decision to remove that Government from power, if it so chooses. Just as secrecy undermines democracy, information is a threat to authoritarianism\(^{240}\).

Further, the Apex Court in case of *Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal*,\(^{241}\) narrowly expanded its view on the provision of Article 19(1)(a) towards the right to information. It held that the right to freedom of speech and expression includes the right to receive and impart information. For ensuring the free speech right of citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an unaware citizen’s diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them.

The Supreme Court had the occasion to deal with the exposure of the conduct of government through the media or otherwise on several occasions. The Supreme Court in *S. Rangarajan v. P. Jagjivan Ram*\(^{242}\) held that the criticism of government policies was not prohibited though there should be a proper balance between freedom of expression and social interests, but courts cannot simply balance the two interests as if they are of equal weight. The court’s


\(^{241}\) AIR 1995 SC 1236.

\(^{242}\) (1989) 2 SCC 574.
commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest will be endangered.

The Supreme Court in *Life Insurance Corporation v. Manubhai D. Shah*\(^{243}\) held that there is nothing wrong in requesting the publication of the respondent’s rejoinder in the Life Insurance Corporation’s journal though the rejoinder referred to the discriminatory practices of the Corporation which were adversely affecting the interests of a large number of policy holders. This was because the statute required the Corporation to function in the best interests of the community. The Court observed that the community is entitled to know whether or not this requirement of the statute is being satisfied in the functioning of the Life Insurance Corporation. The legal foundation for exposure of corruption, misconduct or maladministration by public servant was laid down by the Supreme Court in *R. Rajgopal v. State of Tamil Nadu*\(^{244}\), wherein the question of serious misconduct of public servants by a convict who was a serial killer was involved. The case squarely dealt with the right to know and the rights of privacy of public servants. The Supreme Court referred to the judgments of the American Court in *New York Times v. Sullivan*\(^{245}\) and of the British House of Lords in *Derbyshire v. Times Newspaper Ltd.*,\(^{246}\) and held that while decency and defamation are two the grounds mentioned in Clause (2) of Article 19, still any publication against any person will not be objectionable if such a publication is based on ‘public record’. In addition, in the case of ‘public official’ the right of privacy or for that matter, the remedy of action for damages is simply not available with respect to their acts and conduct relevant to the discharge of their official duties. This is so even where the publication is based upon the facts and statements, which are not true, unless the public official establishes that the publication was

\(^{243}\) (1992) 2 SCC 63.

\(^{244}\) (1994) 6 SCC 632

\(^{245}\) (1964) 376 US 254.

\(^{246}\) 1993 (2) WLR 449.
made with reckless disregard for truth. In such a case, it would, however, be sufficient for a person who published the news to prove that he reacted after a reasonable verification of the facts. It is not necessary for him to prove that what he has published is true. Of course, where the publication is proved to be false and actuated by malice or personal animosity, damages can be awarded. The above principle does not, however, mean that the Official Secrets Act, 1923 or any similar enactment does not bind the press.

The Supreme Court in *Dinesh Trivedi v. Union of India*,247 held that in modern constitutional democracies, it is axiomatic that the citizens have the right to know about the affairs of the government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital decisions taken by the government and the basis thereof. In this case the court was dealing with the Vohra Committee Report and stated that though it was not advisable to make public the basis on which certain conclusions were arrived at in the report, the conclusion reached in that report should be examined by a new body or institution or a special committee to be appointed by the President of India on the advice of the prime Minister and after the consideration of the Speaker of the Lok Sabha. It is now recognised that while a public servant may be subject to a duty of confidentiality, this duty does not extend to remaining silent regarding corruption of other public servants. The society is entitled to know and the public interest is better served if corruption or maladministration is exposed. The Whistleblower laws are based on this principle.248 Further, the right to get information in democracy is recognised all throughout and it is the natural right flowing from the concept of democracy.249

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247 1997 (4) SCC 306.
249 AIR 2002 SC 2112.
public interest in freedom of discussion stems from the requirement that members of a democratic society should be sufficiently informed.\textsuperscript{250}

It is apparent that from the opinions and observations of the Supreme Court of India in the *Kesavananda Bharati* case\textsuperscript{251} that India is in need of law on the right to information. The Apex Court in case of *Union of India v. Association of Democratic Reforms*,\textsuperscript{252} issued the directives to Election Commission of India regarding voters’ right to know the antecedents of the election candidates. Between this period, a plethora of sensitive judgments followed the Supreme Court’s concern on the right to know. Further, in the Law Commission of India’s 179th Report in 2001 entitled, “The Public Interest Disclosure and Protection of Informers”, The Supreme Court in the case of *Vineet Narain v. Union of India*,\textsuperscript{253} which is based on the Public Interest Litigation and judiciary enforcing rule of law, held that the holders of public offices are entrusted with certain powers to be exercised in public interest alone and therefore, the office held by them is trust for the people. The Law Commission referred to the evil of corruption amongst public servants and maladministration and the adverse effects thereof to the country\textsuperscript{254}. It also spoke about the options available for eradication of corruption, the protection of the right to freedom of expression and the right to know and the limitations of the right to privacy. However, most importantly it was concerned with the protection to be afforded to the whistle blowers\textsuperscript{255}.

There are various Indian laws which provide for the right to access information in specific contexts:

i) **The Indian Evidence Act, 1872**

The Law of Evidence is the most important branch of adjective
law. Without it trials might be infinitely prolonged to the great detriment of the public and vexation and expense of suitors. Chapter Vth of the Indian Evidence Act, 1872 deals with documentary evidence and mode of proof of the statements which are contained in documents. Documents are of two kinds Public and Private. Section 74 gives a list of public documents; all other documents are private. Sections 74 to 78 of the Indian Evidence Act, 1872 give right to the person to know about the contents of the public documents. In this connection section 76 of the Indian Evidence Act provides that the public officials shall provide copies of public documents to any person, who has the right to inspect them. The Act states that every public officer having the custody of a public document, which any person has right to inspect shall give that person on demand a copy of it on payment of legal fees. Such copy considered to be true copy of such document. The Act gives a list of public documents such as documents forming the acts or records of the acts of the sovereign authority, of official bodies and tribunals, of public officers, legislative, executive and judicial, of any part of India or of foreign Country.

ii) **The Code of Criminal Procedure, 1973**

The essential object of criminal law is to protect society against criminals and law-breakers. For this purpose the law holds out threats of punishments to prospective law breakers and as well attempts to make the actual offenders suffer the prescribed punishments for their crimes. Therefore, criminal law, in its wider sense consists of both procedural and substantive law. The Code of Criminal Procedure is a procedural law which regulates the working of

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256 Section -76 Certified copies of public documents- Every public officer having the custody of a public document, which any person has right to inspect shall give that person on demand a copy of it on payment of legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such is authorized by law to make use of seal; and such copies so certified shall be called certified copies.

257 Section -74 of The Indian Evidence Act,1872, provides list of public documents such as documents forming the acts or records of the acts of the sovereign authority, of official bodies and tribunals, of public officers, legislative, executive and judicial, of any part of India or of foreign Country.
the machinery set up for the investigation and trial of offences. The provisions relating to right to information under the Code of Criminal Procedure can be traced in the topic of rights of arrested person, where it is written that every police officer arresting any person without warrant shall communicate to the arrested person full particulars of the offence for which he is arrested and where a police officer arrest without a warrant any person other than a person accused of a non bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf. The police officer making arrest give such information of arrest and place where the arrested person is being held to his friends or relatives. The Magistrate is under an imperative duty to furnish to the accused, free of cost, copies as statements made to the police and of other documents to be relied upon by the prosecution. Where a case is instituted otherwise than on a police report and it appears to the magistrate issuing process that the case is exclusively triable by Court of Session than the Magistrate shall without delay furnish to the accused, free of cost, copies as statements made to the police and of other documents to be relied upon by the prosecution.

In the case of Satish Chandra Rai v. Jodu Nandan Singh, the Court held that the right to be informed about grounds of arrest is a precious right of arrested person. Timely information of grounds of arrest serves him in many ways. It enables him to move court for bail or in appropriate circumstances for a writ of habeas corpus, or to

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259 Section 50 of the Code of Criminal Procedure 1973, provides person arrested to be informed of grounds of arrest and of right to bail. (1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. (2) where a police officer arrest without a warrant any person other than a person accused of a non bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.
260 Section 50 A of the Code of Criminal Procedure 1973, deals with obligation of person making arrest to inform about the arrest, etc; to a nominated person.
261 Section 207 of the Code of Criminal Procedure 1973, provides supply of copy of police report and other documents to the accused.
262 Section 208 of the Code of Criminal Procedure 1973, provides supply of copies of statements and documents to accused in other cases triable by court of session.
263 ILR 26 Cal 748.
make expeditious arrangements for his defence.

The Apex Court in *Hari kishan v. State of Maharashtra*,\(^{264}\) held that it is reasonable to expect that the grounds of arrest should be communicated to the arrested person in the language understood by him otherwise it would not amount to sufficient compliance with the Constitutional requirement.

The Supreme Court in *Gurbachan Singh v. State of Punjab*,\(^{265}\) held that the object of furnishing accused person with copies of the statements and documents is to put him on notice of what he has to meet at the time of the inquiry or trial and to prepare himself for his defence. Similarly in the case of *Viniyoga International v. State*,\(^{266}\) the Court held that if the case instituted on complaint which was investigated by Central Bureau of Investigation the accused was entitled to disclosure of information. The Court said that the accused person would have the right albeit a non-statutory right, to complete disclosure of material at the threshold of a trial, even in cases instituted otherwise than on a police report if the proceedings were preceded by police investigation.

### iii) The Factories Act, 1948

The first Factories Act was enacted in 1881. Since then the Act has been amended on many occasions. The Factories Act 1934 was passed\(^{267}\) replacing all previous legislations in regard to factories. This Act also has number of defects and weaknesses and a need for wholesale revision of the Act to extend its protective provisions to the large number of smaller industrial establishments was felt. Therefore the Factories Act, 1948 consolidating and amending the law relating to labour in factories was passed. The Act makes it mandatory for every occupier of factory involving a hazardous process\(^{268}\) shall

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\(^{264}\) AIR 1962 SC 911.  
\(^{265}\) AIR 1957 SC 623.  
\(^{266}\) 1985 CRLJ 761.  
\(^{267}\) The Act was drafted on the recommendations of the Royal Commission on labour.  
\(^{268}\) Section 2(cb) of Factories Act, 1948. Hazardous process – means any process or activity in relation to an industry specified in the first schedule, where unless special care is taken, raw materials used
disclose in the manner prescribed all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the chief inspector, the local authority within whose jurisdiction the factory is situate.\footnote{Section-41(b) of the Factories Act, 1948, Compulsory disclosure of information by the occupier-occupier of factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the chief inspector, the local authority within whose jurisdiction the factory is situate and the general public in the vicinity.}

While this is an excellent provision, requiring \textit{suo motu} disclosure from private parties, in practice it is violated with impunity. The only recourse for those who believe their rights under it have been breached is to file a case in court, which in practice presents an impossible hurdle for most people. The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority\footnote{Ibid.}. The information furnished by the occupier shall include accurate information as to the quantity, specifications and other characteristics of waste and the manner of their disposal.\footnote{Sahay, Mareesh Pravir, “Right to Information: Its Scope and Need”, \textit{Indian Factories and Labour Reports}, Vol. 119, Part 21, July-December 2008, pp. 20-27.}

Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place. The Factories Act makes provision for Right of workers, and every worker under the Act shall have the right to obtain from the

occupier, information relating to worker’s health and safety at work and get trained at a training centre where training is imparted for workers health and safety.  

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

The Water (Prevention and Control of Pollution) Act, 1974 was passed for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water. The judiciary has given a very important and valuable directions to the appropriate authorities for the purpose of preservation and protection of environment. The Judiciary has given some judgements which have contributed to the enrichment of environmental jurisprudence. The Judges have contributed a lot to the jurisprudence of Environmental Law and to the development of international environmental law. The analysis seeks not only to deal with the specific content of each judgement but also to draw a broader picture of views of the Judges towards protection and development of environment and related laws.

The Supreme Court in Municipal Council Ratlam v. Vardhichand and ors. observed that the residents of a locality within the limits of Ratlam Municipality, tormented by stench and stink by open drains and public excretions by nearby slum dwellers moved the Sub-Divisional Magistrate under Sec. 133 CrPC to require the Municipality to construct drain pipes with the flow of water to wash the filth and stop the stench towards the members of the Public. The Municipality pleaded paucity of funds as the chief cause of disability to carry out its duties. The Supreme Court upheld the order of the High Court and directed the Municipality to take immediate action within its statutory powers to construct sufficient number of public latrines, provide water supply and scavenging services, to construct drains, cesspools

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272 Section 111-A of the Factories Act, 1948.
274 AIR 1980 SC 1622.
and to provide basic amenities to the public.

The Court also accepted the use of section 133 of Code of Criminal Procedure, 1973 for removal of public nuisance. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. In another case of *Tehri Bandh Virodhi Sangharsh Samiti v. State of UP and ors.* The writ petition was filed praying directions restraining the Union of India, State of UP and the Tehri Hydro Development Corporation from constructing and implementing the Tehri Hydro Power project. The main contention against the construction of the dam was on the basis that the plan for the Tehri project had not considered the safety aspect of the dam and serious threat existed due to this construction, as north India is prone to earthquakes. The design of the dam, was on a site which was prone to seismic activity hence posing grave danger to the people residing in that area. Base on the fact and circumstances of the case, the Court came to the conclusion that the Union of India had considered the question of safety of the project in various details more than once and that it had taken into account the reports of experts on various aspects. In the circumstances, the court held that it was not possible to hold that the Union of India had not applied its mind or had not considered the relevant aspects of safety of the dam. The Court lacked expertise in deciding such technical and scientific details, but would always judge to the fact whether or not the Government had taken all relevant consideration, while clearing the project or not.

Section 25(6) of the Water (Prevention and Control of Pollution) Act, 1974 requires every state to maintain a register of information on water pollution and "so much of the register as relates to any outlet or

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275 Ibid.
276 1990 (2) SCALE 1003.
277 Ibid.
any effluent from any land or premises shall be open to inspection at all reasonable hours by any person interested in or affected by such outlet, land or premises”.  

v) Air (Prevention and Control of Pollution) Act, 1981

The Air (prevention and control of pollution) Act, 1981 was passed for the prevention, control and abatement of air pollution, the judiciary has given a very important and valuable directions to the appropriate authorities for the purpose of preservation and protection of environment. A writ petition was filed in the case of LK Koolwal v. State of Rajasthan and ors279 In this writ petition, the petitioner asking the court to issue directions to the state to perform its obligatory duties. The petitioner invoked Fundamental Rights and the Directives Principles of State Policy and brought to the fore the acute sanitation problem in Jaipur which, it claimed as hazardous to the life of the citizens of Jaipur. The Court observed that maintenance of health, preservation of sanitation and environment falls within the purview of Art. 21 of the Constitution as it adversely affect the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because o the hazards created of not checked. The Court held that the Municipality had a statutory duty to remove the dirt, filth etc from the city within a period of six months and clear the city of Jaipur from the date of this judgment280. A committee was constituted to inspect the implementation of the judgment.

As regard the provisions of Right to Information under the Air (prevention and control of pollution) Act, 1981 the Act in certain cases mention that Furnishing, of information to State Board and other agencies where in any area the emission of any air pollutant into the atmosphere in excess of the standards laid down by the State Board occurs or is apprehended to occur due to accident or other unforeseen act or event, the person in charge of the premises from where which emission occurs or is apprehended to occur shall forthwith intimate

278 Section - 25(6) of The Water (Prevention and Control of Pollution ) Act, 1974.
279 AIR 1988 Raj 2.
280 Ibid.
the fact of such occurrence or the apprehension of such occurrence to
the State Board and to such authorities or agencies as may be
prescribed and on receipt of information with respect to the fact or the
apprehension of any occurrence of the nature whether through
intimation, the State Board and the authorities shall, as early as
practicable, cause such remedial measure to be taken as are
necessary to mitigate the emission of such air pollutants\(^{281}\). For the
purposes of carrying out the functions entrusted to it, the State Board
or any officer empowered by it may call for any information (including
information regarding the types of air pollutants emitted into the
atmosphere and the level of the emission of such air pollutants) from
the occupier or any other person carrying oil any industry or
operating any control equipment or industrial plant and for the
purpose of verifying the correctness of such information\(^{282}\), the State
Board or such officer shall have the right to inspect the premises
where such industry, or industrial plant is being carried on or
operated\(^{283}\).

\textbf{vi) The Indian Penal Code, 1860}

Though the Indian Penal Code 1860 does not deal explicitly
with a citizens Right to Information as the Indian Evidence Act 1872
does, it however contains various provisions which have close bearing
on the responsibility of a public servant to provide correct information
to the public, failing which the public servant concerned is liable to
punishment for his acts of omission and commission in this regard.\(^{284}\)
The Indian Penal Code, defines a public servant\(^{285}\) to include such
categories of persons as every commissioned officer in the military,
naval or air force of India, every judge, every officer of a Court of

\begin{itemize}
  \item Section-23 of the Air (Prevention and Control of Pollution) Act, 1981.
  \item Section-24 of the Air (Prevention and Control of Pollution) Act, 1981.
  \item Ibid.
  \item Chapter-IX of the Indian Penal Code, 1860.
  \item Section-21 of the Indian Penal Code, 1860- Every commissioned officer in the military, naval or
  air force of India, every judge, every officer of a Court of Justice, every juryman, assessor or a
  member of Panchayat assisting a Court of Justice or public servant, every arbitrator or other person
  to whom a cause or matter has been referred for decision or report by a Court of Justice or by any
  other competent public authority.
\end{itemize}
Justice, every juryman, assessor or a member of Panchayat assisting a Court of Justice or public servant, every arbitrator or other person to whom a cause or matter has been referred for decision or report by a Court of Justice or by any other competent public authority, every person who holds any office by virtue of which he is empowered to place or keep any person in confinement, every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect public health, safety or conveniences, every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, every person who is by virtue of his office discharges responsibilities in the conduct of election, and moreover every person who receives pay, remuneration or commission from the Government or from a local authority or corporation established by or under a Central, Provincial or State Act or a Government Company as defined in Section 617 of the Companies Act, 1956. The provisions relating to Offences by or relating to Public Servants are mentioned under Chapter IX of the Indian Penal Code, 1860. Public Servant framing an incorrect statement or making a wrong translation of a statement with the intention of causing injury to any person shall be punished for imprisonment up to three years or fine or both. Under the circumstances, a genuine concern for making the action of State transparent before the people calls for not only a suitable, prior amendment of the outdated Service Rules before the Bill is enacted, but also incorporation of the aforesaid provision of IPC 1860.

vii) The Environment (Protection) Act, 1986,

The judiciary has viewed the human rights on one hand and the environmental protection on the other hand as the two faces of the same coin. The judiciary as a guardian of fundamental right has

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286 Section-167 of the Indian Penal Code, 1860- Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
protected the right of each individual in relation to environment under Article 21 of the Constitution. The Environment (Protection) Rules, 1986 and the Environmental Impact Assessment Regulations provide for public consultation and disclosure in various circumstances. For example, the Environmental Impact Assessment Regulations set out, in paragraph 2(l)(a), read with Schedule IV, a procedure for public hearings and the requirement for the publication of the executive summary of a proposal for any project affecting the environment, prepared by the person seeking to execute that project. Although this provision is meant to facilitate citizen input, in fact it is too limited and environmental groups have had to go to the courts to get more complete disclosure. The Apex Court in Essar Oil Ltd. v. Italar Utkarsh Samiti, said that there was a strong link between Article 21 and the right to know, particularly where "secret Government decisions may affect health, life and livelihood." The case related to the grant of permission by the State of Gujarat to the appellant to lay the pipelines carrying oil through the Marine National Park and Sanctuary. The respondents, by way of PIL, had challenged the State decision and contended that the Government before granting permission, should have asked for and obtained an environmental impact report from expert bodies and be satisfied that the damage which might be caused to the environment, was not irreversible and that the applicant should publish its proposal so that public, particularly those who were likely to be affected, be made aware of the proposed action. Reiterating with approval the observations made in Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, the Court ruled that the citizens, who had been made responsible to protect the environment, had a right to know the

287 Article 21- Right to life and personal liberty.
288 Ibid.
289 AIR 2003 SC 2341.
290 AIR 2002 SC 1476.
For a free and fair election, an accurate and error-free electoral roll is the most important pre-requisite. Some of the electoral malpractices like bogus voting and impersonation, in a large part, result from defective electoral rolls. For enhanced participation of electors in the electoral process and reducing the electoral malpractices, it is essential to improve the quality of electoral registration process and of the electoral rolls. Therefore, adequate stress has to be laid on the preparation and revision of the electoral roll.

The provisions of the Representation of the People Act, 1950 which deals with right to information can be summed up as follows:

1. A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) or section 33, also furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction; or he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

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

(3) The returning officer shall, as soon as may be after the furnishing

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291 Section 33A of the Representation of People Act, 1950.
of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]\(^{294}\)

Candidate to furnish information only under the Act and the rules.-Notwithstanding anything contained in any judgment, decree or order of any court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election which is not required to be disclosed or furnished under this Act or the rules made there under a candidate contesting elections is required to furnish in his nomination paper the information in the form of an affidavit concerning: (i) accusation of any offence punishable with two or more years of imprisonment in any case including the framing of charges in pending cases; and (ii) conviction of an offence and sentence of one or more than one year imprisonment\(^{295}\). Moving forward in the same direction the Court in *Union of India v. Association for Democratic Reforms*,\(^{296}\) held that voter’s right to know antecedents including criminal past of a candidate to membership of Parliament or Legislative Assembly is also a fundamental right. Court observed that voter’s speech and expression in case of election would included casting of vote and for this purpose information about candidate to be selected is a must. In this case the Supreme Court had further directed the Election Commission to acquire information about crime and property and education status of the candidate as a part of nomination paper. Subsequently Parliament amended the Representation of People Act\(^{297}\) by which a candidate was required to supply information about his conviction in a criminal case, however, he was not required to give

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294 Ibid.
295 Section 33B of the Representation of People Act, 1950.
296 AIR 2003 SC 1743.
297 Third Amendment Act, 2002.
information about his assets and education. Declaring the amendment as illegal, null and void as violative of voter’s fundamental right to know under article 19(1)(a), the Court held in People’s Union of civil liberties v. Union of India,\textsuperscript{298} held that the information allowed by the Amendment Act, 2002 is deficient in ensuring free and fair elections which is the basic structure of the Constitution. Similarly, Court in the case of Onkar Lal Bajaj v. Union of India,\textsuperscript{299} held that people have a right to know the circumstances under which their representatives got allotment of petroleum retail outlets. Holding that the right to life has reached new dimensions and urgency, the Supreme Court in R.P. Ltd. v. Proprietors Indian Express Newspapers, Bombay Pvt. Ltd.,\textsuperscript{300} observed that if the democracy had to function effectively, people must have a right to know and to obtain information about the conduct of affairs of the State.

\textbf{ix) The Public Records Act, 1993\textsuperscript{301}}

The Public Records Act, 1993 was enacted to regulate the management, administration and preservation of public records of the Central Government, union territory administrations, public sector undertakings, statutory bodies and corporations, commissions and committees constituted by the Central Government or a Union Territory Administrations. Record officers were appointed to take appropriate action against the unauthorized removal, destruction etc. etc. of public records in his custody\textsuperscript{302}. All unclassified public records that were more than thirty year old were transferred to the National Archives of India or the Archives of the Union Territory as the case may be, subject to such exceptions and restrictions as may be prescribed to be made available to any bona fide research scholar\textsuperscript{303}.

\textbf{x) The Designs Act, 2000}

The existing legislation on industrial designs in India is
contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration.

The designs Act, incorporates the principle of disclosure of a design\textsuperscript{304} by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person, other than the proprietor of the design, and the acceptance of a first and confidential order for articles bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance. During the existence of copyright in a design, any person on furnishing such information as may enable the Controller to identify the design and on payment of the prescribed fee may inspect the design in the prescribed manner\textsuperscript{305}. Any person may, on application to the Controller and on payment of such fee as may be prescribed, obtain a certified copy of any registered design.

On the request of any person furnishing such information as may enable the Controller to identify the design, and on payment of the prescribed fee, the Controller shall inform such person whether the registration still exists in respect of the design, and, if so, in respect of what classes of articles, and shall state the date of registration, and the name and address of the registered proprietor.\textsuperscript{306}

\textit{xii) The Semiconductor Integrated Circuits Layout-Design Act, 2000}

The Integrated Circuits Layout Designs or Topographies are protected like an Intellectual Property in different countries. The

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\textsuperscript{304} Section 16 (Effect of Disclosure on Copyright) of the Designs Act, 2000.
\textsuperscript{305} Section -17 of the Designs Act, 2000.
\textsuperscript{306} Section-18 of the Designs Act, 2000.
\end{flushright}
Integrated Circuits Layout Designs are the outcome of huge efforts by extremely skilled experts along with financial inputs. In India, these designs are protected by the Central legislation, the Semiconductor Integrated Circuits Layout-Designs Act, 2000. The Act was passed to give effect to provisions of Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) concluded under the auspices of United Nations. The Act prohibits the registration of certain designs which are not novel, has been utilized for business purposes wherever in India or abroad, not fundamentally unique and not differentiable from other designs registered. Where the design has been created by the intellectual labors of the inventor and is distinctive, such designs shall be considered original under the Act. The Act confers power on the Central Government to formulate rules to execute the provisions of the legislation. This Act is a novel legislation to grant protection for the scientific and technological inventions and to prevent from exploitation of such works by unauthorized user. Under this Act, documents are open to public inspection and any person may on an application to Registrar with fees, obtain a copy of any entry in the register.307

4.8 Conclusion

Thus, it can be concluded from the above discussion that the right to information has been recognized at national as well as international levels and a number of Conventions and Declarations have been signed to guarantee the right to information. The right to information is such basic right today that this right to information was considered by National Commission Constituted to Review the Working of the Constitution and it was held that right to information should be guaranteed and needs to be given real substance and, accordingly, NCRWC suggested that Article 19(1) (a) of the Constitution of India may be amended as:

"All citizens shall have the right (a) to freedom of speech and expression which shall include the freedom of the press and other

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media, the freedom to hold opinions and to seek, receive and impart information and ideas."

An ordinary citizen had no access to information held by a public authority. Even in matters affecting legal entitlements for such subsidised services as food for work, wage employment, basic education in healthcare, old age pension and food security for destitute, it was not easy to seek the details of the decision-making process that affected him. Without access to relevant information, it was not possible for a common man to participate in a meaningful debate on political and economic options or choices available to him for realising socio-economic aspirations. In this backdrop, the **Right to Information Act, 2005**, was passed by the Indian Parliament to dismantle the culture of secrecy and to change the mindset of the bureaucrats and political leaders and to create conditions for taking informed decisions. The major concern of the Act is to allow for greater probity in the functioning of the Government departments so as to promote transparency and accountability in the working of the public bodies and contain the scourge of corruption, which are critical for ensuring good governance and development.

There is plethora of legislation which directly or indirectly, latently or patently deal with different facets of right to information in India but its real enforcement is lacking behind. If implemented successfully, democracy will attain new heights and desired results may be achieved in true letter and spirit.