CHAPTER 1
INTRODUCTION

1.1 Genesis of Right to Information in India

The right to information, as such, has come to be talked about only in recent times. It is, however, not a new concept. It has been there all the time, though in other forms. Traditionally, man is inquisitive. There is ample evidence in this context in the great Vedic erudition, where it is written: “Life is a perennial search for the truth. The restless swan (soul) is on the journey infinite to find the truth”. 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 secure knowledge since the very early time of Vedic age.¹

This spiritual message of Vedic vintage describes man as “child of Morality” and his mission in life is to realize the ultimate truth. Ignorance is darkness and must be dispelled; information is light and must be processed through consciousness. The Hindu scriptures also stress the same value.

Since the beginning of time, human beings have tried to exercise powers over each other by controlling access to information and knowledge. With the growth of centralized bureaucracies and the increasing complexity of statecraft, the focus of secrecy based power shifted to the area of governance. The advent of colonialism and slavery, the latter a variation of the former, created a political need to keep the ruled in ignorance of what the rulers were really up to. The

¹ Dr. Lalit Dadwal, Right to Information, (2010), pp. 7-8.
transformation of absolute monarchies into the democratic system had resulted in conferring various civil, political and social rights.\textsuperscript{2}

The colonial government in India kept itself at a distance from the people. It thrived on the culture of secrecy, and distrust of the people. Such culture also produced distrust of the government among the people. The culture of secrecy continued even after independence, and even after India became a republic. It has continued for the last fifty seven years. It is unfortunately true that the government of independent India functioned in the same milieu as that of the colonial government until recently. Secrecy had been the rule and transparency an exception. However, after independence when India became a welfare state, powers of the administration were bound to increase. A welfare state is always a much-governed state. In a welfare State, it is the executive cum-administrative branch of the government, having the duty and responsibility to plan and implement welfare schemes, which expands and acquires vast powers, most of which are discretionary in nature, the traditional methods of control of the government are bound to prove inadequate to cope with such increased powers. Although actions of the authorities are subject to judicial review and although the courts have extended the scope of judicial review, but judicial review has its own limitations. Judicial review is sporadic and formal. Abuse of power can be very subtle and may escape judicial scrutiny. Corruption and abuse of power are the inevitable fall-outs of such an unaccountable system of governance.\textsuperscript{3}

In India, information has not been an easy thing to get. Its accessibility has always been questionable; the colonial culture of the Official Secrets Act, 1923 is still current coin in India. Section 5 of the said Act prevents any person, who obtains or has access or who is in possession of any secret, from passing it to any person, who obtains

\textsuperscript{2} Ibid.
\textsuperscript{3} Ibid.
or has access or who is in possession of any secret, from passing it to any person, both the possessor and the person to whom it is passed may be prosecuted. The agony is that the Act does not define “Secret”, it is left to the Government to decide what is secret. Similarly under the Central Civil Services (Conduct) Rules, 1964, Evidence Act, 1872, Code of Criminal Procedure, 1973, Constitution of India, Commission of inquiry Act, 1962 etc., information can be withheld. These statues changed the whole scenario of democratic set up of our country as many things were kept secret and there is no precise definition of the word “secret”.

In the quest for systemic answers to this chronic malaise, the source of corruption inherent within the character of the State machine include a determined denial of transparency, accessibility and accountability, cumbersome and confusing procedures, proliferation of mindless controls, and poor commitment at all levels to reveal results of public welfare. Demystification of rules and procedures, complete transparency and proactive dissemination of this relevant information amongst the public is potentially a very strong safeguard against corruption. Ultimately the most effective systemic check on corruption would be where the citizen herself/himself has the right to take initiative to seek information from the State, and thereby to enforce transparency and accountability.

In 1982, Mathew Commission Report recommended the amendment of the Official Secrets Act, 1923, which was considered as great impediment in the way of people’s right to know and Section 5 of the Act was sought to be suitably amended. In 1989, V.P. Singh’s National Government came to power and declared its decision to make

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5 Supra note 1.

6 Ibid.
Right to Information a fundamental right. In April 1990, in the 20th conference of Ministers of information and Cinematography, he expressed his views thus.7 “An open system of governance is an essential prerequisite for the fullest flowering of democracy. Free flow of information from the government to the people will not only create an enlightened and informed public opinion but also render those in authority accountable.8

1.1.1 The Campaign for the Right to Information

The battle for appropriate legislation for the right to information has been fought on two main planks. The first is a demand for amendment of the draconian colonial Official Secrets Act, 1923 and the second, campaign for an effective law of the right to information. The Official Secrets Act, 1923 (OSA), is a replica of the erstwhile British Official Secrets Act and deals with espionage.9

During the last decade, the focus of citizens’ groups had shifted from demanding merely an amendment to the Official Secrets Act to the demand for its outright repeal, and its replacement by a comprehensive legislation, which would make disclosure the duty, and secrecy the offence. Powerful organizations, like MKSS, continued to experience enormous difficulties in securing access to and copies of Government documents, despite clear administrative instructions that certified copies of such document should be available to the citizens on demand. This highlighted to citizens’ groups how important it is that the people’s right to information should be enforceable by law.10

Interestingly, in India, the movement for the right to information has been as vibrant in the hearts of marginalized people as it is in the pages of academic journals and in the media. This is not

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8 Supra note 1.
10 Ibid.
surprising since food security, shelter, environment, employment and other survival needs are inextricably linked to the right to information.

In the early 1990s, in the course of struggle of the rural poor in Rajasthan, the Mazdoor Kisaan Shakti Sangathan (MKSS) hit upon a novel way to demonstrate the importance of information in an individual’s life through public hearings or Jan Sunwais. The MKSS’s campaign demanded transparency of official records, a social audit of government spending and redressal machinery for people who had not been given their due. The campaign caught the imagination of large cross-section of people, including activists, civil servants and lawyers.\textsuperscript{11}

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 enforced. 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{12}

The Press Council of India 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 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

\textsuperscript{11} Prof. S.R. Bhansali, \textit{The Right to Information Act, 2005}, (2008), pp. 15
cannot be denied to a citizen either. The draft also provided for penalty clauses for defaulting authorities.\textsuperscript{13}

Next came the Consumer Education Research Council (CERC) draft, 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 Central 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, and 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 OSA.\textsuperscript{14}

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.

1. The Central and State governments also agreed to a number of other measures to promote openness. These included establishing accessible computerised information centers to provide information to the public on essential services, and speeding up ongoing efforts to computerise government operations. In this process, particular attention would be placed on computerisation of records of particular importance to the people, such as

\textsuperscript{13} Ibid.
\textsuperscript{14} Ibid.
land records, passports, investigation' of offences, administration of justice, tax collection and the issue of permits and licences.¹⁵

2. In order to make the Government more transparent, and accountable to the public, the Government of India appointed a Working Group on Right to Information and Promotion of Open and Transparent Government under the Chairmanship of Shri H.D. Shourie. 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. 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 amendment 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.

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.

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.

5. In our present democratic frame work, free flow of information for the citizens and non-Government institutions suffers from several bottlenecks including the existing legal frame-work, lack of infrastructure at the grass root levels and an attitude of secrecy within the Civil Services as a result of the old frame work of rules. 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.

6. The proposed Bill enables 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 specified that subject to the provisions of the 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 record 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.

However, with the passage of time, it was found that even this Act did not fulfill the aspiration of the citizens of India. 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. In view of the significant changes proposed in the existing Act, the Government decided to
repeal the Freedom of Information Act. Thus, the Right to Information Act, 2005, which came into force in India in totality with effect from 12th October, 2005 is regarded as a milestone in the history of social 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 completely, would be checked to a greater extent.

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 interest, 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 harmonize these conflicting interests while preserving the paramountcy of the democratic ideal and, therefore, it is expedient to provide for furnishing certain information to citizens who desire to have it. 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 independence, which has prompted them to make money by fair or foul means. The absence of availability of information on the working of the Government, generally, generates 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 adjudge the performance of the Government, which they elected for themselves.
1.1.2 Constitutional Guarantees

In post-independence India, the liberal democratic political system with a written Constitution including rule of law, social justice, development, adult franchise, periodic elections multi-party system came into existence. For the transparent functioning of the democratic political system, the founding fathers of the Constitution included the provisions of the right to expression in Part Three of the Constitution as a fundamental right.

While there is no specific right to information or even right to freedom of press in the Constitution of India, the Right to Information has been read into Constitutional guarantees, which are a part of the Chapter on Fundamental rights. For more than two decades, the Supreme Court has recognized the Right to Information as a constitutionally protected fundamental right, established under Article 19 (Right to Speech and Expression) and Article 21 (Right to Life) of the Constitution. For example, the Supreme Court has recognized that popular Government without popular information of the means for obtaining, it is but a prologue to force or tragedy or perhaps both. The citizen’s right to know the facts, the true facts, about the administration of the country, is, thus, one of the pillars of democratic state, and that is why the demand for the openness in the government is increasingly growing in different parts of the world.\(^\text{16}\) Right of information is a face of the freedom of “Speech and Expression” as contained in Article 19 (1) 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.\(^\text{17}\) However, the State is entitled to impose only reasonable

\(^\text{17}\) Secretary, ministry of information and broadcasting, Government of India v. Cricket Association of Bengal, AIR 1995 SC 1236: (1995) 2 SCC 161
restrictions, *inter alia*, in the interest of the State. In a government of responsibility like ours, where all the agents of public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of Freedom of Speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions, which can, at any rate, have no repercussion on public security. The right to get information in democracy is recognized throughout and it is a natural right flowing from the concept of democracy. At this stage, let us refer to Article 19(1) and (2) of the International Covenant on Civil and Political Rights, 1966, which reads as under:

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. The purpose of the press is to advance the public interest by publishing facts and opinions without which democratic electorate cannot make responsible judgments. Freedom of expression has four broad social purposes to serve: (i) it helps an individual to attain self fulfillment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision

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20 Union of India v. Association for Democratic Reforms, AIR 2002 SCC 2112.
making, and (iv) It provides a mechanism by which, it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved there is the people’s right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration.\footnote{Indian Express News Paper (Bombay) (P) Ltd. v. Union of India, 1985 1 SCC 641: AIR 1986 SC 115.} The Freedom of Speech and Expression includes right to acquire information and to disseminate it. Freedom of Speech and Expression is necessary for self fulfillment. It enables people to contribute to debates on social and moral issues. It is the best way find truest model of anything, since it is only vehicle political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts.\footnote{Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal, AIR 1995 SC 1236: (1995) 2 SC 161.}

1.1.3 Earlier Legislations

Even though most of the laws in India favour secrecy as a guiding principle in governance, yet there is a silver lining as well. There are some laws which do provide for the disclosure of information. Under the Evidence Act, 1872 the documents have been divided into two groups: private documents and public documents. In that Act, it has been laid down that all documents that are not public documents are private documents.\footnote{Section 75 of the Indian Evidence Act, 1872.} A public document has been
defined to mean ‘a document which is the act or record of the acts of a sovereign authority, official bodies and tribunals, public officers, legislative, judicial and executive is a public document’. A public document is one which is prepared by a public servant in his official duty. All the public documents have this characteristic that they are kept in some special custody and provable by means of a copy without production of original. Further, it requires public officials to provide copies of public document to anyone who has a right to inspect them. This Section provides that every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees, together with a certificate written at the foot of such copy that it is true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title and shall be sealed, whenever such officer is authorized by law to make use of seal.

The Factories Act, 1948, which is one of the most important labour legislations in the country also provides for compulsory disclosure of certain information. In fact, unless full information regarding factory involving a hazardous process is furnished at the time of making an application for approval to establish such a factory or expansion thereof, the measures of safety and security cannot effectively be taken. In order to ensure the safety of the workers and the general public living in the vicinity of the factory, it has been made imperative to disclose all information regarding the dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the material or substances in the manufacture, transportation, storage and other process so that suitable and effective measures may be taken for that purpose. The

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24 Section 74 of the Indian Evidence Act, 1872.
25 Section 76 of the Evidence Act, 1872.
newly incorporated provision is for compulsory disclosure of information by the occupier of every factory involving a hazardous process in the interest of workers and the general public living in the vicinity of such a factory.\textsuperscript{26} It may be noted that not only the duties have been imposed on the occupiers, but the sanction has also been attached for the proper compliance thereof. It has been provided that where any occupier of the factory contravenes his duty to inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed, if such factory engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987 within a period of thirty days of such commencement, and if the factory proposes to engage in a hazardous process at any time after such commencement of such process, the licence issued to such factory shall, notwithstanding any penalty to which the occupier of the factory shall be subject to under the provisions of this Act, be liable for cancellation.\textsuperscript{27}

Further, the Water (Prevention and Control of Pollution) Act, 1974 also makes it compulsory for every State to maintain a register of information and water pollution. It says that “Every state shall maintain a register containing particulars of conditions imposed under this Section and 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 as the case may be, or by any person authorized by him in this behalf and the condition contained in such register shall be conclusive proof that consent was granted subject to the conditions.\textsuperscript{28} Similarly, the Air (Prevention and Control of Pollution) Act, 1981 provides for the disclosure of similar information regarding air pollution. But each of these enactments have an

\begin{footnotesize}
\begin{enumerate}
\item Section-41 B of the Factories Act, 1948.
\item Sub-Section(6) of Section 41-B of the Factory Act, 1948.
\item Section 25(6) of the Water (Prevention and Control of Pollution) Act, 1974.
\end{enumerate}
\end{footnotesize}
exception clause which provides that the information may be withheld if the disclosure is against public interest. The general law of the country on the environmental protection is contained in the Environment (Protection) Act, 1986. Both, the Act as well as Rules framed there under provide for consultation with the people and disclosure of information. It empowers the government to take measures to protect and improve the environment. The rules framed under this Act, in particular Rule 5(3)(a), empower the government to call for objections from the public within sixty days from the date of publication of the notification against the intention of the government to impose restrictions and prohibitions on the expansion and modernization of any activity or new projects being undertaken unless environmental clearance has been accorded.

The Environment Impact Assessment Regulations further lay down, in paragraph 2(I)(2) read with Scheduled IV, a procedure for public hearings and the requirement for the public to be given the executive summary of the proposal prepared by the person seeking to execute any such project. However, although these provisions are laudable, they often do not function in practice. These provisions, which are meant to facilitate citizens’ input are, in fact, too limited that environmental groups have to go to the courts to get more complete disclosure.

Under the Indian Constitution, it is provided that no person who is arrested shall be detained in custody without being informed, as soon as may be, the grounds for such arrest nor shall he be denied the right to consult and to be defended by a lawyer of his choice. There is also a provision that when a person is detained under a law providing for preventive detention, the authority making the order

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30 Section 3 of the Environmental (Protection) Act, 1986.
31 Constitution of India, Article 22(1).
shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.\textsuperscript{32}

The Constitution also provides that no civil servant can be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.\textsuperscript{33} The rules of natural justice require that no person should be condemned unheard. Fair hearing means informing the person of the charges against him and giving him an opportunity to rebut those charges. The observance of these rules saves an action from being considered arbitrary under Article 14.\textsuperscript{34} They also constitute the essential conditions of the reasonableness of restrictions on any of the rights given by Article 19 of the Constitution and have been held to be essential requisites of “the procedure established by law” in accordance with which alone a person can be deprived of his life and personal liberty guaranteed by Article 21 of the Constitution.\textsuperscript{35}

\subsection*{1.1.4 Important State Initiatives}

The details of important State initiatives are as under:\textsuperscript{36}

\textbf{Goa}

One of the earliest and most progressive legislations, it has the fewest categories of exceptions, a provision for urgent processing of requests pertaining to life and liberty, and a penalty clause. It also applies to private bodies executing government works. One weakness is that it has no provision for pro-active disclosure by government.

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\item \textsuperscript{32} Article 22(5), Lawrence D Souza v. State of Bombay, AIR 1965 SC 531; Colam v. State of West Bengal, AIR 1976 SC 754.
\item \textsuperscript{33} Constitution of India, Article, 311(2).
\item \textsuperscript{34} E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555.
\item \textsuperscript{35} Maneka Gandhi v. Union of India, AIR 1978 SC 597.
\end{enumerate}
\end{footnotesize}
Tamil Nadu

The legislation stipulates that the authorities should part with information within 30 days of it being sought. Following the legislation, all Public Distribution System 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 get.

Karnataka

The right to information legislation contains standard exception clauses covering 12 categories of information. It has limited provisions for pro-active disclosure, contains a penalty clause and provides for an appeal to an independent tribunal. Delhi: The law is along the lines of the Goa Act, containing the standard exceptions and providing for an appeal to an independent body, as well as the establishment of an advisory body - the State Council for Right to Information. Residents of the Capital can seek any type of information, with some exceptions, from the civic bodies after paying a nominal fee. The corporation has to provide it within a month, failing which the concerned officials could be penalised and are liable to pay Rs. 50 per day for any delay beyond 30 days, subject to a maximum of Rs. 500 per application. It is also clearly stated that wherever the information is found to be false or has been deliberately tampered with, the official would face a penalty of Rs. 1,000 per application.

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 called Jan Sunwais, organised by the Mazdoor Kisaan 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 Jan Sunwais: (1) transparency of panchayat functioning; (2) accountability of officials; (3) social audit; and (4) redressal of grievances. The Bill as it was eventually passed, however, placed at least 19 restrictions on the right of access. Besides having weak penalty provisions, it gives too much discretionary power to bureaucrats. Despite this, at the grassroots level in Rajasthan, following systematic campaigns waged by concerned groups and growing people’s awareness of their own role in participatory governance, the right to information movement thrives. It was the Jan Sunwais, which exposed corruption that pervaded several panchayats and also campaigned extensively for the right to food after the revelation of hunger and starvation-related deaths in drought ravaged districts.

Maharashtra

The Maharashtra assembly passed the Maharashtra Right to Information (RTI) Bill, following sustained pressure from social activist and anti-corruption crusader, Anna Hazare. The Maharashtra legislation has been called the most progressive of its kind. The Act brings not only government and semi government bodies within its purview, but also State public sector units, cooperatives, registered societies (including educational institutions) and public trusts. It provides that Public Information Officers who fail to perform their duties may be fined up to Rs. 250 for each day's delay in furnishing information. Where an information officer has wilfully provided incorrect and misleading information or information that is incomplete, the appellate authority hearing the matter may impose a fine of up to Rs. 2,000. The information officer concerned may also be subject to internal disciplinary action. The Act even provides for the setting up of a council to monitor the workings of the Act. The council shall be comprised of senior members of government, members of the
press and representatives of NGOs. They are to review the functioning of the Act at least once every six months.

1.1.5 The Commonwealth

In 1980, the Commonwealth Law Ministers meeting in Barbados resolved that “public participation in the democratic and governmental process was at its most meaningful when citizens had adequate access to official information”. More recently, the Commonwealth has taken a number of significant steps to elaborate on the content of that right. In March 1999, the Commonwealth Expert Group Meeting in London adopted a document setting out a number of guidelines on the right to know and freedom of information as a human right, including the following:

“Freedom of information should be guaranteed as legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the State, as well as any government-owned corporation and any other body carrying out public functions. These principles and guidelines were endorsed later at the Commonwealth Heads of Government Meeting in November 1999”. 37

1992 Rio Declaration on Environment and Development

Principle 10 of the 1992 Rio Declaration on Environment and Development 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

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activities that have or are likely to have a significant impact on the
environment, and information protection measures".38

At the national level, several countries have laws which codify,
at least in part, Article 10 of the Rio Declaration. In Colombia, 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 a number of environmental protection laws.39

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 recognizes access to
information as 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 States, which are consistent with 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 the
power to review refusals of request for information must be
established.40

Towards a National Right to Information Act

For the introduction of National Right to Information Act, there
have been efforts since 1996 onwards. The National Campaign for
People’s Right to Information (NCPRI) was founded in 1996. Its

38 Dheera Khandelwal and K.K. Khandelwal, A Commentary and digest on Right to
39 Ibid.
40 Ibid.
founding members included social activists, journalists, lawyers, professionals, retired civil servants and academics, and one of its primary objectives was to campaign for a national law facilitating the exercise of fundamental right to information.\textsuperscript{41}

The international organizations, like Commonwealth Human Rights Initiative strongly advocates that Right to Information (RTI) is fundamental to the realization of rights as well as effective democracy, which requires informed participation by all. CHRI educates the public about the value of RTI and advocates at policy level for guaranteed access to information. The contribution of Commonwealth Human Rights initiative for the enactment of the national Right to Information Act in India was through providing aid to discussions, analysis of the Freedom of Information Act and recommendations to the National Advisory Council, to all the Cabinet Ministers and Members of the Parliament.\textsuperscript{42}

In response to the pressure from the grassroots movements, national and international organizations, the Press Council of India, under the guidance of its Chairman, Justice P.B. Sawant, drafted a Model Bill that was later updated at a workshop organized by National Institute of Rural Development and sent to the Government of India, which was one of the reference paper for the first draft bill prepared by the Government of India. For some political and other reasons, the bill could not be taken up by the Parliament.\textsuperscript{43}

Again, in 1997, the United Front Government appointed the working group under the chairmanship of Mr. H.D. Shourie, which

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\textsuperscript{42} Ibid.

\textsuperscript{43} Ibid.
drafted a law called “The Freedom of Information Bill, 1997”. This bill was also not enacted into a law.44

Thereafter, to provide freedom to every citizen to secure access to official information, in order to promote openness, transparency and accountability in administration and in relation to matters connected there with or incidental there to, the Freedom of Information Act, 2002 was passed.45 It contained three Chapters and twenty one (21) Sections with an objective to provide information to the general public. Further, the Preamble’s declaration was fairly ambitious in setting the objectives of the Act. “To provide 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 there with on incidental there to”.46 Therefore, Freedom of Information Act, 2002 amounts to a major step taken by Parliament to ensure a participatory developmental process in the country.

The coalition Government at the Centre, led by United Progressive Alliance (UPA), formulated an agenda called, “Common Minimum Programme (CMP)”47 One of the agenda of the CMP was the introduction of the “Right to Information Act”. The CMP stated clearly, “the Right to Information Act will be made more progressive, participatory and meaningful”. In order to look after the implementation of the CMP, the UPA constituted National Advisory Council, which comprised of activists, like Aruna Roy48, Jean Dreze49,

44 Ibid.
45 Elaborating on the objects and reasons of the Freedom of Information Act, 2002, recently, the Apex Court has ruled that the State was empowered to withhold information on various important issues, including national securing international relations and crime investigation, *The Tribune*, January 12, 2004.
47 Consensus Programme of the constituents of the UPA Government at the Centre.
48 Registered IAS officer, MKKS activist and winner of the Ramanmagsay says award.
who are associated with the National Campaign for Peoples’ Right to Information, and who consistently put pressure on the UPA Government to pass the Bill and President of India consented the Act on 15th June, 2005. The implementation process of Right to Information Act was started from 12th October 2005.

1.1.6 Public Hearing is the genesis of Right to Information Movement

Public Hearing or Jan Sunwais is the origin point of the Right to Information Movement in India. The instrument of public hearing was initiated by the MKSS (Mazooder Kissan Shakti Sanghatan) in some parts of rural areas of Rajasthan in order to check corruption with the involvement of people in the public hearing. The public hearing is nothing but an open and democratic debate about the public issues. In this type of public hearings, Elected Representatives, Government Officials, People, Local Intelligentsia, such as lawyers, media persons, Non-governmental organizations, community based organizations, external observers, etc., would participate. In public hearings, generally, after identifying issues, for example, corruption in developmental activities, further deliberations take place. The Mazdoor Kissan Shakti Sanghatan identified corruption, misuse, and nepotism in the drought relief works, which were sanctioned for the rural poor. Therefore, MKSS initiated the series of public hearings over the rural developmental activities with substantial evidence of data and documents by involving cross Section of the society. The public hearings are being conducted in Panchayati Raj Institutions, Government Offices and Non Governmental Organizations, which are receiving substantial financial support from the public authorities. In these public hearings, in front of the public it is proved that a great deal of corruption and misuse is taking place. It happened due to secrecy in the maintenance of records and registers, and lack of

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49 Prominent pro-working class economist.
accessibility to the public information for the citizens. Therefore, to combat corruption in the developmental activities initiated either by the State Government or Central Government, there is a need to have the Act to access public information, which is national wealth generated by the citizens.\textsuperscript{50}

1.1.7 Public Agitations for the Right to Information

Along with the public hearings, the MKSS also launched direct actions like Dharnas\textsuperscript{51} for the Right to Information in various parts of Rajasthan, such as Beawar in 1995. The demand was to press for the issuance of administrative orders to enforce the right to information of ordinary citizens regarding local development expenditure. Dharna witnessed an unprecedented upsurge of homespun idealism in the small town of Beawar and the surrounding countryside.

Donations in cash and kind poured in daily from ordinary local people including vegetables and milk from small vendors, sacks of wheat from farmers in surrounding villages, tents, voluntary services of cooking, serving cold water, photography and so on, and cash donations from even the poorest.\textsuperscript{52}

Even more significant was the daily assembly of over 500 people in the heat of the tent, listening to speeches and joining in for slogans, songs and relics. Active support cut across all class and political barriers. Rich shopkeepers and professionals to daily wage labourers, and the entire political spectrum from the right wing fringe to communist trade unions extended vocal and enthusiastic support.

However, no assurance from the government was forthcoming, and therefore, after completion of polling on 2 May, 1996, while the

\textsuperscript{50} Dr. E. Venkatesu Asst.Professor Centre for Panchayati Raj National Institute of Rural Development Rajendra Nagar, Hyderabad-500030.

\textsuperscript{51} Kaveri I Haritas “The Right to Information Movement: The First Step Against Corruption” Lawyers Collective, August 2003:p.05.

\textsuperscript{52} Mander Harsh & Joshi Abha, “People for the Control of Corruption” available at www.chri.org.
dharna continued in Beawar, it also spread to the State Capital of Jaipur. In Jaipur, in an unprecedented gesture, over 70 people's organizations and several respected citizens came forward to extend support to the MKSS' demand. The mainstream press was also openly sympathetic.53

1.2 The Right to Information Act, 2005: An Analysis

In a world where non-state actors, such as public or private corporations, non-governmental organizations (NGOs), quasi non-governmental organizations and international institutions influence the destinies of millions, the ambit of the Right to Information needs to encompass more than just governments. Some Commonwealth countries have extended the coverage of their laws to some private bodies,54 recognizing that the issue needs to be “resolved by reference to its role in protecting the fundamental interests of citizens, and not by reference to the provenance or structural characteristics of the institution holding the contested information”.55 As more and more public functions, like provision of health care, supply of water, power and transport, and even prison management, are privatized, people need to be able to get information from the bodies performing these services. Often, agreements between government and service providers do not require them to make information about their activities available. This removes information from the public domain that would otherwise have been covered under access laws. Even where private bodies are not providing public services, their activities need to open to public scrutiny if they affect people's rights. For example, the public should be able to access information on a factory's environmental management policies to ensure the factory is managing

53 Ibid.
toxic waste appropriately, and therefore, not diminishing their right to health. Without information and communication of exact knowledge, one feels impotent to step into action. With the growth of idea of social welfare State or a socialistic pattern of society, the Government being an activist entity, has gathered a vast arsenal of powers and has come to acquire enormous powers. The powers are used to affect economic interests, social and cultural life and personal liberty of individuals. In the name of peoples’ welfare, Government does all acts and performs all activities. Such a development, certainly, has an inbuilt danger that these vast powers of the government are not used for private gains or personal profit of grinding own axe, or with corrupt motives or arbitrarily and capriciously, instead of being exercised in public welfare. Hence, it is extremely important that these powers must be exercised for public good and for the purpose for which these powers are conferred. This makes it extremely essential for the people to know what Government had been doing for ensuring accountability of the Government to the people. The first requisite, therefore, is that the people should know or be informed from time to time how, and in what manner, the government had been functioning. 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 Government.

The Right to Information Act consists of six Chapters arranged as under:

- Chapter I Preliminary
- Chapter II Right to information and Obligations of Public Authorities
- Chapter III The Central Information Commission
- Chapter IV The State Information Commission
Chapter V  Powers and Functions of the Information Commissions, Appeal and Penalties

Chapter VI  Miscellaneous

As per the Scheme of the Act, Chapter 1 is preliminary chapter dealing with short title, extent, commencement and definitions of certain words used in the Act. According to Section 1(3) of the Act, the Right to Information Act extends to whole of India except the State of Jammu & Kashmir, and provisions of sub-Section (1) of Section 4, sub-Sections (1) and (2) of Section 5, Sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment. According to Section 2(f) of the Act, “information” means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force. Moreover, as per Section 2(j) of the Act, “right to information” means the right to information accessible under this Act 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.
Chapter 2 of the Act deals with right to information and obligations of Public Authorities. Section 3 of the Act provides that subject to the provisions of this Act, all citizens shall have the right to information. The words used in Section 3 are “all citizens” and not “all persons”, which is important. Thus, right to information is conferred only on all citizens of India and not the foreigners visiting India. Section 4 of the Act provides for obligations of the public authorities to maintain their records duly catalogued and to publish the particulars of its organization, functions and duties etc. within the prescribed period; Section 5 deals with designation of Public Information Officers and Section 6 deals with the request of the citizens for obtaining information, while Section 7 deals with the disposal of such request. Section 8 of the Act provides for exemption from disclosure of information in cases provided therein; whereas Section 9 lays down that request for information shall be rejected where such access would involve an infringement of copyright subsisting in a person other than the State.

Chapter 3 deals with Central Information Commission wherein Constitution of the Central Information Commission, terms of office and conditions of service and the procedure for removal of Chief Information Commissioner or the Central Information Commissioner are lain down. Likewise, Chapter IV deals with the State Information Commission regarding constitution of the State Information Commission, term of office and conditions of service and procedure for removal of State Chief Information Commissioner or State Information Commissioner, etc. Chapter V of the Act provides for power and functions of the Information Commission; the procedure for appeal against the order of Central Public Information Officer or State Public Information Officer and the penalties for refusing to receive an application for information without any reasonable cause, etc.
Chapter 4 of the Act, like many other statutes, deals with miscellaneous matters. Section 21 of the Act provides for protection of action taken in good faith; whereas Section 22 lays down that this Act shall have overriding effect and Section 23 bars the jurisdiction of courts to entertain any suit, application and other proceedings in respect of any order made under this Act. Section 24 lays down that the Act shall not apply to certain organization specified in the Second Schedule; while Section 25 deals with monitoring and reporting of the implementation of the provisions of this Act, and Section 26 lays down that appropriate government may, to the extent of availability of finances or other resources, prepare the programmes. Sections 27 and 28 of the Act empower the appropriate government and the competent authority to make rules to carry out the functions of this Act; while Section 29 of the Act provides for laying of the rules and Section 30 empowers the Central Government to remove difficulties.

Section 31 has repealed the Freedom of Information Act, 2002. In exercise of the powers conferred by Sections 27 and 28 of the Act, the appropriate governments and the Competent Authorities have framed Right to Information Rules, 2005.

1.3 Objective of the Study

True democracy cannot exist unless all citizens have right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless citizens are well informed of all sides of the issues in respect of which they are called upon to express their views. One sided information, disinformation, misinformation and non-information, all equally create uninformed citizenry, which makes democracy a farce when medium of information is monopolized, either by State or any other organization. This is particularly so in a country like ours where about 65 percent of the population is illiterate and hardly 1.5 percent of population has an access to the print media, which is not subject to
pre-censorship. The Government has shown political will by enacting the Right to Information Act, 2005. However, struggle for achieving 'openness' in the governmental affairs is not over. The government should use Right to Information Act, 2005 to improve the delivery system of the administration.

The Right to Information Act, 2005 is the most important and progressive piece of legislation since independence, and it has tremendous potential to improve the functioning of public authorities in the country. Citizens at large are very enthusiastic about using this new instrument to improve the services they get from public authorities. The bureaucratic and political establishment in the country does not seem to have right spirit. The Central and the State governments have an important role in ensuring that Act gets implemented in the right spirit. The Central Information Commission and State Information Commissions have to tread carefully but firmly to ensure that the Act does not loose its value to citizens and to the society at large. Therefore, the main aim of this study is to suggest the means for its effective implementation.

1.4 Significance of Study

The present study is specifically aimed at studying the Right to Information Act, 2005, and its implementation, specifically in the State of Punjab. An analytical study shall be carried out to find out whether the Right to Information Act, 2005, is able to achieve the idea of transparent government? In this regard, a specific study shall be undertaken to observe the commitment on the part of the governments and the functioning of the Commission under the Right to Information Act, 2005. This study will help in analyzing the law relating to the right to information, and the government’s commitment to further provide the right to information to the people of India according to the Constitutional and Legislative Commitments, specifically in the State of Punjab.
1.5 **Research Hypothesis**

Transparency and openness in the functioning of a democratic and welfare government is essential. The citizen’s right to know is essential for such purpose. The right to information is the basic right and the execution and enjoyment of all other rights depend upon the enforcement of this right. The trend in India and other commonwealth countries favour the non-disclosure and secrecy in the government functioning. The bureaucracy in India has developed a practice of keeping the secrecy in the office files. The confidentiality and secrecy is supported to some extent by the Constitution of India itself, and other legislations, like Official Secrets Act, 1923, Indian Evidence Act, 1872, etc. The judiciary in India has tried to build up the citizen’s right to know from the government functionaries through its judgments. The recent legislation has further strengthened the citizen’s right to get information from the public authorities. This is one of the best pieces of legislation enacted by the Parliament. But it will be most difficult to implement this law in the background of confidentiality and secrecy in functioning of government, and the mindset of the public officials of our country. There has to be a change in the mindset by creating the infrastructure to make this legislation fruitful. Therefore, it is hypothesized that the right to information is essential for the exercise of all other rights, but the lack of infrastructure in the government machinery and mindset of public officials may cause problems in the implementation of the recent legislation, which favours openness and transparency in the functioning of the government. The research shall be conducted and suggestions shall be made for the effective implementation of this law.

1.6 **Research Methodology**

The present research work requires both analytical and empirical study of the topic. The analytical work will deal with the literature relating to the right to information of the citizens from their
government. The study shall be conducted to understand the historical background of the citizens' right to know and its applications in the present era in the light of Right to Information Act, 2005. An analytical study of the Reports of the Central Information Commission and State Information Commissions shall also be conducted. A comprehensive study shall be conducted through the statutes, websites, journals, newspapers and books. In the empirical study, data shall be collected on the basis of structured and unstructured interviews and questionnaires.

1.7 Analysis of Literature

1. The book “A commentary and digest on Right to Information Act, 2005”, edited by Dheera Khandelwal and K.K. Khandelwal,\textsuperscript{56} is an exhaustive and critical commentary on the Right to Information Act, 2005. This book covers freedom of information in general, evolution of the right to information in national and global perspective, Central and State Rules on right to information, Model Freedom of Information Law, International Covenant on Civil and Political Rights, 1966, and hand book for public authorities. It provides analysis of each and every Section along with explanatory notes so that the reader is in a position to grasp the ingredients of various Sections. It also provides relevant case laws, decisions of various courts and information from various public authorities. This book is a commentary, a reference book and a text book. It is a standard treatise/digest containing various provisions of the Act thoroughly analyzed incorporating therein relevant and important observations of the experts.

2. Dr. Niraj Kumar, in his book, “Handbook on Right to Information Act, 2005”, has given a detailed analysis of evolution and salient aspects of Right to information Act with commentary on the statutory provisions and practices the world over. It also provides sample questions and specimen forms for making applications. The author has divided his book into 12 chapters and 5 (A to E) parts. The remarkable feature of this book is the case analysis of Supreme Courts, High Courts and Central Information Commission (CIC) decisions. The analysis has been divided into various Sections. This categorization makes the understanding of the Act easy and simple. In this book, efforts have been made by the author to cover almost all the aspects of Right to Information Act, 2005 from its historical perspective to worldwide discussion and critical evaluation.57

3. Dr. J.N. Barowalia, author of the “Commentary on the Right to Information Act”58 has given a detailed commentary on Right to Information law. His book discusses the provisions of Right to Information Act, 2005 along with the decisions of Supreme Court, High Courts and Central Information Commission.


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Regulations, High Courts and Subordinate Courts RTI Rules, Office Memorandums of Department, Government of India Guidelines for various stake holders, Acts and Rules of foreign countries, comparative study of RTI Law in foreign states, model forms etc. In a nutshell, this book is very helpful to understand different aspects of right to information law. The author has divided this book into six chapters and ten divisions.

5. The book, “Commentary on The Right to Information Act, 2005”, by N.K. Acharya,\(^6^0\) comprises allied Rules and Acts along with the provisions of Right to Information Act, 2005. The most useful feature of this book is its question answer form, which is helpful in removing a number of doubts concerning the Right to Information law.

6. "Handbook for Public information officers",\(^6^1\) edited by Dr. R.S. Tolia, highlights many administrative reforms, which can be brought through effective implementation of the Right to Information Act. His book is useful for various stake holders, especially the Public Information Officers. This book is a useful guide, a ready reference, an interpreter of my expressions.

1.8 Chapter Plan of the Study

First Chapter gives introduction to the topic, its problem profile, object of study, significance of study, research hypothesis and analysis of literature, genesis of Right to Information in India, i.e., the role played by MKSS (public hearings and public agitations etc.).

\(^6^0\) N.K. Acharya, “Commentary on the Right to Information Act” (Hyderabad: Asia Law House) 2006.

provisions already existed under different laws before the implementation of Right to Information Act, 2005, role of different State Governments to implement Right to Information Act 2005 in India, Role of Commonwealth regarding Right to Information in India, Efforts made by National Campaign for People’s Right to Information in 1996.

The central theme of Second Chapter is that Right to Information promotes an open government system, like rule of law, participatory government, transparent and corruption free system, responsiveness of the government, effectiveness and efficiency of the government, and accountability of the government.

Third Chapter deals with the role of the government to implement the Right to Information Act, 2005. Certain goals are specified under Section 4 of Right to Information Act, 2005. All the public authorities are required to achieve these goals; in other words, discharge these obligations defined under this Section. Further, the obligation of the government to prepare programmes as defined by Section 26 of the Right to Information Act, 2005, is also defined in this chapter.

Fourth Chapter explains the relationship of Right to Information Act, 2005 with the Constitution and other legislations, i.e., The Official Secrets Act, 1923, The Indian Evidence Act, 1872, Destruction of Official Record Act, 1917, Public Record Act, 1993, Public Interest Disclosure and Protection of Persons Act, 2010, Freedom of Information Act, 2002. The main theme of this chapter is to highlight the harmonious relationship of these enactments with the Right to Information Act, 2005. All these enactments contain certain provisions in favour and disfavour of the disclosure of information.

Fifth Chapter highlights the significant role of Judiciary to develop Right to Information Act, 2005, in our country by giving
landmark decisions in favour of people's right to know. The present chapter has divided the role of Judiciary in two parts, i.e., Role of Judiciary before the enforcement of Right to Information Act, 2005 and Role of the Judiciary after the enforcement of Right to Information Act, 2005. Decisions of the Supreme Court and High Courts have been discussed in this chapter.

Sixth Chapter defines the power and functioning of the Central Information Commission since 2005. This chapter explains the constitution of the Central Information Commission (CIC). With the help of various decisions of the Central Information Commission, an analysis has been made regarding the actual functioning of this Commission, what kind of action has been taken on the complaints received, and the procedure adopted by the Commission.

In the Seventh Chapter, a case study is presented on the Punjab State Information Commission since 2006 to analyze the nature of complaints and procedure adopted by the State Information Commission.

Eighth Chapter deals with the empirical work of this topic. In this chapter researcher has made an analysis of the data collected from Information Commissioners (State Information Commission Punjab), Public Information Officers (PIOs) & Assistant Public Information Officers (AIPOs) of the different Punjab Government Departments and from the stake holders.

Finally, based on the research, the conclusion has been drawn and few suggestions have been given with a view to enforce the Right to Information Act, 2005 with efficacy.