CHAPTER-2
CONCEPT AND GENESIS OF RIGHT TO INFORMATION

2.1 INTRODUCTION

In the previous chapter we have seen that the right to information is a unique human right and is ultimate source of power in the hands of common people in the democratic societies. Access to public records is an essential requirement for a modern government, especially in a democracy. The democracy expects openness and openness is a concomitant of free society. The openness is possible only when the ‘right to know’ is exercisable by the people who can use it to keep a check on the bodies that govern them. Information provides us the knowledge to demand political, economic and social rights from our government. In this chapter an attempt has been made by the researcher to know the concept and genesis of this right. In depth, efforts were made to trace the historical background that led to the passing of the Right to Information Act, 2005, from the Constitutional protection to the enactment of a right to information laws at Centre and State levels and to see how this right to information has been given protection nationally and internationally.

Information is a term derived from latin word ‘Forma’ which means giving shape to something and forming a pattern respectively. It adds something new to our awareness and removes the vagueness of our ideas. The importance of information as an empowering tool is well explained by several traditional scripts.\(^1\) Information is basis for knowledge which provokes thought and without thinking process there is no expression. Freedom of expression is running theme of democratic governance.\(^2\)

Looking at the concept from historical perspective, it can be inferred that the concept of search for truth is not alien to the Indian political thinkers and philosophers. They have expressed concern to

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secure knowledge since the very early time of Vedic age. In this context the great Upanishad philosophy says "Tamso ma Jyotigramaya" means "Oh Lord ! Lead me from darkness to light i.e. from ignorance to knowledge."  

The great Upanishadic verses describe man as 'child of mortality' and his mission in life is to realize the ultimate truth. Ignorance is darkness and must be dispelled and information is light and must be processed through consciousness. Knowledge and wisdom spring from the base of facts sensitively structured and finished. Mere jumble of information may be bewildering or misleading mess. Knowledge is power but information is fuel of knowledge. Obviously a citizen cannot achieve knowledge unless he has certain basic freedoms such as freedom of thought, freedom of information, freedom of conscience, freedom of speech, expression and of locomotion and so on so forth. These freedoms represent the basic values of life in a civilized society and have been given a place of pride in our Constitution in the shape of Fundamental Rights which are inviolable though subject of some reasonable restrictions. These restrictions are meant to protect the national interest, to safeguard the fundamental rights of the other persons etc. Freedom of information has been gradually receiving acceptance and recognition the globe over. Transparency in administration is a sure technique to minimize the abuse and misuse of administrative discretion. Openness negatives the ideas of arbitrary and oppressive form of

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3 The Shanthi Mantra from the Brhadāraṇyaka Upanishad which is one of the older, "primary"(mukhya) Upanishads.
5 Seth, Mahendra Kumar and Baman Parida, “Perspectives on India’s Right to Information” 35 SC 88-92 (2005).
8 Article 19(2) of the Constitution of India, 1950.
government action.\textsuperscript{10}

The Supreme Court in \textit{Maneka Gandhi v. Union of India}\textsuperscript{11}, held that a government which reveals in secrecy in the field of people's liberty not only acts against democratic decency but busies itself with its own burial. Public power must rarely hide its heart in an open society and system." Right to know the truth is supreme and it must out-weigh the right to property and other personal rights.

\subsection*{2.2 MEANING OF INFORMATION}

Information is oxygen for the democratic society and communication is at the heart of all social intercourse. In this context it is essential that all men and women, in all social and cultural environments, should be given the opportunity of joining in the process of collective thinking thus initiated, for new ideas must be developed and more positive measures must be taken to shake off the prevailing inertia\textsuperscript{12}. With the coming of a new world communication order, each people must be able to learn from the others, while at the same time conveying to them its own understanding of its own condition and its own view of world affairs.\textsuperscript{13} Mankind will then have made a decisive step forward on the path to freedom democracy and fellowship."\textsuperscript{14}

The source of right to information from Rig Veda downwards the Indian heritage has been an eclectic universality and cultural hospitality for creative ideas and educative information\textsuperscript{15}. The Rig Veda says "\textit{Ano Bhadra Krittavo Yantu Vishwatah}" which means “Let noble thoughts come to us from every side.”\textsuperscript{16} Similarly the Bible says, and ye shall know the truth, and the truth shall make you free.\textsuperscript{17} The philosophy which inspires the Indian people's hunger for freedom of

\begin{thebibliography}{99}
  \bibitem{Tayal} Tayal, B.B & Jacob, \textit{Indian History, World Developments and Civics} 23(2005).
  \bibitem{AIR} AIR 1978 SC 597.
  \bibitem{Foreword} Foreword by the Director General of UNESCO to the Mac Bride Report titled \textit{“Many Voices, One World”}.
  \bibitem{Sridhar} Dr. Madhabhushi Sridhar, \textit{Right to Information Law and Practice} 16 (2006).
  \bibitem{Rigveda} (Rigveda, 1-891).
  \bibitem{Darby} DarbyJohn, “\textit{Commentary on John 8:32}” 31(1950).
\end{thebibliography}
information is best expressed by Rabindranath Tagore who won noble prize for his poetry.

"Where the mind is without fear and the head is held high; where knowledge is free; Where the world has not been broken up into fragments by narrow domestic walls; Where words come out from the depth of truth; Where tireless striving stretches its arms towards perfection; Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit; Where the mind is led forward by thee into ever-widening thought and action - Into that Heaven of Freedom My Father, Let My Country Awake."

2.3 DEFINITION OF INFORMATION

According to the Oxford Pocket Dictionary of Current English, “Information is a knowledge derived from study, experience and instruction or knowledge of specific events, data that has been verified to be accurate and timely, or it is a knowledge communicated or received concerning a particular fact or circumstance.”

Information in its most restricted technical sense is an ordered sequence of symbols that record or transmit a message. It can be recorded as signs, or conveyed as signals by waves. Information is any kind of event that affects the state of a dynamic system. As a concept, however, information has numerous meaning. Moreover, the concept of information is closely related to notions of constraint, communication, control, data, form, instruction, knowledge, meaning, mental stimulus, pattern, perception, representation, and even entropy.

According to the Encyclopedia Britannica, “Information is the amount of the data after data compression”.

18 1st Non European to get Noble Prize in Literature in 1913 for the Poem Gitanjali (A Collection of 103 Bengali Poems).
22 Ambrose Bierce, The Devil's Dictionary, Butterworths 451 (1911).
According to the *Whiteley’s Law Dictionary*,\(^{24}\) It defines "information" as a "difference that makes a difference".

According to the *Black’s Law Dictionary*,\(^{25}\) Information only provides an answer to a posed question. Whether the answer provides knowledge depends on the informed person.

According to the *Jowitt’s Dictionary of English Law*,\(^{26}\) Information is a phrase often used in legal pleadings (complaints and answers in a lawsuit), declarations under penalty of perjury, and affidavits under oath, in which the person making the statement or allegation qualifies it. In the French law, the term information is used to signify the act or instrument which contains the depositions of witnesses against the accused.\(^{27}\)

In general, information is raw data that has been verified to be accurate and timely, is specific and organized for a purpose, is presented within a context that gives it meaning and relevance, and which leads to increase in understanding and decrease in uncertainty. The value of information lies solely in its ability to affect a behaviour, decision, or outcome. A piece of information is considered valueless if, after receiving it, things remain unchanged.\(^{28}\)

### 2.3.1 Kinds of Information

Generally, there are three kinds of Information Primary, Secondary and Tertiary Information.\(^{29}\)

(a) Primary Information can be defined as original material that has not been interpreted or analyzed. They are first hand, authoritative accounts of an event, topic, or historical time period. They are typically produced at the time of the event by a person who experienced it, but can also be made later on in the form of personal memoirs or oral histories.\(^{30}\)

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\(^{27}\) West’s Encyclopaedia of American Law 538 (2008).


information on a topic is considered a primary source such as Original photographs, First-hand newspaper reports, Acts, Statutes, Codes and Research articles.

(b) Secondary Information is created from primary material, or interpreting original material. They often include an analysis of the event that was discussed or featured in the primary source. They are second-hand accounts that interpret or draw conclusions from one or more primary sources i.e. Essays or reviews, Criticisms or commentaries Textbooks, Guides, Notes, and helpbooks.

(c) Tertiary Information generally provide an overview or summary of a topic which is primary or secondary. It acts as a tool in understanding and locating information, i.e. Databases, Facts, Figures and Questionairres.31

2.4 DEFINITION OF RIGHT

An entitlement to something, whether to concepts like justice and due process, or to ownership of property or some interest in property, real or personal.32 These rights include various freedoms, protection against interference with enjoyment of life and property, civil rights enjoyed by citizens such as voting and access to courts, natural rights accepted by civilized societies and human rights to protect people through out the world from terror and torture.33 Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people, according to some legal system, social convention, or ethical theory. Rights are of essential importance in such disciplines as law and ethics, especially theories of justice and deontology.34

Rights are often considered fundamental to civilization, being regarded as established pillars of society and culture, and the history of social conflicts can be found in the history of each right and its

32 Laski’s, Theory of Rights 45 (2000).
33 Ibid.
34 The Columbia Encyclopedia 345 (2010).
development. The connection between rights and struggle cannot be overstated. Rights are not as much granted or endowed as they are fought for and claimed, and the essence of struggles past and ancient are encoded in the spirit of current concepts of rights and their modern formulations. The Modern English word right derives from Old English riht or reht, in turn from Proto-Germanic ‘rixtaz’ meaning "right" or "direct", and ultimately from Proto-Indo-European ‘reg-to’ meaning "having moved in a straight line", in turn from ‘(o)reg(a)’ meaning "to straighten or direct". In several different Indo-European languages, a single word derived from the same root means both "right" and "law", such as French droit, Spanish derecho, and German recht.35

Rights are widely regarded as the basis of law, some theorists suggest civil disobedience is, itself, a right, and it was advocated by famous thinkers36. There is considerable disagreement about what is meant precisely by the term rights. It has been used by different groups and thinkers for different purposes, with different and sometimes opposing definition and the precise definition of this principle, beyond having something to do with normative rules of some sort or another, is controversial.

2.4.1 Kinds of Rights

Rights can be of many types such as natural, positive, legal etc.

(a) Natural and Legal right

According to some views, certain rights derive from a deity or nature. Natural rights are rights which are derived from nature. They are universal; that is, they apply to all people, and do not derive from the laws of any specific society. They exist necessarily, inhere in every individual, and can’t be taken away. For example, it has been argued that humans have a natural right to life. They are sometimes called moral rights or inalienable rights.37

36 Henry David Thoreau, Martin Luther King Jr, and Gandhi.
37 Ambrose Bierce, The Devil’s Dictionary 451(1911).
Legal rights, in contrast, are based on a society’s customs, laws, statutes or actions by legislature. An example of a legal right is the right to vote of citizens\textsuperscript{38}. Citizenship, itself, is often considered as the basis for having legal rights, and has been defined as civil rights, the "right to have rights". Legal rights are sometimes called \textit{statutory rights} and are culturally and politically relative since they depend on a specific societal context to have meaning\textsuperscript{39}. Some thinkers see rights in only one sense while others accept that both senses have a measure of validity. There has been considerable philosophical debate about these senses throughout history.

According to \textit{Jeremy Bentham} legal rights are the essence of rights, and he denied the existence of natural rights\textsuperscript{40}. According to \textit{Thomas Aquinas} the rights which were purported by positive law but not grounded in natural law were not properly rights at all, but only a facade or pretense of rights\textsuperscript{41}.

\textbf{(b) Positive rights and Negative rights}

In one sense, a right is a permission to do something or an entitlement to a specific service or treatment, and these rights are called \textit{positive rights}. However, in another sense, rights may allow or require inaction, and these are called \textit{negative rights}; they permit or require doing nothing. For example, in some democracies e.g. the United States of America, citizens have the \textit{positive right} to vote and they have the \textit{negative right} not to vote; people can stay home and watch television instead, if they desire.\textsuperscript{42} In other democracies e.g. Australia, however, citizens have a positive right to vote but they don’t have a negative right to not vote, since non-voting citizens can be fined\textsuperscript{43}.

Positive rights are permissions to do things, or entitlements to be done. One example of a positive right is the purported "right to welfare."

\textsuperscript{38} Ibid.  
\textsuperscript{39} The Columbia Encyclopedia 346 (2010).  
\textsuperscript{40} Byrne, W. J., \textit{A Dictionary of the English Law} 453 (1923).  
Negative rights are permissions not to do things, or entitlements to be left alone. Often the distinction is invoked by libertarians who think of a negative right as an entitlement to "non-interference" such as a right against being assaulted. Though similarly named, positive and negative rights should not be confused with active rights which encompass "privileges" and "powers" and passive rights which encompass "claims" and "immunities".

2.5 DEFINITION OF RIGHT TO INFORMATION

Right to Information" means the right to information which can be obtained from the public authorities or which is held by or under the control of any public authority and includes the right to:

(i) inspection of work, documents, records;
(ii) taking notes, extracts or certified copies of documents or records;
(iii) taking certified samples of material;
(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

According to Madison, "a popular government without popular information, or the means of obtaining it, is but a prologue to a farce or tragedy or perhaps both." Right to Information empowers every citizen to seek any information from the Government and the authorities acting under the authority of the Government. This right is regarded as oxygen of democracy as because exercise of this right ensures transparency and prevention of corruptions in the functioning of the Public Authorities and thereby helps to survive and strengthen the democracy.

According to Thomas Jefferson, "it is their sweat which is to earn all the expenses of the war and their blood which is to flow in

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44 Laski’s, Theory of Rights 78 (2000).
45 Section 2 of the Right to Information Act, 2005.
46 American political theorist and 4th U.S. President.
expiation of the cause of it.\(^49\) 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, is "the most comprehensive of rights and the rights most valued by civilized men\(^50\)."

Freedom of information, as *Norman Marsh* 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 government decision-taking'\(^51\). 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.\(^52\)

The fact that the right to information is included in the constitutional guarantees of freedom of speech and expression has been recognized by Supreme Court decisions challenging governmental control over newsprint and bans on the distribution of newspapers.\(^53\) In a landmark case the petitioners, publishers of one of the leading national dailies, challenged restrictions in the Newsprint Control Order on the acquisition, sale and use of newsprint. The Supreme Court struck down the restrictions on the basis that they interfered with the petitioners' right to publish and circulate their paper freely, which was included in their right to freedom of speech and expression. In a subsequent case, the Supreme Court held that media controlled by public bodies were required to allow both sides of an issue to be aired. The right to know has been reaffirmed in the context of environmental issues that have an impact upon people's very survival. Several High Court decisions have upheld the right of citizens' groups to access information where an environmental issue


was concerned.\textsuperscript{54} For example, in different cases the right to inspect copies of applications for building permissions and the accompanying plans, and the right to have full information about a municipality's sanitation programme, has been affirmed.

The overall impact of these decisions has been to establish clearly that the right to freedom of information or the public's right to know, is embedded in the provisions guaranteeing fundamental rights in the Constitution.\textsuperscript{55}

\textbf{2.6 CONCEPT OF RIGHT TO INFORMATION}

The concept of democracy in India is enshrined in the Preamble to the Constitution of India wherein opening words provide that "We, the People of India “and in the end it lays down”give to ourselves this Constitution\textsuperscript{56}". The citizens have the fundamental right to know what the government is doing in its name. Freedom of speech is the life-blood of democracy\textsuperscript{57}. The Apex Court in the case of \textit{K. v. Secretary of State for the Home Department Ex. P. Simms},\textsuperscript{58} held that the free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice in the country.

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 Britishers passed Official Secrets Act 1923, which was mainly a defense mechanism against the rising tide of nationalism initiated by M.K. Gandhi in 1917. As Indians were distrusted by British Government, so nobody had any access to official information under this Act.\textsuperscript{59} The

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\textsuperscript{55} Sharma, Pradeep, “Empowered People” \textit{The Tribune}, 14 October 2008, p.03.
\textsuperscript{56} The Constitution of India, 1950.
\textsuperscript{57} Part-111\textsuperscript{th} of the Constitution of India, 1950.
\textsuperscript{58} LR 2000(2) AC 115.
\textsuperscript{59} Jacob, \textit{Indian History, World Developments and Civics} 24 (2005).
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Indian Legal System, largely being a colonial vintage, stresses on secrecy laws and such provisions are contained in Official Secrets Act 1923, the Indian Evidence Act 1872 and the infamous Rowlatt Act 1919 etc.

After independence India adopted democratic form of government, which implies the government of the people, by the people and for the people. 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 must arm themselves with the power knowledge gives. The Supreme Court in the case of *S.P. Gupta v Union of India* held that "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 increasingly growing in different parts of the world.

With the globalization of trade and industry and well knit world today, the disclosure of information may be of the purity, potency and price of commodities in the market or the functioning of the government is necessary and for this purpose various Conventions

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60 Act 19 of 1923.
61 Section 123,124 & 162.
62 Passed by the Imperial Legislative Council in London on 10 March 1919. This Act authorized the government to imprison for up to two years, without trial any person suspected of terrorism. The accused was denied the right to know the evidence used in the trial.
64 An American Statesman, political theorist and the fourth President of United States.
65 AIR 1982 SC 149.
have been held at National and International levels, which suggested imparting of the information on the working of the government to its citizens subject to some restrictions being imposed by the law in the interest of security of the country etc.

The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once is five years to choose their rulers and, once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government an attitude and habit of mind. But this important role people can fulfill in a democracy only if it is an open government where there is full access to information in regard to the functioning of the government.

For a long period the working of the Government had been shrouded in secrecy and the poor citizens had to run from pillar to post even to get small information about his application to get copies of record-of-rights or his representation made to the government functionaries and instances are not lacking where he had not received reply to his genuine request for years together. The Supreme Court of India, while interpreting Article 19(1) of the Constitution of India clearly laid down in a number of decisions that the fundamental right of freedom of speech and expression includes right to acquire information and to disseminate it which is necessary for self

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expression enabling the people to contribute to debate on social and moral issues.

In view of this, provisions were made in various Acts passed by the legislature for imparting information to the citizens from time to time. The Indian Evidence Act, give right to the person to know about the contents of the public documents\(^70\) and in this connection section 70 of the *Indian Evidence Act* 1872, lays down that the public officials shall provide copies of public documents to any person, who has the right to inspect them\(^71\). Under the Factories Act, compulsory disclosure of information has to be provided to factory workers regarding dangers including health hazards arising from their exposure to dangerous materials and the measures to overcome such hazards\(^72\). Under the Water (Prevention and Control of Pollution) Act, every State is required to maintain a register of information on water pollution and it is further provided that so much of the register as relates to any outlet or 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\(^73\). Under the Representation of the People Act, a candidate contesting elections is required to furnish in his nomination paper the information in the form of an affidavit concerning, accusation of any offence punishable with two or more years of imprisonment in any case including the framing of charges in pending cases; and conviction of an offence and sentence of one or more than one year imprisonment\(^74\).

Before the enactment of the Freedom of Information Act, 2002\(^75\), legislative steps though some were taken but only a little could be achieved in the field of right to information through the following enactments.

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\(^70\) Sections 74 to 78 of the Indian Evidence Act, 1872.
\(^71\) Section 70 of the Indian Evidence Act, 1872.
\(^72\) Section 41(6) of the Factories Act, 1948.
\(^73\) Section 25(6) of the Water (Prevention and Control of Pollution) Act, 1974.
\(^74\) Section 33A of the Representation of the People Act, 1951.
\(^75\) Freedom of Information Act, 2002,(Act No.5 of 2003).
1. The Constitution of India, 195076.
2. The Indian Penal Code, 1860 (45 of 1860)77.
3. The Indian Evidence Act, 187278.
4. The Representation of the People Act, 195179.
5. The Companies Act, 195680.
8. The Bureau of Indian Standards Act, 198683.
10. The Trade Marks Act, 199985.
11. The Designs Act, 200086.
13. The Information Technology Act, 200088.
15. The Competition Act, 200290.
16. The Delimitation Act, 200291.
17. The Medical Termination of Pregnancy Regulations, 200392.
18. The Central Civil Services (Conduct) Rules, 196493.
19. The All India Services (Conduct) Rules, 196894.

76 Article 14,19,21,22,32,54,78,226.
78 Section 123,124,125,126.
79 Section 33A, 33B, 38, 71,73,74,75A,78A,78B.
80 Section 39,40,53,54,61,63,64,118,136,144,197,222,223,305,307 etc.
81 Section 3 and Section 18 of The Atomic Energy Act, 1962
82 Section 3,4,5,6,7.
83 Section 30.
84 Section 2 and 78.
85 Section 148.
86 Section 2,16,17,18.
87 Section 87.
88 Section 2,3,4,5,6,7,8,9,11,12,13,14,15,29,30,34,67,70,72.
89 Section 84,86.
90 Section 57.
91 Section 10,11.
92 Section 3,4,5,6,7.
93 Section 11.
Former judge of Supreme Court of India\textsuperscript{95} in his open letter dated 26th December, 1989 took up the matter regarding right to information to the citizens with the then Prime Minister of India\textsuperscript{96} in which it was categorically highlighted that "the right to know and the freedom of information are inalienable components of the freedom of expression and participation in public affairs, which Constitution confers on every citizen of the country. It is heartening that, in the very first broadcast to the nation you emphasized the importance of the freedom of information and the annihilation of secrecy as a crafty art of Government accepting this postulate, some things require to be done immediately so that, the credibility of the Indian community in the changed ethos of open government may be created.

The Report of National Commission for Review of Working of the Constitution\textsuperscript{97} recognized the right to information wherein it is provided that major assumption behind a new style of governance is the citizen's access to information. Much of the common man's distress and helplessness could be traced to his lack of access to information and lack of knowledge of decision-making processes. He remains ignorant and unaware of the process that virtually affects his interest. Government procedures and regulations shrouded in veil of secrecy do not allow the litigants to know how their cases are being handled.\textsuperscript{98} They shy away from questioning officers handling their cases because of the latter's snobbish attitude and bow-wow style.\textsuperscript{99} Right to information should be guaranteed and needs to be given real substance. In this regard government must assume a major responsibility and mobilize skills to ensure flow of information to citizens. The traditional insistence on secrecy should be discarded. In fact, we should have an oath of transparency in place of an oath of

\textsuperscript{94} Section 2.9.
\textsuperscript{95} V.R. Krishna Iyer last Supreme Court judge to have previously served as politician. He was conferred with Padma Vibhushan in 1999. He is one of the oldest judges in India.
\textsuperscript{96} Vishwanath Pratap Singh was the seventh Prime Minister of India and the 41\textsuperscript{st} Raja Bahadur of Manda.
\textsuperscript{97} 179\textsuperscript{th} Report under the Chairmanship of Justice M. N. Venkatachaliah, Dated March 31, 2002.
\textsuperscript{98} Kataria, S. K., "Role of RTI in Reforming the Indian Administration" 55 IJPA 661-669 (2009).
secrecy. Administration should become transparent and participatory, right to minimizing manipulative and dilatory tactics of the babudom, and, last but most importantly putting a considerable check on graft and corruption100.

During the last decade, the right to information has got a momentum as never before and on the civil societies side also some organizations; social activists and individuals did excellent work in this field. The Mazdoor Kisan Shakti Sangathan101 (MKSS) has done a great job in the field of right to information in rural India and its struggle for minimum wages and to get the information regarding Muster Rolls being maintained compelled the Government of Rajasthan to enact Right to Information Act and then various other State Governments enacted the Right to Information Acts. viz.


The Freedom of Information Act, 2002102 (5 of 2003) was enacted by the Government of India to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto. The Statement of Objects and Reasons appended to the Freedom of Information Act, 2002 laid down that the Freedom of Information Bill seeks to achieve the following objects:

101 A Non Governmental Organisation (NGO) established in 1990 at Rajasthan.
1. The need to enact a law on right to information was recognized unanimously at New Delhi\textsuperscript{103}. In its 38th Report relating to Demands for Grants of the Ministry of Personnel, Public Grievances and Pension, the Parliamentary Standing Committee on Home Affairs recommended that the Government should take measures for enactment of such legislation.

2. In order to make the Government more transparent, and accountable to the public, the Government of India appointed a Working Group\textsuperscript{104} on Right to information and Promotion of Open and Transparent Government. The working group was asked to examine the feasibility and need for either full-fledged Right to Information Act or its introduction in a phased manner to meet the needs of open and responsive governance and also to examine the frame work of rules with reference to the Civil Services (Conduct) Rules and Manual of Office Procedure. \textsuperscript{105} The said Working Group submitted its report in May 1997 along with a draft Freedom of Information Bill to the Government. The working Group also recommended suitable amendments to the Civil Services (Conduct) Rules and the Manual of Departmental Security instructions with a view to bring them in harmony with the proposed Bill\textsuperscript{106}.

3. The draft Bill submitted by the Working Group was subsequently deliberated by the Group of Ministers constituted by the Central Government to ensure that free flow of information was available to the public, while inter alia, protecting the national interest, sovereignty and integrity of India, and friendly relations with foreign States\textsuperscript{107}.

\textsuperscript{103} Chief Ministers Conference on 'Effective and Responsive Government' held on 24th May,1997
\textsuperscript{104} Under the Chairmanship of Shri H.D. Shourie.
\textsuperscript{105} Ibid.
\textsuperscript{106} Dr. Madabhushi Sridhar, Right to Information Law and Practice 22 (2005).
4. The proposed Bill is in accord with both Article 19 of the Constitution as well as Article 19 of the Universal Declaration of Human Rights, 1948\textsuperscript{108}.

5. In our present democratic framework, free flow of information for the citizens and non-Government institutions suffers from several bottlenecks including the existing legal framework, lack of infrastructure at the grass root levels and an attitude of secrecy within the Civil Service as a result of the old framework of rules\textsuperscript{109}. The Government proposes to deal with all these aspects in a phased manner so that the Freedom of Information Act becomes a reality consistent with the objective of having a stable, honest, transparent and efficient Government.\textsuperscript{110}

6. The proposed Bill will enable the citizens to have an access to information on a statutory basis. With a view to further this objective, clause 3 of the proposed Bill specifies that subject to the provisions of this Act, every citizen shall have right to freedom of information. Obligation is cast upon every public authority under clause 4 to provide information and to maintain all records consistent with its operational requirements duly catalogued, indexed and published at such intervals as may be prescribed by the appropriate Government or the competent authority\textsuperscript{111}.

With the passage of time, it was felt that even this Act failed to fulfil the aspiration of the citizens of India in the field of right to know and to get information since this Act was never enforced. In order to ensure greater and more effective access to information, it was thought that the Freedom of Information Act, 2002 must be made more progressive, participatory and meaningful\textsuperscript{112}.

On this issue National Advisory Council suggested certain important changes to be incorporated into the said Act to ensure smoother and greater access to information. After examiner the

\textsuperscript{108} Dr. Subash C. Kashyap, *Constitutional Law of India* 43 (2008).
\textsuperscript{110} Kataria, S. K., “Role of RTI in Reforming the Indian Administration” 55 *IIPA* 660-671(2009).
\textsuperscript{111} P.C. Majmudar, *Right to Information* 29 (2005).
suggestions of the National Advisory Council and others, the government decided to make a number of changes in the law. In view of the significant changes proposed by the National Advisory Council and others, it was decided to repeal the Freedom of Information Act, 2002 and enact another law for providing an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India. To achieve this object, The Right to Information Bill was introduced in the Parliament in December 2004. The important changes proposed to be incorporated, inter alia, include establishment of an appellate machinery with investigating powers to review decisions of the Public Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure and minimum exemptions consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities, etc.

In view of the significant changes proposed in the existing Act, the government decided to repeal the Freedom of Information Act and in the proposed legislation to provide an effective framework for effectuating the right to information. Indian Parliament passed the Right to Information Act, 2005, which came into force on 15.06.2005. This enactment set out its objectives in the Preamble, which aims to promote transparency and accountability in the working of every public authority. This Act was brought into Statute book on the premise that informed citizenry and transparencies of information are vital to the vibrant democracy.

Thus, the Right to Information Act, 2005, which came into force in India in totality is regarded as a milestone in the history of social

117 Preamble to the Right to Information Act, 2005 (Act No.22 of 2005).
legislation to impart information to citizens of India regarding working of the government and its corporations, etc. to make them more transparent as a result of which corruption, if not eliminated at all, would be checked to a greater extent. The Right to Information Act thus provides an effective framework for effectuating the right of information, a fundamental right, recognized under Article 19 of the Constitution of India\textsuperscript{120}.

The Preamble to the Right to Information Act, 2005 lays down that whereas the Constitution of India has established democratic Republic; and whereas democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed; and whereas revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information and whereas it is necessary to harmonise these conflicting interests while preserving the paramount of the democratic ideal and, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it.\textsuperscript{121} It is not out of place to mention here that most of the problems today are the result of non-observance of moral values by the younger generations after the independence that have prompted them to make money by fair or foul means.\textsuperscript{122} The absence of availability of information on the working of the government generally generate corruption and nepotism and, therefore, the enactment of this Act is an important milestone in furtherance of the democratic process whereby it shall be possible for the citizens to get information on all important issues and decisions affecting them and thereafter to

\textsuperscript{121} Dogra, Bharat, “Right to Information: Hope and Despair” 32 \textit{EPW} 1794-1795(1997).
\textsuperscript{122} Divan, Madhavi, “From Secrecy to Right to Information - A Reluctant Transition” 8 \textit{SCC} 60-67(2003).
adjudge the performance of the government, which they elected, for themselves.\textsuperscript{123}

**2.7 EVOLUTION OF RIGHT TO INFORMATION**

In Ancient India, traditionally man is inquisitive and from the time immemorial he has been busy in his mission of knowing and discovering the truth in whatever field his aptitude and imagination ventured\textsuperscript{124}. In this context there is ample evidence in this context in our great Vedic erudition where it is written- “Life is a perennial search for the truth. The restless swan (soul) is on journey infinite to find the truth\textsuperscript{125}. The Indian history starts right from the post glacial epoch i.e. from about 8000 BC\textsuperscript{126}, “The Rig Veda is considered to be the first recorded utterance of mankind\textsuperscript{127}.” Indians from the time immemorial, worshipped knowledge in the form of ‘Saraswati’, the Goddess of knowledge, ‘Let noble thoughts come to us from every side’ is the eternal message of the Rig Veda given several millennia ago signifying the freedom to inform and be informed. The Upanishads also expound a fearless quest of free and frank exchange of views\textsuperscript{128}.

The Rig Veda states: ‘ekam sat viprah bahudaa vadanti’ meaning truth or god is one but learnt men describe it in many ways\textsuperscript{129}. Hinduism is based primarily on the Vedas. ‘Veda’ literally means knowledge or wisdom. It is also called ‘Shruti’ which means ‘what is heard or revealed’. All other scriptures go under the omnibus term of ‘Smriti’ (‘what is remembered’). Shruti being divinely revealed to the great Rishis of yore in the depths of their mystical experience, its authority is supreme. Smritis are the secondary scriptures which derive their authority from the Shruti. Their business is to explain, elaborate and illustrate the fundamental teachings of the Shruti.\textsuperscript{130}

\textsuperscript{125} Rigveda 10.8.18.
\textsuperscript{130} Hari Sharan Saxena, *Eternal Values in Manu Samriti* 27 (1924).
Hindu scriptures state, “Sathya meva Jayathe” meaning “Truth alone triumphs never falsehood.” So Hindu scriptures allow free flow of thoughts and actions.\textsuperscript{131} Hindu authors knew that by allowing absolute freedom of expression of thoughts and actions, everyone will finally end up attaining truth\textsuperscript{132}. They preached, "Ignorance is the root cause of all evils and knowledge eradicates ignorance\textsuperscript{133}.

Since the beginning of human civilisation, the need to communicate with each other has brought the homosapines into cohesive groups. Communication is not only an exchange of news and information, it lies in sharing facts, ideas, thoughts and message and other social activities. The desire to communicate has resulted in the birth of language the basic mode of communication\textsuperscript{134}.

During the middle ages in Europe the concept of the divine right of kings developed. This right held that because kings were answerable only to God, they were exempt from criticism from the public\textsuperscript{135}. Freedom of information generally means access to information about any governmental entity involved in the operation of government. This includes access to reports, budgets, correspondence, and other documents related to the operational aspects of a governmental body, whether it is legislative or executive.

In the early twenty-first century the concepts of freedom of information and access to information are closely aligned with democracy. Throughout history democracy and freedom of information have been limited\textsuperscript{136}. Public discourse and exchange of information and ideas about government were common in the development of Greek democracies beginning in the fifth century (BC). Greek citizens were welcome to attend open forums, debate issues, make proposals, and hear about matters of public debate\textsuperscript{137}. Around

\begin{itemize}
  \item \textsuperscript{131} E.J. Rapson, “The Cambridge History of India” 54 (1968).
  \item \textsuperscript{132} Encyclopedia of Hinduism 32 (1967).
  \item \textsuperscript{133} Bhisma’s, Study of Indian History and Culture” 432 ( 1988).
  \item \textsuperscript{134} Swami Prakash Nand Saraswati,True history and religion of India 134 (1999).
  \item \textsuperscript{136} Stephen Shea, Real Freedom of Information: The Basis of Democracy 23 (1978).
  \item \textsuperscript{137} EricW. Robinson,”Ancient Greek Democracy:Readings and Sources” 32 (2003).
\end{itemize}
the same time the Roman Senate was a public body. Originally it was composed of the 100 leading citizens of Rome who advised the executive authority\textsuperscript{138}. Neither the Greeks nor the Romans practiced democracy in the modern sense, and neither society recognized equality among its citizens\textsuperscript{139}. Nonetheless, each saw the need for public participation in government and, in order for that government to prove effective, for citizens to be aware of the issues of the day and understand the workings of government, with kings enjoying such an exalted position and insulation, public participation in government was limited. Because kings did not answer to the public, there was little necessity for them to communicate information to the public or respond to public requests. Laws prohibiting criticism of the government or government officials, known as insult laws, still exist in many countries around the world. Although these laws are not always enforced, their existence, which limits speech and information, is considered a major hindrance to freedom of expression and freedom of information\textsuperscript{140}.

Ideas related to freedom of information are freedom of the press and freedom of expression. Shortly after Johannes Gutenberg invented printing in the mid-fifteenth century, the Catholic Church imposed censorship on any books not approved by the Church\textsuperscript{141}. In England, beginning with 1530, censorship and the repression of ideas and information were common\textsuperscript{142}.

English poet John Milton in his famous essay\textsuperscript{143} argued passionately for freedom of ideas and information and against the licensing and printing monopoly common in England at that time. In some of the most famous lines in Western literature Milton wrote: "And though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do injuriously by licensing and

\begin{thebibliography}{99}
\bibitem{138} Cowell, F.R., \textit{Cicero and the Roman Republic} 23 (1948).
\bibitem{140} Dhavan, Rejeev, \textit{Contempt of Court and the Press} 43 (1982).
\bibitem{142} During, King Henry VIII (1491–1547).
\bibitem{143} Milton, \textit{Areopagitica} 34 (1644).
\end{thebibliography}
prohibiting to misdoubt her strength. Let her and Falsehood grapple; who ever knew truth put to the worse, in a free and open encounter.\textsuperscript{144} The concept of the marketplace of ideas was thus born, one in which people would have access to all information and individuals would be free to publish their own ideas and opinions without fear of retribution.\textsuperscript{145} The fundamental belief behind the marketplace of ideas is that the people, not government, the church, or any other group, should decide what is the truth.

The founders of the U.S. Constitution were inspired by the marketplace of ideas in the eighteenth century and sought to include it in the formation of a representative democracy and guarantee the free flow of information.\textsuperscript{146} James Madison (1751–1836) was the primary author of the Bill of Rights, in an frequently quoted letter to W. T. Barry (1785–1835) written in 1822, Madison said: "A popular Government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps, both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives"\textsuperscript{147}

Although general openness and access to information were traditions early on in the United States, laws in the twentieth century made the process more formal and outlined specific procedures for securing information. The Federal Freedom of Information Act was passed in 1966 and signed by President Lyndon B. Johnson\textsuperscript{148} (1908–1973). During that time period many individual states enacted open records and open meetings acts, part of a so-called sunshine law movement. "Government in the sunshine" became an expression of

\textsuperscript{144} Milton, Rhys 36 (1946).
\textsuperscript{147} Hunt, 1910.
openness and accessibility to government just as the United States was making major reforms in civil rights and improving opportunities for women.\textsuperscript{149}

The access to information law in Sweden is the oldest in the world, dating from 1766. Freedom of the press and freedom of information received a major push from various international organizations during the mid-twentieth century\textsuperscript{150}. Article 19 of the United Nations Universal Declaration on Human Rights, adopted in 1948, states: "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."

As of 2004 more than fifty countries around the world had laws specifying access to information.\textsuperscript{151} That number continues to increase, as there is an active movement to enact such laws. Among those countries enacting access laws in the early twenty-first century is India, the world's second most populous country. Access to information laws are common in Europe,\textsuperscript{152} and about half the countries in Latin America have some type of law regarding citizens' right to information.\textsuperscript{153} Mexican President Vicente Fox (b. 1942) signed such a bill into law in 2002. In the first year of its existence the law in Mexico was used by thousands of citizens and journalists seeking specific types of information from the government.

Sweden was the first country to grant to its people the right of access to government information.\textsuperscript{154} In Sweden, all governmental

\textsuperscript{149} Ibid.
\textsuperscript{151} Dr. J. N. Barowalia, \textit{Commentary on the Right to Information Act} 42 (2007).
\textsuperscript{152} 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.
\textsuperscript{153} US Congress in 1966 passed the \textit{Freedom of Information Act}, 1966.
\textsuperscript{154} In Sweden, the \textit{Freedom of the Press Act}, 1766 granted public access to government documents. It thus became an integral part of the Swedish Constitution, and the first ever piece of freedom of
information is public unless certain matters are specifically listed as exemptions from the general rule. This right is made formal by a provision for a system of appeal against the wrongful withholding of information by public officials. What is more, this law dates back to the year 1766. Sweden has thus been practising openness in its public administration for an uninterrupted period of 215 years, apparently without any harm occurring to it or loss suffered by it. This only proves that legitimate national interests can as well be safeguarded under conditions of administrative openness.155

Swedish legal culture treats access to government departments and documents as a right and non-access as an exception. In this context, Donald C. Rowat writes as under:-

"To my amazement, all incoming and outgoing documents and mail were laid out in a special press room in each department for an hour every morning for reporters to examine. If any reporter wanted further information on a case, he simply walked down the hall to look at the departmental files. No special permission was needed. Such a system of open access is so alien to the tradition of secrecy elsewhere as to be almost unbelievable. Sweden’s long experience with the principle of openness indicates that it changes the whole spirit in which public business is conducted.156 It causes a decline in public suspicion and in distrust of the officials, and this in turn gives them a great feeling of confidence. More important, it provides a much more solid foundation for public debate, and gives citizens in a democracy a much firmer control over their government."157

2.8 HISTORICAL PERSPECTIVE OF RIGHT TO INFORMATION IN INDIA

India was a colony for long. Before that it had a feudal culture and hierarchical social structure. The Maharajas and the Mughals,
the Viceroy’s and the British Empire defended themselves behind ramparts of secrecy. The entire freedom struggle was a battle against colonialism and for independence or self-government. Thus people became the focus and popular information was used by them as a weapon to achieve responsible and responsive government. In this perspective, the conflict between freedom of information and official secrecy, democratic culture and imperial heritage was formally resolved in favour of the latter. After the birth of Republic and enactment of the Constitution, freedom of expression became a guaranteed fundamental right.\(^{158}\) That was the watershed of jurisprudence of human rights. However, decade after decade we find free India still suffocated by official secrecy laws. There have been protests and dissents and resistance by the mass media.

The human history is a struggle for rights and moves zigzag varying from country to country, culture to culture and age to age. Although the Indian legal system is largely a colonial vintage, yet our swaraj vintage is also pro-secrecy. Reference may be made to the Constitution of India,\(^{159}\) the Commission of Enquiry Act, 1952 and the Atomic Energy Act, 1962. A project on freedom of information as a locomotive of human progress has to be seriously considered as a high priority on the agenda of India.

The fact that the right to information is included in the Constitutional guarantees of freedom of speech and expression has been recognised by Supreme Court decisions challenging governmental control over newsprint and bans on the distribution of newspapers. Liberty of thought is the basis of freedom speech and expression under Article 19(1)(a), which is an essential component of a democratic governance. As the information will be at the genesis of thought and expression, the right to information has to be an invisible integral part of the right of free speech. As the information is of vital not only for life of society but also for the life of individual, the Article

\(^{158}\) Article 19(1)(a) of the Constitution of India, 1950.

\(^{159}\) Articles 74 and 163, Constitution of India, 1950.
21 guaranteeing Right to live includes the basic right to be informed. In the Constitution of our democratic Republic, among the fundamental freedoms, freedom of speech and expression shines radiantly in the firmament of Part III. We must take legitimate pride that this cherished freedom has grown from strength to strength in the post independent era. It has been constantly nourished and shaped to new dimensions in tune with the contemporary needs by the constitutional Courts. Barring a few aberrations, the Executive Government and the Political Parties too have not lagged behind in safeguarding this valuable right, which is the insignia of democratic culture of a nation. Nurtured by this right, Press and electronic media have emerged as powerful instruments to mould the public opinion and to educate, entertain and enlighten the public.

Freedom of speech and expression, just as equality clause and the guarantee of life and liberty has been very broadly construed by this Court right from 1950s. It has been variously described as a 'basic human right', 'a natural right' and the like. It embraces within its scope the freedom of propagation and inter-change of ideas, dissemination of information, which would help formation of one's opinion and viewpoint and debates on matters of public concern. The importance which our Constitution-makers wanted to attach to this freedom is evident from the fact that reasonable restrictions on that right could be placed by law only on the limited grounds specified in Article 19(2), not to speak of inherent limitations of the right. In due course of time, several species of rights enumerated in Article 19(1)(a) have branched off from the genus of the Article through the process of Interpretation by this apex Court, one such right is the 'right to information' Perhaps, the first decision which has adverted to this right is State of U.P. v. Raj Narain. The right to know,' it was observed is derived from the concept of freedom of speech, though not

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162 Dr. Subash C. Kashyap, Constitutional Law of India 54 (2008).
163 (1975) 4 SCC 428.
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”. It was said very aptly— "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."

The next milestone which showed the way for concretizing this right is the decision in *S.P. Gupta v. Union of India*164 in which this Court dealt with the issue of High Court Judges’ transfer. In this case it was held that "The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy an exception..." Peoples’ right to know about governmental affairs was emphasized in the following words: "No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government165. It is only when people known how Government is functioning that they can fulfill the role which democracy assigns to them and make democracy a really effective participatory democracy.” These two decisions have recognized that the right of the citizens to obtain information on matters relating to public acts flows from the fundamental right enshrined in Article 19(1)(a)166. The pertinent observations made by the learned Judges in these two cases were in the context of the question whether the privilege under Section 123 of the Evidence Act could be claimed by the State in respect of the Blue Book in the first case i.e., *Raj Narain’s* case and the file throwing light on the consultation process with the Chief Justice, in the second case. Though the scope and ambit of Article 19(1)(a) *vis-a-vis* the right

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to information did not directly arise for consideration in those two landmark decisions, the observations quoted supra have certain amount of relevance in evaluating the nature and character of the right.

Then, we have the decision in *Dinesh Trivedi v. Union of India*\(^{167}\). This Court was confronted with the issue whether background papers and investigatory reports which were referred to in Vohra Committee’s Report could be compelled to be made public. The following observations of AHMADI, C.J. are quite pertinent:—

"In modern Constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute."

The next decision which deserves reference is the case of *Secretary, Ministry of I & B v. Cricket Association of Bengal*\(^{168}\). Has an organizer or producer of any event a right to get the event telecast through an agency of his choice whether national or foreign? That was the primary question decided in that case. It was highlighted that the right to impart and receive information is a part of the fundamental right under Article 19(1)(a) of the Constitution.

"The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution. A citizen has a fundamental right to use the best means of imparting and receiving information and as such to have an access to telecasting for the purpose. However, this right to have an access to telecasting has limitations on account of the use of the public property...... Jeevan Reddy, J. spoke more or less in the same voice:

"The right of free speech and expression includes the right to receive and impart information. For ensuring the free speech right of

\(^{167}\) (1997) 4 SCC 306.

the 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 ‘aware’ citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them\[169.\]"

A conspectus of these cases would reveal that the right to receive and impart information was considered in the context of privilege pleaded by the State in relation to confidential documents relating to public affairs and the freedom of electronic media in broadcasting/telecasting certain events.

Right to information in the context of the voter’s right to know the details of contesting candidates and the right of the media and others to enlighten the voter. For the first time in \textit{Union of India v. Association forDemocratic Reforms}\[170\] case, which is the forerunner to the present controversy (petition challenging the constitutional validity of Amendments to R.P. Act invalidating the Supreme Court’s May 2, 2002 judgment, the right to know about the candidate standing for election has been brought within the sweep of Article 19(1)(a). There can be no doubt that by doing so, a new dimension has been given to the right embodied in Article 19(1)(a) through a creative approach dictated by the need to improve and refine the political process of election. In carving out this right, the Court had not traversed a beaten track but took a fresh path. It must be noted that the right to information evolved by this Court in the said case is qualitatively different from the right to get information about public affairs or the right to receive information through the Press and electronic media, though to a certain extent, there may be overlapping. In \textit{Association forDemocratic Reforms v. Union of India and another},\[171\] In this case it was held that the right to information of the voter/citizen is sought to be enforced against an individual who

\[169\] \textsuperscript{169} 179\textsuperscript{th} Report of Law Commission of India on Public Interest Disclosure & Protection of Informer 2001.
\[170\] AIR 1982 SC 1473.
\[171\] AIR 2003 SC 93.
intends to become a public figure and the information relates to his personal matters. Secondly, that right cannot materialize without State’s intervention. The State or its instrumentality has to compel a subject to make the information available to public, by means of legislation or orders having the force of law.

The information is currency that every citizen requires to participate in the life and governance of the society. In any democratic polity, greater the access, greater will be the responsiveness, and greater the restrictions, greater the feeling of powerlessness and alienation. Information is not private property. If at all it is the property, it is the national property. Especially the property the Government has the hold over is the information generated for purposes related to the legitimate discharge their duties of office and for the service of people and hence the people as ultimate beneficiaries or sovereign, are entitled to know and benefit from it. Thus the government and public officers who are supposed to serve the people on the payment from public purs, are none else than the trustees of this national resource-information. Besides moral and legal obligation it is their constitutional obligation also based on the philosophical foundation of freedom of speech and expression under Article 19(1)(a) of the Constitution. As the transparency is the culture required for good governance, secrecy directly means disempowerment.

Whenever, the executive interfered with the freedom of speech and expression through its executive orders or legislative measures, the press knocked the doors of justice in apex court and the resultant judgments paved way for the jurisprudence of information rights (le development of the right to information as a part of the Constitutional Law of the country started with petitions of the press to the Supreme Court for enforcement of certain logistical implications of the right to freedom of speech and expression such as challenging governmental orders for control of newsprint, bans on distribution of papers, etc. It

was through the following cases that the concept of the public's right to know developed.

The landmark case in freedom of the press in India was *Bennett Coleman and Co. v. Union of India*\(^{174}\) in which the petitioners, a publishing house bringing out one of the leading dailies challenged the government's newsprint policy which put restrictions on acquisition, sale and consumption of newsprint. This was challenged as restricting the Petitioner's rights to freedom of speech and expression. The court struck down the newsprint control order saying that it directly affected the Petitioners right to freely publish and circulate their paper. In that, it violated their right to freedom of speech and expression. The judges also remarked, "It is indisputable that by freedom of the press meant the right of all citizens to speak, publish and express their views" and "Freedom of speech and expression includes within its compass the right of all citizens to read and be informed." The dissenting judgment of Justice K.K.Mathew also noted, The freedom of speech protects two kinds of interests. There is an individual interest, the need of men to express their opinion on matters vital to them and a social interest in the attainment of truth so that the country may not only accept the wisest course but carry it out in the wisest way. Now in the method of political government the point of ultimate interest is not in the words of the speakers but in the hearts of the hearers\(^{175}\).

This principle was even more clearly enunciated in the case of *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*\(^{176}\), in which the court remarked, "The basic purpose of freedom of speech and expression is that all members should be able to form their beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people's right to know."

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\(^{174}\) AIR 1973 SC 783.


\(^{176}\) AIR 1985 SC 641.
Another development on this front was through *Manubhai D. Shah v. Life Insurance Corporation*\textsuperscript{177}, case in which it was held that if an official media or channel was made available to one party to express its views or criticism, the same should also be made available to another contradictory view. The facts of this case, briefly, were: One Mr. Shah who was also a Director of a voluntary consumer rights organization and had, incidentally, worked extensively on the right to information, including drafting a model Bill, wrote a paper highlighting discriminatory practices by the Life Insurance Corporation which is a government controlled body. The Corporation published a critique of this paper in its institutional publication, to which Mr. Shah wrote a rejoinder which the LIC refused to publish. The Court held that a state instrumentality having monopolistic control over any publication could not refuse to publish any views contrary to its own.

In the area of civil liberties, the courts have built up the right to have a transparent criminal justice system free from arbitrariness. In *Prabha Dutt v. Union of India*\textsuperscript{178} the Court held that there excepting clear evidence that the prisoners had refused to be interviewed, there could be no reason for refusing permission to the media to interview prisoners in death row.

Repeated violations of civil rights by the police and other law enforcement agencies have compelled the courts to give, time and again, directions to the concerned agencies for ensuring transparency in their functioning in order to avoid violations like illegal arrests and detention, torture in custody and the like. In cases concerning the right to life and liberty under Article 21 of the Constitution the Courts have stressed the need for free legal aid to the poor and needy who are not either aware of the procedures or not in a position to afford lawyers, and therefore unable to avail of the constitutional guarantees of legal help and bail. The Courts have said, that it is the legal

\textsuperscript{177} AIR 1981 SC 15.

\textsuperscript{178} AIR 1982 SC 6.
obligation of the judge or the magistrate before whom the accused is produced to inform him of the that if he is unable to engage a lawyer on account of poverty or indigence, he is entitled to free legal aid.

'Right to know' has been given status of fundamental right by the highest Court of the land in *S.P. Gupta v. Union of India*179 (Judges' Transfer Case). The Apex Court held that the right to know is implicit in the right of free speech and expression guaranteed under our Constitution in Article 19(1)(a).

Right to know is also implicit in Article 19(1)(a) as natural concomitant to free press which right is deducible from fundamental right of freedom of speech and expression. In S.P. Gupta’s case the Apex Court also recommended change in century-old provisions of Section 123 of the Indian Evidence Act, 1872 so as to be conducive to the republican form of government and the open society which, we the people of India, have established. Section 123 relates to immunity from production of documents and was enacted to suit the needs of the empire builders.

The Supreme Court has reaffirmed this legal position in its subsequent decisions in *Reliance Petro Ltd. v. Indian Express*180 and *Secretary, Ministry of Information and Broadcasting v. Cricket Association, Bengal*.181 In Reliance Petro’s case, the Supreme Court has observed that the right to know has reached new dimensions and urgency and is basic right which citizens of a free country aspire in the broaden horizons of the right to live in this age on our land under Article 21 of the Constitution. The people at large have a right to know in order to be able to take part in a participatory development in the industrial life. In Secretary, MIB’s case, the Apex Court has given a very broad definition to the right to receive and disseminate information through any media including air waves and electronic media. Right to information is inherent in right to live as enshrined in Art.21 and freedom of speech and expression as guaranteed under

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179 AIR 1982 S.C. 149.
180 AIR 1989 SC 190.
181 AIR 1995 SC 1236.
Article 19(1)(a) of our Constitution. Right to information thus emanates from the fundamental right to life and fundamental freedom of speech and expression.\textsuperscript{182}

These freedoms guaranteed by the Constitution have to be enjoyed subject to some reasonable restrictions. But these restrictions can never outweigh and dominate the freedoms. After all what is fundamental is the freedom and not the restriction.\textsuperscript{183}

Under the mantle of Welfare State, the Government today is engaged in variety of activities which cannot be termed as sovereign functions of the Government. These activities do not constitute 'Affairs of the State' in strict sense. The Government, especially of a welfare state, is responsible for socio-economic development and uplift of the people, besides maintaining routine law and order.\textsuperscript{184} One of the Directive Principles of the State Policy says: "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social economic and political, shall inform all institutions of the national life.\textsuperscript{185} The State shall in particular strive to minimize the inequalities in Income and endeavour to eliminate inequalities in facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in difference vocations." In an independent, democratic and welfare state, the citizens occupy quite an important position.\textsuperscript{186} They are the ones who are not only being governed but also govern by way of exercising their right of franchise and electing their representatives, who in turn formulate policies in accordance with which the administrators are supposed to govern for the benefit of the society. The benefits are to be accorded to or conferred on the citizens by the administration in a manner whereby


\textsuperscript{186} H. M. Seervai, Constitutional Law of India 76 (1994).
most optimum position is attained and no one is favoured or deprived of at the cost of or for favouring the other one. In such a system, it is expected of the administration to provide to all the members of the society a reasonable dignified standard of life in which there is no risks of insecurity or stagnation on the economic front. No individual should have any fear of suspicion and mistrust towards the system in his mind. This is possible only by disseminating proper information, of course, without leaking out the vital secrets. More than fifty per cent of the citizen’s problems could be sorted out promptly through a proper communication between different channels in the administration.

Administrative India puts the greatest weight on keeping happenings within its corridors secret, thereby denying the citizens access to information about them. Such orientations produce deep contradictions in the larger socio-political system of the land which itself is in a state requiring nourishment and care. As the latter is still relatively new and in its infancy, its growth processes inevitably get retarded for want of information about the government, which means from the Government. Over-concealment of governmental information creates a communication gap between the governors and the governed, and its persistence beyond a point is apt to create an alienated citizenry. This makes democracy itself weak and insecure. Besides, secrecy renders administrative accountability unenforceable in an effective way and thus induces administrative behaviour, which is apt to degenerate into arbitrariness and absolutism. This is not all, “The Government, today, is-called upon-to make policies on an ever increasing range of subjects, and many of these policies must necessarily impinge on the lives of the citizens. It may sometimes happen that the data made available to the policy makers is of a

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selective nature and even the policy-makers and their advisors may deliberately suppress certain viewpoints and favour others.\textsuperscript{190} Such bureaucratic habits get encouragement in an environment of secrecy; and openness in governmental work is possibly the only effective corrective to it, also raising, in the process, the quality of decision-making. Besides, openness has an educational role in as much as citizens are enabled to acquire a fuller view of the pros and cons of matters of major importance, which naturally helps in building informed public opinion, no less than goodwill for the Government\textsuperscript{191}.

Justice Krishna lyer while commenting on the public functionaries remarked, "Be you ever so high, the law is above you".\textsuperscript{192} The public power must not hide its heart in a welfare State and open system. The normal rule in the Government of India is secrecy and openness the exception. There is the Official Secrets Act, 1923 which makes unauthorized communication of information including documents, an offence punishable with imprisonment which may extend upto three years. This Act covers all documents and information and makes no distinction of kind or of degree. A blanket is thrown over everything. Nothing escapes. By secrecy system the government safeguards its reputation, buries its mistakes, manipulates its citizens, maximizes its powers and corrupts itself. In the backdrop of judgement of the Supreme Court in the Judges' Transfer case, the provisions of the Official Secrets Act, 1923 and of Section 123 of the Evidence Act 1872 suffer from the stigma of unconstitutionality. These colonial provisions need to be pensioned off.\textsuperscript{193} "Secrecy in government is fundamentally anti-democratic, perpetuating bureaucratic errors. Open discussion based on full information and debate on public issues are vital to our health".

Woodrow Wilson has rightly said, "A democratic Government

\textsuperscript{191} Jain, M. P., \textit{Outlines of Indian Legal History} 44 (1972).
\textsuperscript{192} Maneka Gandhi \textit{v. Union of India}, AIR 1978 SC 597.
ought to be all outside and not inside”. Unbridled freedom is not possible in our world of perils and evils designs. Truth may have to be withheld in moments when a nation’s survival is in imminent danger. In Churchill’s words: ”In time war, the truth is so precious that it must be escorted by a bodyguard of lies”. No State should adopt the mendacious methodology of Goebbels and mislead its subjects, whatever the crisis. However, quite often the right to information is denied and a seemingly authentic diet of official lies is served with a view to condition the minds of men and they are expected to consume government’s version. Free speech is sabotaged from within by fouling the fountains of information. The bureaucracy itself is banned from telling the truth by forced statutory secrecy. Administrative secrecy relating to classified documents concerning national security and foreign policy is justified. But routine claim to secrecy or privilege by the government and public bodies may jeopardize the very survival of democracy in India because this immunity is anti-democratic. Therefore, no government should think that people must be told only that much which it thinks to be good for the people and safe for itself. Dangers of burying truth have been very powerfully put by Emile Zola:

"When truth is buried underground it grows, it chokes, it gathers such an explosive force that on the day it bursts out, it blows up everything with it".

Equally forceful are the views of Kurt Eisner, who says that the truthful information must not be withheld because: "Truth is the greatest of all national possessions. A state, a people, a system which suppresses the truth or fears to publish it, deserves to collapse.

The overall impact of these decisions has been to clearly establish that the right to freedom of information, or the public’s right to know, is embedded in the provisions guaranteeing fundamental rights under the Constitution. Various Indian laws provide for the

right to access information in specific contexts\(^\text{196}\). The system of governance in India has traditionally been opaque, with the State retaining the colonial Official Secrets Act (OSA) and continuing to operate in secrecy at the administrative level. The OSA, enacted in 1923, still retains its original form, apart from some minor amendments made in 1967. The poor flow of information is compounded by two factors -- low levels of literacy and the absence of effective communication tools and processes. In many regions, the standard of record-keeping is extremely low. Most government offices have stacks of dusty files everywhere, providing a ready excuse for refusing access to records, on the specious excuse that they have been ‘misplaced’. The rapid growth of information technology, on the other hand, has meant that most states in the country are now trying to promote technology, primarily to attract investment. This is indirectly contributing to an improved flow of information\(^\text{197}\).

2.9 MOVEMENT OF RIGHT TO INFORMATION IN INDIA

The right to information movement in India can be broadly classified into three phases. In the first phase, from 1975 to 1996, there were sporadic demands for information from various sections of the society, culminating in a more focused demand for access to information from environmental movements in the mid 1980s, and from grassroots movements in rural Rajasthan in the early 1990s. This phase ended with the formation of the National Campaign for People's Right to Information (NCPRI), in 1996. This phase also saw various judicial orders in support of transparency, and the judicial pronouncement that the right to information was a fundamental right.

The second phase starts in 1996, with the formulation of a draft RTI bill, spearheaded by the NCPRI, and its subsequent processing by the government and the Parliament. Various state RTI laws are passed during this period, including in Tamil Nadu, Delhi, Maharashtra, Karnataka, Assam, Madhya Pradesh, and Goa, as is the national


Freedom of Information Act in 2002. This phase also marks the rapid growth in size and influence of the RTI movement in India, and culminates in the passing of the national RTI Act in 2005. This is also the period that sees a large number of countries across the World enact transparency laws. The third phase, from the end of 2005 to the present, has been mainly focused on the consolidation of the act and on pushing for proper implementation. Part of the effort has also been to safeguard the RTI Act from at least two efforts to weaken it, and to push the boundaries of the RTI regime and make it deeper and wider in coverage, participation, and impact.

Objections to the Official Secrets Act have been raised since 1948, when the Press Laws Enquiry Committee recommended certain amendments. In 1977, the government formed a working group to look into the possibilities of amending the Official Secrets Act. Unfortunately, the working group did not recommend changes, as it felt the Act related to the protection of national safety and did not prevent the release of information in the public interest, despite overwhelming evidence to the contrary. In 1989, a committee was set up which recommended limiting the areas where government information could be hidden, and opening up all other spheres of information. However, no legislation followed from these recommendations.

In the last decade or so, citizens groups have started demanding the outright repeal of the Official Secrets Act and its replacement by legislation making the duty to disclose the norm, and secrecy the exception.

It’s taken India 77 years to transition from the repressive climate of the OSA to one where citizens can demand the right to information. The enactment of the Freedom of Information Act 2002

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198 A remarkable achievement, in 2002/3, was that of the Association for Democratic Reforms, which successfully petitioned the Supreme Court and finally got a law passed that made it compulsory for all those standing for elections for Parliament and state assemblies to declare their assets, their educational qualifications and their criminal records, if any.

199 P.C Majmudar, Right to information 33 (2005).
marks a significant shift for Indian democracy, for the greater the access to information by citizens, the greater the responsiveness of government to community needs\textsuperscript{200}.

Interestingly, in India, the movement for the right to information has been as vibrant in the hearts of marginalised people as it is in the pages of academic journals and in the media. This is not surprising since food security, shelter, the environment, employment and other survival needs are inextricably linked to the right to information\textsuperscript{201}.

In the early-1990s, in the course of the struggle of the rural poor in Rajasthan, the Mazdoor Kisan Shakti Sangathan (MKSS) hit upon a novel way to demonstrate the importance of information in an individual’s life through public hearings, or \textit{jan sunwais}. The MKSS’s campaign demanded transparency of official records, a social audit of government spending, and a redressal machinery for people who had not been given their due. The campaign caught the imagination of a large cross-section of people, including activists, civil servants and lawyers.

The National Campaign for People’s Right to Information (NCPRI), formed in the late-1990s, became a broad-based platform for action. As the campaign gathered momentum, it became clear that the right to information had to be legally enforceable. As a result of this struggle, not only did Rajasthan pass a law on the right to information, but, in a number of panchayats, graft was exposed and officials punished\textsuperscript{202}.

The Press Council of India\textsuperscript{203} drew up the first major draft legislation on the right to information, in 1996. The draft affirmed the right of every citizen to information from any public body. Significantly, the term ‘public body’ included not only the State but

\textsuperscript{200} S.P. Sathe, \textit{Right to information Law} 22 (2006).
\textsuperscript{201} A S Yaduv, \textit{Historical Movement of Right to information in India} 36 (2004).
\textsuperscript{202} Anurag kashyap, \textit{RTI movement in Rajasthan} 32 (1998).
\textsuperscript{203} The consumer protection movement in India had also been concerned about the lack of transparency with regards to matters that affected consumer rights. They had also formulated an Access to Information Bill 1996.
also all privately-owned undertakings, non-statutory authorities, companies, and other bodies whose activities affect the public interest. Information that cannot be denied to Parliament or State Legislatures cannot be denied to a citizen either. The draft also provided for penalty clauses for defaulting authorities.

Next came the Consumer Education Research Council (CERC) draft which was, by far the most detailed proposed freedom of information legislation in India. In line with international standards, it gave the right to information to anyone, except “alien enemies”, whether or not they were citizens. It required public agencies at the federal and state levels to maintain their records in good order, to provide a directory of all records under their control, to promote the computerisation of records in interconnected networks, to publish all laws, regulations, guidelines, circulars related to or issued by government departments, and any information concerning welfare schemes. The draft provided for the outright repeal of the Official Secrets Act, 1923. This draft didn’t make it through Parliament either.

Finally, in 1997, a conference of chief ministers resolved that the central and state governments would work together on transparency and the right to information. Following this, the Centre agreed to take immediate steps, in consultation with the states, to introduce freedom of information legislation, along with amendments to the Official Secrets Act and the Indian Evidence Act, before the end of 1997. Central and state governments also agreed to a number of other measures to promote openness, including establishing accessible computerised information centres to provide information to the public on essential services, and speeding up ongoing efforts to

205 Rajeev Dhawan, Right to Information laws in India 21 (2004).
207 The Consumer Education Research Council (CERC) Bill in 1996.
computerise government operations.\textsuperscript{208}

In response, the Government of India set up a committee, known as the Shourie Committee, after its chair, Mr. H.D. Shourie. The Shourie committee was given the responsibility of examining the draft right to information bill and making recommendations that would help the government to institutionalise transparency. The committee worked fast and presented its report to the government within a few months of being set up, though it did succeed in significantly diluting the draft RTI bill drafted by civil society groups. Once again, the government was confronted with the prospect of introducing a right to information bill in Parliament. Clearly the dominant mood in the government was against any such move, but it was never politically expedient to openly oppose transparency.\textsuperscript{209} That would make the government seem unwilling to be accountable, almost as if it had something to hide. Therefore, inevitably, the draft bill, based on the recommendations of the Shourie committee, was referred to another committee: this time a Parliamentary committee.\textsuperscript{210}

These Government committees which serve many purposes such as they examine proposals in detail, sometime consult other stakeholders, consider diverse opinions, examine facts and statistics, and then to come to reasoned findings or recommendations. However, these committees could also be a means of delaying decisions or action, and for taking unpopular, or even indefensible, decisions. The tyranny of a committee is far worse than the tyranny of an individual. Whereas an individual can be challenged and discredited, it is much more difficult to pinpoint responsibility in a committee, especially if it has many honourable members, and it becomes difficult to figure out who said what and who supported what.

Inevitably, around this time various sections of the government started becoming alarmed at the growing demand for transparency. This also marked the beginnings of organized opposition to the proposed bill and to the right to information. Interestingly, the armed forces, which in many other countries are reportedly at the centre of opposition to transparency, were not a significant part of the opposition at this stage. This might perhaps have been because they assumed, wrongly as it turned out, that any transparency law would not be applicable to them. More likely, it was the outcome of the tradition in India, wisely nurtured by the national political leadership, which discourages the armed forces from meddling in legislative or policy issues apart from those relating to defence and security.\footnote{Gill, S.S., “The Information Revolution in India- A Socio-Political Critique”, Rupa and Company, New Delhi, 2004.} Characteristically, the Indian State was a divided and somewhat confused house. There were many bureaucrats and politicians who were enthused about the possibility of a right to information law and did all that they could to facilitate its passage. However, many others were alarmed at the prospect of there being a citizen’s right to information that was enforceable.\footnote{Ramesh, “Right to Information/Open Government: Boon or Bane”, Indian Law Reports, Vol. 48, Part 4, December 1998, p. 65-67.} Undoubtedly, some of these individuals were corrupt and saw the right to information act as a threat to their rent-seeking activities. Yet, many others opposed transparency as they felt that this would be detrimental to good governance. Some of them felt that opening up the government would result in officers becoming increasingly cautious. Already, there was a tendency in the government to play safe and not take decisions that might be controversial. It was felt that opening up files and papers to public scrutiny would just aggravate this tendency and reinforce in the minds of civil servants the adage that they can only be punished for sins of commission, never for sins of omission. Another group of bureaucrats and politicians feared that the opening up of government processes to public scrutiny would result in the death of discretion.
The government would become too rigid and rule-bound as no officer would like to exercise discretion which could later be questioned. In the same spirit it was also thought that the public would not appreciate the fact that many administrative decisions have to be taken in the heat of the moment, without full information, and under various pressures including those of time. There were apprehensions that many such decisions would be criticized with hindsight and the competence, sincerity and even integrity of the officers involved would be questioned. There were also those who felt that too much transparency in the process of governance would result in officials playing to the gallery and becoming disinclined to take unpopular decisions. Some elements in the government feared that transparency laws would be misused by vested interests to harass and even blackmail civil servants. Others felt outraged that the general public, especially the riffraff among them, would be given the right to question their integrity and credentials. There were also those who felt that the Indian public was not yet ready to be given this right, reminiscent of the British on the eve of Indian independence who seemed convinced that Indians were not capable of governing themselves.

There were even those who objected on principle, arguing that secrecy was the bedrock of governance! As was inevitable, these internal contradictions within and among different levels of the government had to, sooner or later, come to a head. They did, in 1999, with a cabinet minister unilaterally ordering that all the files in his ministry henceforth be open to public scrutiny. This, of course, rang alarm bells among the bureaucracy and among many of his cabinet colleagues. Though the minister's order was quickly reversed by the Prime Minister, it gave an opening for activists and lawyers to file a petition in the Supreme Court of India questioning the right of the Prime Minister to reverse a minister's order, especially when the

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213 In 1999 Mr Ram Jethmalani, then Union Minister for Urban Development, issued an administrative order enabling citizens to inspect and receive photocopies of files in his Ministry.
order was in keeping with various Supreme Court judgments declaring the right to information to be a fundamental right. By now it seemed clear that a large segment of the bureaucracy and political leaders were not eager to allow the passage of a right to information act. On the other hand, the judiciary had more than once held that the right to information was a fundamental right and at least hinted that the government should ensure that the public could effectively exercise this right. The third wing of the government, the Legislature, had not yet joined the fray as no bill had yet been presented to Parliament. However, in certain states of India, notably Tamil Nadu, Goa, Madhya Pradesh, Maharashtra, Karnataka, Rajasthan, Assam, Jammu and Kashmir, and even Delhi, the legislature proved to be sympathetic by passing state RTI acts (albeit, mostly weak ones) much before the national act was finally passed by Parliament. Perhaps the happenings in India around that time very starkly illustrate the contradictions present within governments in relationship to the question of transparency. As was done in India, even elsewhere such contradictions can be used to weaken and divide the opposition to transparency laws and regimes, and to drive a wedge in what might initially appear to be bureaucratic unity in opposition to transparency.

2.9.1 Passing of the Freedom of Information Act, 2002

Meanwhile, a case had been filed in the Supreme Court questioning the unwillingness of the government to facilitate the exercise of the fundamental right to information. This case continued from 2000 to 2002 with the government using all its resources to postpone any decision. However, finally, the court lost patience and gave an ultimatum to the government. Consequently, the government enacted the Freedom of Information Act, 2002, perhaps in order to avoid specific directions about the exercise of the right to information from the Supreme Court. It seemed that the will of the people,

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supported by the might of the Supreme Court of India, had finally prevailed and the representatives of the people had enacted the required law, even if it was a very watered-down version of the original bill drafted by the people. Unfortunately, this was not really so. The Freedom of Information Act, as passed by Parliament in 2002, had the provision that it would come into effect from the date notified. Interestingly, despite being passed by both houses of Parliament and having received presidential assent, this act was never notified and therefore never became effective. The bureaucracy had, in fact, had the last laugh!

In May, 2004, the United Progressive Alliance (UPA), led by the Congress Party, came to power at the national level; displacing the BJP led National Democratic Alliance government. The UPA government brought out a Common Minimum Programme (CMP) which promised, among other things, “to provide a government that is corruption-free, transparent and accountable at all times...” and to make the Right to Information Act “more progressive, participatory and meaningful”. The UPA government also set up a National Advisory Council (NAC) to monitor the implementation of the CMP. This council had leaders of various people’s movements, including the right to information movement, as members. This was recognised by the NCPRI and its partners as a rare opportunity and it was decided to quickly finalise and submit for the NAC’s consideration, a revamped and strengthened draft bill that recognized people’s access to information as a right. As a matter of strategy, it was decided to submit this revised bill as a series of amendments to the existing (but non operative) Freedom of Information Act, rather than an altogether new act. Accordingly, in August 2004, the National Campaign for

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215 Essentially, the five indicators of a strong transparency law can be seen to be *minimum exclusions, mandatory and reasonable timelines, independent appeals, stringent penalties and universal accessibility*. The 2000 Bill failed on most of these counts. It excluded a large number of intelligence and security agencies from the ambit of the act, it had no mechanism for independent appeals, it prescribed no penalties for violation of the act and it restricted the access only to “citizens” and did not put a cap on the fees chargeable under the act.

216 The NAC was chaired for the first couple of years of its existence by Mrs. Sonia Gandhi, President of the Congress Party and Chairperson of the UPA.
People’s Right to Information (NCPRI), formulated a set of suggested amendments to the 2002 Freedom of Information Act. These amendments, designed to strengthen and make more effective the 2002 Act, were based on extensive discussions with civil society groups working on transparency and other related issues. These suggested amendments were forwarded to the NAC, which endorsed most of them and forwarded them to the Prime Minister of India for further action.

2.9.2 Passing of Right to Information Act, 2005

Reportedly, the receipt of the NAC letter and recommended amendments was treated with dismay within certain sections of the government bureaucracy. A system, that was not willing to operationalise a much weaker Freedom of Information Act, was suddenly confronted with the prospect of having to stand by and watch a much stronger transparency bill become law. Therefore, damage control measures were set into motion and, soon after, a notice appeared in some of the national newspapers announcing the government’s intention to finally (after two and a half years) notify the Freedom of Information Act, 2002. It sought from members of the public suggestions on the rules related to the FoIA. This, of course, alerted the activists that all was not well, and sympathizers within the system confirmed that the government had decided that the best way of neutralizing the NAC recommendations was to resuscitate the old FoIA and suggest that amendments can be thought of, if necessary, in this act, after a few years experience! The next three or four months saw a flurry of activity from RTI activists, with the Prime Minister and

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217 The first of these amendments was the renaming of the Act from “Freedom of Information” to “Right to Information”. The RTI Act was among the first of the laws unveiling the rights based approach public entitlement—subsequent ones include the National Rural Employment Guarantee Act and the Right to Education Act. The rights based approach, apart from empowering the people, also does away with the prevailing system of benign dispensation of entitlements, leading to state patronage and corruption. It allows even the poorest of the poor to demand with dignity what is their due, rather than to beg for it and humiliate themselves, while being at the mercy of insensitive, partisan or corrupt civil bureaucrats.


other political leaders being met and appealed to, the media being regularly briefed and support being gathered from all and sundry, especially retired senior civil servants (who better to reassure the government that the RTI Act did not signify the end of governance, as we knew it), and other prominent citizens.\textsuperscript{220} This intense lobbying paid off and after a tense and pivotal meeting with the Prime Minister (arranged by a former Prime Minister, who was also present and supportive), in the middle of December 2004, the Government agreed to introduce in Parliament a fresh RTI Bill along the lines recommended by the NAC.\textsuperscript{221} Consequently, the Government of India introduced a revised Right to Information Bill in Parliament on 22 December 2004, just a day or two before its winter recess. Unfortunately, though this RTI Bill was a vast improvement over the 2002 Act, some of the critical clauses recommended by the NCPRI and endorsed by the NAC had been deleted or amended. Most significantly, the 2004 Bill was applicable only to the central (federal) government, and not to the states. This omission was particularly significant as most of the information that was of relevance to the common person, especially the rural and urban poor, was with state governments and not with the Government of India. Consequently, there was a sharp reaction from civil society groups, while the government set up a group of ministers to review the bill, and the Speaker of the \textit{Lok Sabha} (the lower house of Parliament) referred the RTI Bill to the concerned standing committee of Parliament. Soon after, the NAC met and expressed, in a letter to the Prime Minister, their unanimous support for their original recommendations. Representatives of the NCPRI and various other civil society groups sent in written submissions to the Parliamentary Committee and many were invited to give verbal evidence. The group of Ministers, chaired by the senior minister, Shri Pranab Mukherjee, was also


lobbied. Fortunately, these efforts were mostly successful and the Parliamentary Committee and Group of Ministers recommended the restitution of most of the provisions that had been deleted, including applicability to states. The Right to Information Bill, as amended, was passed by both houses of the Indian Parliament in May 2005, got Presidential assent on 15 June 2005, and became fully operational from 13 October 2005. Even while according assent “in due deference to our Parliament”, the then President had some reservations which he expressed in a letter dated 15 June 2005 addressed to the Prime Minister. Essentially, the President wanted communication between the President and the Prime Minister exempt from disclosure. He also wanted file notings to be exempt. The Prime Minister, in his reply dated 26 July 2005, disagreed with the first point but reassured the President (wrongly, as it turned out), that file notings were exempt under the RTI Act. In any case, those who thought that the main struggle to ensure a strong legislation was over and that the focus could now shift to implementation issues were in for a rude shock. In 2006 the government made a concerted effort to amend the Act and to weaken it. Though this move was finally defeated, the danger has not yet abated, as will be described later.

The Government of India introduced the Freedom of Information Bill, 2000 (No.98 of 2000) in the Lok Sabha on 25th July, 2000. The Bill, which cast an obligation upon public authorities to furnish such information wherever asked for, was passed by the Parliament as the Freedom of Information (FOI) Act, 2002. However, the Act could not be brought into force because the date from which the Act could come into force, was not notified in the Official Gazette.

The United Progressive Alliance (UPA) Government at the Centre, which came into power in 2004, set up a National Advisory

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222 NCPRI letter dated, 18th January 2005, to Mr Pranab Mukherjee, Chairman of the Group of Ministers set up to look at the draft RTI Bill, regarding amendments to the RTI Bill.
223 Copies of the correspondence Correspondence Between the President and the Prime Minister of India Relating to the RTI Act: June/July 2005.
Council (NAC). The Council suggested important changes to be incorporated in the FOI Act. These suggestions were examined by the UPA Government, which decided to make the FOI Act more progressive, participatory an meaningful. Later, however, the UPA Government decided to repeal the FOI Act, and enacted a new legislation, the Right to Information Act, 2005, to provide an effective framework for effectuating the right of information India recognised under Article 19 of the Constitution of India.225

2.9.3 Important State Initiatives

Inspired and encouraged by the exercises taken up by the central government, many state governments yielded under popular pressure and prepared draft legislations on the right to information. A number of states introduced their own transparency legislations before the Freedom of Information Bill was finally introduced in the Lok Sabha on July 25, 2000.

i) Goa: One of the earliest and most progressive legislations, it had the fewest categories of exceptions, provision for urgent processing of requests pertaining to life and liberty, and a penalty clause. It also applied to private bodies executing government works. One weakness was that it had no provision for pro-active disclosure by government226.

ii) Tamil Nadu: The legislation stipulated that authorities must part with information within 30 days of it being sought. Following this legislation, all public distribution system (PDS) shops in the state were asked to display details of stocks available. All government departments also brought out citizens charters listing information on what the public was entitled to know and get227.

iii) Karnataka: The right to information legislation contained standard exception clauses covering 12 categories of information. It had limited provisions for pro-active disclosure, contained a penalty

225 The Right to Information Act, 2005.
227 Tamil Nadu, Right to Information Act, 1997.
clause, and provided for an appeal to an independent tribunal.\(^{228}\)

\(iv\) Delhi: This law was along the lines of the Goa Act, containing standard exceptions and providing for an appeal to an independent body, as well as the establishment of an advisory body, the State Council for Right to Information. Residents of the capital can seek any type of information -- with some exceptions -- from the civic body, after paying a nominal fee. It was also clearly stated that if the information was found to be false, or had been deliberately tampered with, the official could face a penalty of Rs 1,000 per application.\(^{229}\)

\(v\) Rajasthan: After five years of dithering, the Right to Information Act was passed in 2000. The movement was initiated at the grassroots level. Village-based public hearings, \textit{jan sunwais}, organised by the Mazdoor Kisan Shakti Sangathan (MKSS), gave space and opportunity to the rural poor to articulate their priorities and suggest changes. The four formal demands that emerged from these \textit{jan sunwais} were: i) Transparency of panchayat functioning; ii) accountability of officials; iii) social audit; and iv) redressal of grievances. The Bill when it was eventually passed, however, placed at least 19 restrictions on the right of access to information. Besides having weak penalty provisions, it gave too much discretionary power to bureaucrats. Despite this, the right to information movement thrived at the grassroots level in Rajasthan, following systematic campaigns waged by concerned groups and growing awareness about the people's role in participatory governance. It was the \textit{jan sunwais} that exposed the corruption in several panchayats and also campaigned extensively for the right to food after the revelation of hunger and starvation-related deaths in drought-ravaged districts.\(^{230}\)

\(vi\) Maharashtra: The Maharashtra assembly passed the Maharashtra Right to Information (RTI) Bill in 2002, following sustained pressure from social activist and anti-corruption crusader Anna Hazare.\(^{231}\) The

\(^{228}\) Karnataka, Right to Information Act, 2000.

\(^{229}\) Delhi, Right to Information Act, 2001.

\(^{230}\) Rajasthan, Right to Information Act, 2000.

\(^{231}\) Maharashtra, Right to Information Act, 2002.
Maharashtra legislation was the most progressive of its kind. The Act brought not only government and semi-government bodies within its purview but also state public sector units, cooperatives, registered societies (including educational institutions) and public trusts. Public information officers who failed to perform their duties could be fined up to Rs 250 for each day’s delay in furnishing information. Where an information officer had wilfully provided incorrect and misleading information, or information that was incomplete, the appellate authority hearing the matter could impose a fine of up to Rs 2,000. The information officer concerned could also be subject to internal disciplinary action. The Act even provided for the setting up of a council to monitor the workings of the Act. The council comprised senior members of government, members of the press, and representatives of NGOs. They were expected to review the functioning of the Act at least once every six months. It needs to be noted that not only is the Right to Information Act, 2005 a landmark legislation in the Indian context, it also places India among a group of some of the more evolved democracies of the world, to have enacted such a law in an effort towards deepening democracy.

It also needs to be noted that the RTI Act is in keeping with the provisions of some of the path-breaking international covenants. However, progress on the part of public authorities towards effective implementation of the Act in right earnest, and the Act’s large scale acceptance and use by the people, as an instrument for pressing transparency and accountability of public bodies or officials – will be the true indicator of the success of the Act. In order for the Act to achieve its objectives, all the stakeholders concerned with implementation of the Act – both from supply and demand sides – will have to work in partnership and in a mission mode.

2.10 INTERNATIONAL POSITION

Right to Information (hereinafter read as RTI) which is the cynosure of this discourse is not something new. In fact there is a long history at international level towards the attainment of this right
and mobilization of the masses for achieving it\textsuperscript{232}. With development of human ideals and establishment of democratic governments in most of the civilized countries, this topic came to the fore.

The United States\textsuperscript{233} and Sweden\textsuperscript{234} constitute the two main models for Freedom of Information. While the Swedish law is a precedent to the American one by 200 years, both are considered important legal precedents that helped shape other Freedom of Information (hereinafter read as FOI) laws around the world.

\textbf{i) Sweden}

Sweden is a constitutional monarchy, with a king or queen as the head of state (the King or Queen who occupies the throne of Sweden in accordance with the Act of Succession shall be the Head of State). But like in most liberal democracies, the royal head of state has no real political power.\textsuperscript{235} The Swedish system is unique because of a high degree of institutional autonomy underlying power dispersal to various levels of government. The Swedish system is known for “its ideology of local government, which basically means that local governments enjoy a great deal of autonomy, limited only by the legislative powers of its national counterpart\textsuperscript{236}. The father of the Swedish Freedom of Information Act (hereinafter read as FOIA), Chydenius, was a member of the Captions party who introduced freedom of information as a means of “promoting social reforms and opposing the supremacy of the nobility\textsuperscript{237}.” Chynedius was inspired by John Locke among other political philosophers during that era (which is known in Sweden as “the age of Liberty”). John Locke saw “the supreme power of the State residing in a legislature and behind the legislature in the people\textsuperscript{238}. The people would govern, but “they

\textsuperscript{233} US Freedom of Information Act, 1966.
\textsuperscript{234} Sweden, \textit{Freedom of the Press Act}, 1766.
\textsuperscript{235} Ibid.
\textsuperscript{236} Johan Lidberg, \textit{“Keeping the Bastards Honest: The Promise and Practice of Freedom of Information”} 114 (2006).
\textsuperscript{237} Patrick Birkinshaw, \textit{Freedom of Information: The Law, the Practice and the Ideal} 59 (1988).
\textsuperscript{238} David Banisar, \textit{Freedom of Information and Access to Government Record Laws around the World} 45 (2008).
were not the government.” Chydenius considered the introduction of the right to access for citizens as his greatest lifetime achievement. The Swedish parliament passed the legislation in 1766, and established the world’s first parliamentary Ombudsman (the word itself is Swedish for delegate and has been imported directly into the English language). Birkinshaw observes that “a very large degree of Swedish public administration is depoliticized in so far as many, sometimes important, decisions are not taken by political overlords.”

The principle of openness “Offentlighetsgrundsatsen” (in Swedish public sector) has been long enshrined in Swedish politics. The major underlying incentive for adopting the FOIA in Sweden, was “an information-starved political opposition that was given a rare chance to pass legislation that would grant them and all citizens access to government-held documents and information”239. The introduction to the Swedish Constitution describes a time of great change: “the death of Carl XII in 1718 brought to an end not only Sweden’s great power status but autocratic rule as well. The pendulum now swung back in the other direction. A new form of government took shape, which became significantly known as the Age of Liberty government”240. The basis for the Swedish FOI system is found in the Swedish Constitution241 (in the basic principles of the form of government):

“All public power in Sweden proceeds from the people. Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. It shall be realized through a representative and parliamentary polity and through local self government. Public power shall be exercised under the law.”242 This premise resulted in four fundamental laws found in the Swedish

240 Ibid.
241 Sweden’s Freedom of the Press Act required the disclosure of official documents on request. The Freedom of the Press Act, 1766, now a part of the Swedish Constitution, provides among other things that “Every Swedish subject shall have free access to official documents”.
Constitution. One of these laws is the “Instrument of Government and the Freedom of the Press Act,” which specifically provides for freedom of information and the right of citizen’s access.\textsuperscript{243} Chapter 2, Article 1 of ‘the Instrument of Government’ guarantees that all citizens have the right of: “freedom of information: that is, the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others.” Specific rules on access are contained in the Freedom of the Press Act, which was first adopted in 1766. The current version was adopted in 1949 and amended in 1976.\textsuperscript{244}

Sweden was the first to enforce the policy of openness in administration. There all governmental information is public unless certain matters are specifically listed as exemptions from the general rule. They have provided for a system of appeal against the wrongful withholding of information by public officials, as long ago as 1766. It provided constitutional safeguards under Freedom of Press Act, 1766, the oldest and probably still the most liberal of its kind in the world. It has been revised and modernized a number of times, most recently in 1978. Sweden has proved that legitimate national interests can as well be safeguarded under conditions of administrative openness.\textsuperscript{245}

Sweden has established cultures that access to government department and documents as a right and non-access an exception.

The principle gives any one, actually even aliens, the right to turn to a State or municipal agencies and ask to be shown any document kept in their files, regardless of whether the document concerns him personally or not. Officials are legally required to comply and even to supply copies of the document requested if this is feasible. In Sweden and other Scandinavian countries documents dealing with national security, foreign policy and foreign affairs can be withheld from public scrutiny but the government is bound to give a


\textsuperscript{245} Ibid.
written statement quoting legal authority for withholding the document.\textsuperscript{246}

**ii) United States of America**

The US constitutional fathers created the three arms of government legislative (Congress), executive (President) and judiciary (the Courts); the separation of powers accounts for a system of checks and balances. At the heart of the US political system is the concept of the ‘balance of power.’ According to some sources, the US is indeed an important role model for FOI worldwide. Lidberg (2006) notes that, “the US FOI model grew out of a global move towards more open government following World War II.”\textsuperscript{247}

America and democracy are generally synonymous. America apparently proclaims it to the torchbearer of the plethora of democratic rights that ought to be the part of a true democratic framework. The same applies on the dispensation of information too. Antipathy towards the inherent secrecy is therefore not a surprising attribute exhibited by the Americans. Schwartz observes, “Americans firmly believe in the healthy effects of publicity and have a strong antipathy to the inherent secretiveness of government agencies.”\textsuperscript{248}

The Freedom of Information Act, 1966 and The Administrative Procedure Act, 1946 are two main statutes which confer RTI. The Constitution of America does not deal specifically with RTI. However, such right is considered to be corollary of the First Amendment freedoms.\textsuperscript{249} A provision of a statute was held to be a restriction on the unfettered exercise of First Amendment Rights\textsuperscript{250} and hence was declared invalid by the Supreme Court. Similarly in *Stanley v. Georgia*\textsuperscript{251} it was observed that freedom of speech necessarily protects the right to receive information. In America there are three Acts which

\begin{itemize}
  \item \textsuperscript{246} JN Barowalia, *Right to Information* 47 (2005).
  \item \textsuperscript{247} Johan Lidberg, “Keeping the Bastards Honest: The Promise and Practice of Freedom of Information” 3(2006).
  \item \textsuperscript{248} Schwartz, *Administrative Law* 129 (1984).
  \item \textsuperscript{249} Thomas Emerson, *Legal Foundation of Right to know* 2 (1976).
  \item \textsuperscript{250} Lamont v. Post Master General, 1965.
  \item \textsuperscript{251} L. Ed. 2d. 24. 542 (1969).
\end{itemize}
upheld the freedom of press and information. (A) Freedom of Information Act was made in 1966, which was amended in 1974 to make it more effective, (B) The Privacy Act, 1974 protected individual privacy against the misuse of federal records while granting access to records concerning them which are maintained by federal agencies and (C) The Government in the Sunshine Act, 1976 provided that meetings of government agencies shall be open to the public. The US Supreme Court has recognized the right to know more than fifty years ago. The right to freedom of speech and press has broad scope. This freedom embraces the right to distribute literature and necessarily protects the right to receive it."

First Amendment contains no specific guarantee of access to publications. The basis of right to know is the freedom of speech, which is protected under Bill of Rights. The policy behind the Freedom of Information Act is to make disclosure a general rule and not the exception, to provide equal rights of access to all individuals, to place burden on the government to justify the withholding of a document, not on the person who requests it, to provide right to seek injunctive relief in the court if individuals are denied access improperly.252

Right to know is the cornerstone of citizen participation. Under the Information Act any person, nor merely an affected individual or group, is eligible to ask for information because what is aimed at is not merely redressal of grievances but encouragement of an informed citizenry253.

The 1966 Freedom of Information Act requires executive branch agencies and independent commissions to make available to citizens, upon request, all documents and record except those, which fall into the following exempt categories254:

1. Secret national security or foreign policy information.  

2. Internal personnel practices.
3. Information exempted by law.
4. Trade secrets or other confidential commercial or financial information.
5. Inter agency or intra-agency memos.
6. Personal information, personnel or medical files.
7. Law enforcement investigatory information.
8. Information related to reports on financial institutions.

But there are major problems. They are: Bureaucratic delay and cost of bringing suit to force disclosure, and excessive charges levied by the agencies for finding and providing the requested information. To meet these problems, Act was amended in 1974. Main provision of amendment is allowing federal judge to review a decision of the government to classify certain material. Another provision set deadlines for the agency to respond to a request for information under the law. Another amendment permitted judges to order payment of attorney’s fees and court costs for plaintiffs who won suits brought for information under the act.

Other Countries like Mexico\textsuperscript{255}, Peru\textsuperscript{256}, Thailand\textsuperscript{257}, Australia\textsuperscript{258}, Canada\textsuperscript{259}, Uganda\textsuperscript{260}, the United Kingdom,\textsuperscript{261} New Zealand\textsuperscript{262} and South Africa\textsuperscript{263} have also enacted similar legislations to enforce a measure of accountability and transparency on the agencies of the State.

To say in the spirit of a democratic world order, it is necessary that each one of us everywhere on this earth under the Sun has a right to know and a duty to shape the course of things, on a national

\begin{footnotesize}
\begin{enumerate}
\item[255] Mexico, Right to Information Act, 2003.
\item[256] The Peruvian, Right to Information Act, 2002.
\item[257] Thailand, Right to Information Act, 1997.
\item[258] Australia, Freedom of Information Act, 1982.
\item[259] Canada, Access to Information Act, 1982.
\item[260] Uganda, Access to Information Act, 2005.
\item[263] South Africa, Right to Information Act, 2001.
\end{enumerate}
\end{footnotesize}
also as on international level. The philosophy of freedom of information and open government has been well described by the U.S. House Committee on Government Operations, which approved the Freedom of Information Act, in 1966,

"A democratic society requires an informed, intelligent electorate, and the intelligence of the electorate varies as the quantity and quality of its information varies. A danger signal to our democratic society in the United States is the fact that such a truism needs repeating....". The root truth is that freedom without information is meaningless and liberty without light will perish because "all governments are obscure and invisible." There is a burden on the government to justify secrecy. Failure on this front is bound to spell dangerous consequences. In a democracy, citizens' right to know is assumed rather than guaranteed. This right is derived from the accountability and answerability of the government to the people.

In the period of analysis immediately after the war, he US and several other members of the newly formed United Nations concluded that too much secrecy in too many countries had provided fertile soil for conflict. The case of the US displays a struggle of maintaining the principle and practice access to public records. One expert on US FOIA explains why this is a struggle, the legacy acquired from the British Empire is for bureaucracies to be secretive; since those times knowledge and information meant power; and trading information was "power trading" among bureaucratic agencies. Today, standards should allow for power sharing. Everyone, everywhere has the right to know. In the 1970s in the US, the Department of Defense showed high compliance to FOIA because the military were used to obeying...

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265 The American Constitution, the oldest written constitution of the world, does not contain specific right to information. However, the US Supreme Court has read this right into the First Amendment of the Constitution and granted access to information where there is a tradition of openness to information in question and where access contributes to the functioning of the particular process involved. The Administrative Procedure Act (APA), 1946 was perhaps the first enactment which provided a limited access to executive information.
legal orders. Whereas, the Department of Agriculture struggled with the newly adopted practice of power sharing and exercised high levels of secrecy; the bureaucrats were simply not used to openness.” In addition, Court records and legislative materials have been open to the public for a long time. In 1946, Congress enacted the Administrative Procedures Act. It required “that government bodies publish information about their structures, powers and procedures and make available all final opinions or orders in the adjudication of cases (except those required for good cause to be held confidential and not cited as precedents) and all rules.” During the 1950’s both Congress and media groups started to advocate for a more wide-ranging and assertive law.

The first effective attempt for a FOIA came in 1958 in the form of an amendment to the 1946 Administrative Procedure Act, which made it mandatory for government agencies to “keep and maintain records.” FOIA forced agency compliance and required that proof of justification be given when denying access to records. Following a long period of hearings based on the 1958 amendment the Freedom of Information Act (FOIA) was enacted in 1966 and went into effect in 1967. The US FOIA is inspired from and based on the First Amendment of the Constitution. Before 1966, statutes had existed but only allowing the public “access to government documents if a need to know was established,” this also allowed agencies the prerogative to hold withhold information for a good cause. A comprehensive “Citizens Guide to FOIA” published in 1966 points out the paradigm and practice shift that the enactment of this legislation caused; “the need to know has been replaced by the right to know.” Thomas Susman served as Chief Counsel and General Counsel to the

266 Thomas Susman, interview by author, 9 April 2008, Washington DC.
267 Ibid.
Antitrust and Administrative Practice Subcommittees and to the Senate Judiciary Committee.\textsuperscript{271} Susman was the principal Senate staff lawyer responsible for development of the 1974 Freedom of Information Act Amendments. He explains that “prior to 1974 FOIA was ineffective and in fact the real road to change in US government transparency began with the 1974 amendments. In the 1966 version the ability to obtain court reviews was difficult for example.” Susman noted that “the 1974 amendments responded to the failures in the 1966 FOIA but placing fee restrictions for instance.” The original 1966 Act only allowed occasional disclosure while after 1974 Americans enjoyed broader maximum disclosure. All information available today was made available because of the successful lawsuits that employed the 1974 Act. FOIA became a long term strategy for advocates, industries, businesses, lawyers, journalists, NGOs and citizens to participate in government processes\textsuperscript{272}.

The Act was amended most recently in 1996 by the Electronic Freedom of Information Act (which allows any person or organization, regardless of citizenship or country of origin, to ask for records held by federal government agencies). The Act’s objective is “to provide public access to an agency’s records.” The applicant does not have to demonstrate a specific interest in a matter to view relevant documents – an idle curiosity suffices. Agencies covered within the Act include “executive and military departments, government corporations and other entities which perform government functions except for Congress, the courts or the President’s immediate staff at the White House, including the National Security Council.” Each agency or public body that is included within the FOIA has to publish in the ‘Federal Register’ the details of its organization as well as the rules and policies of its procedures\textsuperscript{273}.

There are nine categories of discretionary exemptions: “national security, internal agency rules, information protected by other

\textsuperscript{271} Ibid.
\textsuperscript{272} Frederer P. Miller, \textit{Exclusive Right to information} 132 (1998).
\textsuperscript{273} Neeraj Kumar,\textit{Treatise on Right to Information} 175 (2003).
The US FOIA is similar to the Swedish FOIA in that it emphasizes that “the request for documents should have priorities; that real avenues for citizen appeals should exist, and that legally binding rulings would ensure repercussions for the public servants that refuse to comply.” It differs from the Swedish FOIA because freedom of information in the United States is not a constitutional concept. Moreover, the cost of processing a request and photocopying documents is much higher in the US274.

Appeals of denials or complaints about extensive delays can be made internally to the agency concerned. The federal courts review appeals and can overturn agency decisions. The courts have heard thousands of cases in the 40 years of the Act. Alongside, FOIA the Sunshine Act (also known as an ‘open meeting’ law) allows “access to the meeting of those agencies within its scope. Its aim is to open up to the public portions of the ‘deliberative processes’ of certain agencies.” A week’s notice is required of the time, date, topic and location of the meeting. In addition, “a named official with a publicized telephone number must be appointed to answer queries.275”

The US FOIA mode of management is characterized by decentralization; The US Justice Department (DOJ) provides some guidance and training for agencies and represents the agencies in most court cases. The 1996 E-FOIA amendments require agencies to create electronic reading rooms and make available electronically the information that must be published along with common documents requested276. In 2000, the U.S. federal government received more than two million FOIA requests from citizens, corporations, and foreigners.According to Banisar’s 2006 survey, the American FOIA “has been hampered further delay.

Many international organizations and regional groups recognized this right to be part of their systems. Swedish Freedom of Information Law (a literal translation of the native term indicates the Freedom of Printing Act) passed in the year 1766 is considered to be the oldest and earliest legislative recognition of RTI. \(^{277}\) This law was passed by Sweden. A large number of countries have followed the same line and have enacted access laws after it. For example, Finland in 1950, Denmark in 1950, Norway in 1970, and United States of America in 1966 enacted such laws in order to facilitate information access. Before discussing the various international instruments, let us first analyse the status of RTI in the two most developed democracies of the world U.S.A and England.

**iii) Position in England**

Democracy has been the basic tenet of England since ages but ‘secrecy’ is emphasised rather than openness. This is due to the innate tendency of legislature and executive to enshroud policies instead of making it transparent. England has enacted Freedom of Information Act, 2005 \(^{278}\). But basically, the present law is contained in the Official Secrets Acts of 1911, 1920, 1939 \(^{279}\). Judiciary in England has approved of openness in Government. The same is reflected in the decision of House of Lords where it established its jurisdiction to order the disclosure of any document \(^{280}\). However, it was also emphasized that balance between conflicting interests of secrecy and publicity should be maintained. Importance of freedom of expression in English law can be ascertained by the observation of Lord Steyn in a case \(^{281}\) which goes as following:

“Freedom of speech is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they

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can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country….” In Britain, the campaign for reduction of secrecy was going on. They have rule for non-disclosure of sensitive information for about thirty years. When 1957 documents were released, they showed that Prime Minister Harold Macmillan had ordered suppression of information on the Wind scale nuclear accident. It was a startling revelation because it was the worst known nuclear disaster before Chernobyl. But the nation came to know only after thirty years. Under their Official Secret Act some documents could even be blocked for a hundred years.\textsuperscript{282} Even in America the tendency is to increase the items under the list of exemptions to freedom of information. When some documents were released under the Act revealed that FBI and CIA illegally harassed Dr Martin Luther King Jr. and several other things like illegal surveillance of dozens of writers and political groups for over a period of 30 years. In 2000, the Freedom of Information Act came into existence.

Australians are amongst the world's most avid media consumers and there is legislation protecting their rights of access to Federal Government documents of interest to them. In December 1982, Australia enacted Freedom of Information legislation, which gives its citizens and persons entitled to permanent resident status in Australia a free access to various Federal Government Records. Main features of this Act are the creation of public right of access to documents, the right to amend or update incorrect government records, the right of appeal against administrative decisions barring access and the waiving of any need to establish interest before being granted access to documents.\textsuperscript{283}

\textbf{iv) Public Charter of Official Documents in Finland}

Finland has a law on the Public Charter of Official Documents\textsuperscript{282}

\textsuperscript{282} Indian Express, March 30, 1989.
\textsuperscript{283} S.P. Sathe, Right to Information 23 (2008).
in 1951. Norway and Denmark have also statutorised public access to official information sources. Canada and Australia also made useful legislation on this subject. A French Commission on Access to Administrative Documents has been formulated. French Constitution recognizes the free communication of thoughts and opinions as among the most precious rights of man\textsuperscript{284}.

\textbf{v) Open Democracy Bill in South Africa}

The South African Law on this right is a unique example of principle of open governance. The South African Open Democracy Bill provides for public access as "swiftly inexpensively and effortlessly and reasonably possible to information held by governmental and bodies without jeopardising good governance, personal privacy and commercial confidentiality. It also empowers the public to effectively scrutinise and participate in governmental decision making that affects them. It also provided a mechanism to correct the inaccurate information possessed by the government about them and protects individuals against abuse of information about themselves held by the government or private bodies. Canada made Access to Information Act, 1980, and New Zealand enacted the Official Information Act, 1982\textsuperscript{285}.

\textbf{2.11 RTI AND INTERNATIONAL LEGAL INSTRUMENTS}

Various international instruments such as treaties, charters etc have recognized RTI as right that ought to be available to the people. All the citizens have a right to decide, either personally or by their representatives, as to necessity of the public contribution, to grant this freely, to know to what use fix the proportion, the mode of assessment and of collection and the duration of taxes\textsuperscript{286}.

\textbf{i) United Nations}

The United Nations\textsuperscript{287} (UN) is an international organisation

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\textsuperscript{284} Hicks, Bill,”\textit{Transparency International} 52 (2010).
\textsuperscript{285} PC Majmudar, \textit{Right to information} 35 (2005).
\textsuperscript{287} 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
whose stated aims are facilitating cooperation in international law, international security, economic development, social progress, human rights, and achievement of world peace\textsuperscript{288}. The UN was founded in 1945 after World War II to replace the League of Nations, to stop wars between countries, and to provide a platform for dialogue. It contains multiple subsidiary organizations to carry out its missions\textsuperscript{289}. There are currently 192 member states, including every internationally recognised sovereign state in the world but the Vatican City\textsuperscript{290}. From its offices around the world, the UN and its specialized agencies decide on substantive and administrative issues in regular meetings held throughout the year. The organization has six principal organs: the General Assembly (the main deliberative assembly); the Security Council (for deciding certain resolutions for peace and security); the Economic and Social Council (for assisting in promoting international economic and social cooperation and development); the Secretariat (for providing studies, information, and facilities needed by the UN)\textsuperscript{291}. United Nations accepted Right to Information right from its beginning in 1946. The General Assembly resolved that: “freedom of information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated.”\textsuperscript{292}

\textbf{ii) Universal Declaration of Human Rights, 1948}

The Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly (10 December 1948, Paris). The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights

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  \item 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.
  \item “Milestones in United Nations History”, Department of Public Information, United Nations.
  \item UN Department for General Assembly, “General Assembly of the United Nations—Rules of Procedure”.
  \item United Nations General Assembly, resolution 59(1), 65th plenary meeting, 14, December 1946.
\end{itemize}
to which all human beings are inherently entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws. The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. In 1966 the General Assembly adopted the two detailed Covenants, which complete the International Bill of Human Rights; and in 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.

Article 19 of the Universal declaration of Human Rights of 1948, states that, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

iii) International Covenant on Civil and Political Rights, 1968

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966, and in force from March 23, 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of December 2010, the Covenant had 72 signatories and 167 parties.

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

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294 Lindblom, Anna-Karin, Non-governmental organisations in international law 58 (2005).
Committee (a separate body to the Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee meets in Geneva or New York and normally holds three sessions per year\textsuperscript{297}.

Article 19 of the Covenant states as following:-

(1) Everyone shall have the right to hold opinions without interference;

(2) Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

iv) The Commonwealth

The Commonwealth of Nations\textsuperscript{298}, normally referred to as the Commonwealth and formerly known as the British Commonwealth, is an intergovernmental organisation of fifty-four independent member states\textsuperscript{299}. All but two (Mozambique and Rwanda) of these countries were formerly part of the British Empire, out of which it developed\textsuperscript{300}. The member states cooperate within a framework of common values and goals as outlined in the Singapore Declaration. These 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

\textsuperscript{297} Dr. Awasthi and Kataria, \textit{Law Relation to Protection of Human Rights} 67 (2003).
\textsuperscript{298} 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.
status. Its activities are carried out through the permanent Commonwealth Secretariat, headed by the Secretary-General, and biennial meetings between Commonwealth Heads of Government. The symbol of their free association is the Head of the Commonwealth, which is a ceremonial position currently held by Queen Elizabeth II. Elizabeth II is also monarch, separately and independently, of sixteen Commonwealth members, which are known as the "Commonwealth realms". The Commonwealth is a forum for a number of non-governmental organisations, collectively known as the Commonwealth Family, which are fostered through the intergovernmental Commonwealth Foundation. The Commonwealth Games, the Commonwealth’s most visible activity, are a product of one of these organisations. These organisations strengthen the shared culture of the Commonwealth, which extends through common sports, literary heritage, and political and legal practices. Due to this, Commonwealth countries are not considered to be "foreign" to one another. Reflecting this, diplomatic missions between Commonwealth countries are designated as High Commissions rather than embassies.

The Commonwealth-association of 54 countries-affirmed the existence of RTI by emphasizing the participation of people in the government processes. The law ministers of the Commonwealth at their meeting held in Barbados in year 1980 stated that ‘public participation in the democratic and government process would be most meaningful when citizens had adequate access to official information’.


Principle 10 of the Rio Declaration on Environment and

301 Rodney D. Ryder, Right to Information Law-Policy-Practice 75(2004).
302 The Rio Declaration on Environment and Development, often shortened to Rio Declaration, was a short document produced at the 1992 United Nations "Conference on Environment and Development" (UNCED), informally known as the Earth Summit. The Rio Declaration consisted of 27 principles intended to guide future sustainable development around the world.
303 Principle 10: Public Participation-Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities,
Development, 1992 first recognized the fact that access to information on the environment, including information held by public authorities, is the key to sustainable development and effective public participation in environmental governance. Agenda 21, the ‘Blueprint for Sustainable Development’, the companion implementation document to the Rio Declaration, states: “Individuals, groups and organizations should have access to information relevant to environment and development held by national authorities, including information on products and activities that have or are likely to have a significant impact on the environment, and information protection measures.” At the national level, several countries have laws which codify, at least in part, Article 10 of the Rio Declaration. In Columbia, for example, Law 99 of 1993 on Public Participation in Environmental Matters includes provisions on the right to request information. Likewise, in the Czech Republic, there is a constitutional right to obtain information about the state of the environment, which has been implemented in the number of environmental protection laws. In 1998, as a follow up to the Rio Declaration and Agenda 21, member states of the United Nations Economic Commission for Europe (UNECE) and the European Union signed the legally binding Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention). The Aarhus Convention (named after the Danish city where it was adopted) recognizes access to information as a part of the right to live in a healthy environment rather than as a free-standing right. However, it does impose a number of obligations on

including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

304 The Aarhus Convention was signed on June 25, 1998 in the Danish city of Aarhus. It entered into force on 30 October 2001. As of July 2009, it had been signed by 40 (primarily European and Central Asian) countries and the European Union and ratified by 41 countries. The Convention grants the public rights regarding access to information, public participation and access to justice, in governmental decision-making processes on matters concerning the local, national and trans-boundary environment. It focuses on interactions between the public and public authorities. It is a multilateral environmental agreement through which the opportunities for reliable regulation procedure is secured.
States which are consistent with the international standards, for example, it requires States to adopt broad definitions of ‘Environmental Information’ and ‘Public Authority’, exceptions must be subject to a public interest test, and an independent body with a power to review a refusal of request for information must be established.\textsuperscript{305} Forty European and Central Asian countries that ratified this convention have put in place legislative and administrative mechanisms to provide environmental-related information to public. Further, The United Nations Secretary-General Kofi Annan (1997-2006) had said that although regional in scope, the significance of the Aarhus Convention is global. It is by far the most impressive elaboration of principle 10 of the Rio Declaration, which stresses the need for citizens' participation in environmental issues and for access to information on the environment held by public authorities. As such, it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations. The influence of the Aarhus Convention also extends beyond the environmental field. At the Second Internet Governance Forum, held in Rio de Janeiro on 12-15 May 2007, the Convention was presented as a model of public participation and transparency in the operation of international forums.

vi) The African Union and Right to Information

The African Union (AU) consists of 53 states.\textsuperscript{306} The only African nations with a law implementing the right to information are Angola, South Africa, Uganda and Zimbabwe. In Zimbabwe, the Access to Information and Protection of Privacy Act, 2002, in effect restricts the

\textsuperscript{305} Ibid

\textsuperscript{306} Established on 9 July 2002, the African Union (AU) was formed as a successor to the Organisation of African Unity (OAU). Among the objectives of the AU’s leading institutions are: to accelerate the political and socio-economic integration of the continent; to promote and defend African common positions on issues of interest to the continent and its peoples; to achieve peace and security in Africa; and to promote democratic institutions, good governance and human rights. The African Union is made up of both political and administrative bodies. The highest decision-making organ is the Assembly of the African Union, made up of all the heads of state or government of member states of the AU. The AU also has a representative body, the Pan African Parliament, which consists of 265 members elected by the national parliaments of the AU member states. The AU’s secretariat, the African Union Commission, is based in Addis Ababa, Ethiopia.
flow of information instead of facilitating transparency in government bodies. However, Article 9(1) of the African (Banjul) Charter on Human and Peoples’ Rights,\(^\text{307}\) explicitly recognizes the right of people to seek and receive information and says that “Every individual shall have the right to receive information.”\(^\text{308}\) In 2002, the African Commission on Human and Peoples’ Rights reinforced the view that: “public bodies hold information not for themselves but as custodians of the public good and everyone has a right to access this information.”\(^\text{309}\) The African Union’s Declaration of Principles on Freedom of Expression in Africa, 2002\(^\text{35}\) also recognizes that everyone has a right to access information held not only by public bodies, but also by private bodies when this information is necessary for the exercise or protection of a human right. Though not binding, the aforesaid Declaration has considerable persuasive force as it represents the will of a sizeable section of the African population. The Declaration lays down the following principles: Everyone has the right to access information held by public bodies. Everyone has the right to access information held by private bodies which is necessary for the exercise or protection of any right. Any refusal to disclose information shall be subject to appeal to an independent body and/or the courts. Public bodies shall be required, even in the absence of a request, to actively publish important information of significant public interest. No one shall be subject to any sanction for releasing in good faith information on wrongdoing, or information which would disclose a serious threat to health, safety or the environment. Secrecy laws shall

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\(^{308}\) For further details, visit: http://www.achpr.org/english/ratifications/ratification_african%20charter.pdf.

be amended as necessary to comply with freedom of information principles. The African Union’s Convention on Preventing and Combating Corruption, 2003 further recognizes the role that access to information can play in facilitating social, political and cultural stability. For this reason, Article 9 requires that every State adopt: “legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences”.

vii) Organization of American States

The Organization of American States (OAS), or, as it is known in the three other official languages, is a regional international organization headquartered in Washington, D.C., United States. Its members are the thirty-five independent states of the American Continent. American Convention on Human Rights was adopted by the Organization of American States (OAS) in 1969. This international treaty is legally binding in nature.

Article 13 of the convention reads as follows:-

(1) Everyone has the right to freedom of thought and expression. This right shall include freedom to work, receive and impart information and ideas, of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.

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310 Declaration of Principles on Freedom of Expression in Africa was made by the African Commission on Human and Peoples' Rights in its 32nd Session between 17 to 23 October, 2002 at Banjul, Gambia.
311 Ibid.
Clause 2 states that exercise of such right may sometimes be subject to liabilities or restrictions if it compromises the national security or contravenes the right available to others.

**viii) European Convention on Human Rights**

The European Convention on Human Rights (ECHR) (formally the *Convention for the Protection of Human Rights and Fundamental Freedoms*) is an international treaty to protect human rights and fundamental freedoms in Europe, drafted in 1950 by the then newly formed Council of Europe, the convention entered into force on 3 September 1953. All Council of Europe member states are party to the Convention and new members are expected to ratify the convention at the earliest opportunity.

The Convention established the European Court of Human Rights. Any person who feels his or her rights have been violated under the Convention by a state party can take a case to the Court. Judgements finding violations are binding on the States concerned and they are obliged to execute them. The Committee of Ministers of the Council of Europe monitors the execution of judgements, particularly to ensure payment of the amounts awarded by the Court to the applicants in compensation for the damage they have sustained. The establishment of a Court to protect individuals from human rights violations is an innovative feature for an international convention on human rights, as it gives the individual an active role on the international arena (traditionally, only states are considered actors in international law). The European Convention is still the only international human rights agreement providing such a high degree of individual protection. State parties can also take cases against other state parties to the Court, although this power is rarely used. The Convention has several protocols. For example, Protocol 13 prohibits the death penalty. The protocols accepted vary from State Party to

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316 Recommendation 38 of the Consultative Assembly of the Council of Europe on 'Human rights and fundamental freedoms'.
State Party, though it is understood that state parties should be party to as many protocols as possible.

The Council of Europe (COE) 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. Clause 1 of Article 10 of the Convention states that, ‘Everyone has the right to freedom of expression. This right shall include freedom to hold opinions, and to receive and impart information and ideas without interference by public authority and irrespective of frontiers’. However, clause 2 provides that such right is subjected to such formalities, conditions, restrictions or such penalties as are prescribed by law, and are necessary in a democratic society, and if it harms the national interest or territorial integrity. However European Court of Human Rights interpreted Article 10 strictly. That is to say it was held that freedom to information prohibited the Government from restricting a person from receiving information. But, at the same time it does not provide any positive right to a person for obtaining the information. This interpretation was based on the difference between ‘freedom’ and ‘right’ Most of the above discussed international instruments do not deal with RTI directly. Their role however is not diminished at all by this fact. Like a first step they showed the world community a direction to be explored in order to materialize the democratic value of RTI, thereby making the systems transparent and world more amicable for the people.

ix) The Asia-Pacific and the Right to Information

The Asia-Pacific nations with a specific and functional law implementing the right to information are Australia, Azerbaijan, Georgia, India, Israel, Japan, New Zealand, Pakistan, South Korea,

319 Prakash Kumar, K B Rai, Right to know 74 (2005).
Tajikistan, Thailand and Uzbekistan. Neither Asia nor the Pacific has an over-arching regional body that sets or monitors human rights standards in the regions. However, this does not mean that there is no recognition of the people’s right to information – it just comes from different fora. Rather than being recognized in human rights related treaties, the Asian and Pacific countries have generally recognized the importance of the right to information in other agreements. One human rights charter in the region that includes the right to information is the revised Arab Charter on Human Rights\textsuperscript{320} which was adopted at the Summit Meeting of Heads of State of the members of the League of Arab States at their meeting in Tunisia in May, 2004. The Charter includes a specific right to information provision in Article 32(1) which states: “The present charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through and medium, regardless of geographical boundaries.”\textsuperscript{321} Although the Charter has been signed by a number of countries, it has not received the required number of ratifications to come into force. The Association of South East Asian Nations’ (ASEAN)\textsuperscript{322} 1967 Bangkok Declaration\textsuperscript{323} states in its aims and purposes that it adheres to the principles of the United Nations Charter, including Article 19 of the Universal Declaration of Human Rights which includes the right to information. The Asia Development Bank - Organisation for Economic

\textsuperscript{320} The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22 May 2004 and affirms the principles contained in the UN Charter, the Universal Declaration of Human Rights, the International Covenants on Human Rights and the Cairo Declaration on Human Rights in Islam. It has been in force since 15 March 2008.

\textsuperscript{321} Article 32(2) states that such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

\textsuperscript{322} The ASEAN is a geo-political and economic organization of ten countries located in Southeast Asia, which was formed on 8 August 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand.

\textsuperscript{323} The Bangkok Declaration, 1967 is the founding document of the Association of South East Asian Nations (ASEAN). Signed on August 8, 1967, by Thailand, Indonesia, Malaysia, Singapore, and the Philippines.
Cooperation and Development (ADB-OECD) Anti-Corruption Initiative Action Plan,\textsuperscript{324} sets out members states' commitment to freedom of information in order to: “ensure that the general public and the media have freedom to receive and impart public information and in particular information on corruption matters in accordance with domestic law and in a manner that would not compromise the operational effectiveness of the administration or, in any other way, be detrimental to the interest of governmental agencies and individuals. The Pacific Plan,\textsuperscript{325} endorsed by leaders of 16 Pacific Island nations, has a good governance pillar which includes the requirement that states develop freedom of information mechanism. Recognizing the importance of sharing information, the Pacific Islands Forum Secretariat\textsuperscript{326} is in the process of developing its own internal disclosure policy which will provide people access to the information it holds.

\textbf{2.12 CONCLUSION}

The access to information is lifeline of a progressive society. Our Constitution provides for freedom of expression and this freedom is directly connected with access to information. Even after more than 66 years of Independence, the people of India are largely living in the darker side of the governance of the Country and are often uninformed about the public affairs affecting their life and survival. Though, India a late starter in introducing transparency, yet this bold initiative needs appreciation. Right to Information Act symbolizes a

\textsuperscript{324} Governments in Asia-Pacific have resolved to cooperate in the fight against corruption as early as 1999, when they launched the Anti-Corruption Initiative for Asia-Pacific under the joint leadership of the Asian Development Bank (ADB) and the Organisation for Economic Co-operation and Development (OECD).

\textsuperscript{325} The Pacific Islands Forum is a political grouping of 16 independent and self-governing states. Members include Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. New Caledonia and French Polynesia, previously Forum Observers, were granted Associate Membership in 2006.

\textsuperscript{326} The Secretariat to the Forum was initially established as a trade bureau in 1972 and later became the South Pacific Bureau for Economic Co-operation (SPEC). In 2000, when the name of the Forum changed, the Secretariat became the Pacific Islands Forum Secretariat. The Pacific Islands Forum Secretariat is based in Suva, Fiji.
revolution, not so much in the way of working, but in the way of thinking. If implemented successfully, democracy as an idea will attain a new height and will go in a long way for achieving the Constitution goals.