Chapter-3

Constitution of India and the Restrictions on openness of Government

3.1: Constitution of India and Open Government:

At present almost all the countries in the world are developing their tendencies towards the democratic form of Government which needs all time participation of the people. This is reflected by the ‘Preamble’ of the Constitution of India. The constitutional head of our country is not hereditary but elected by the people indirectly and a clear procedure for his election is provided by the Constitution of India itself. At the same time the framers of our Constitution have borrowed the concept of Parliamentary form of Government from England. Here also, the representatives of Parliament are elected by the people directly. So, a democracy with Parliamentary form of government always needs people’s active and direct participation. Therefore, as the active participation of people in a democracy as well as in a Parliamentary form of government is a must, so that people may have access to the right to information about
the functioning of government. With this end in view, at the present moment, in the democratic countries the accent is on 'open government.' The assertion of Justice Bhagwati in Raj Narin's case\(^1\) that, "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." No democratic government can survive without accountability and the basic postulates of accountability is that the people should have information about the functioning of the Government so that their faith in their Government is not eroded. Again, if the processes and functioning of the Government are kept secret and hidden from public scrutiny, it will promote oppression, corruption and misuse or abuse of powers and authority at the same time. An open Government is a clear safeguard against political and administrative arbitrariness and inefficiencies. Therefore, disclosure of information regarding the functioning of Government must be in general rule and secrecy should be an exception, whenever 'Public Interest' so demands. And as such the Parliament has enacted the Right to Information Act, 2005 only on the basis of such demands and needs.

\(^1\) State of Uttar Pradesh -vs- Raj Narain; AIR 1975 SC 865
The Constitution of India does not specifically provide for the right to information as a fundamental right through the constitutional philosophy amply support it. Preamble of the Constitution constitutes India into a democracy and secures for its people, justice-social, economic and political, liberty of thought, expression and belief. This justifies the conclusion that the Indian Constitution is drawn upon the idea of open government. In the same manner Article 19(1)(a), freedom of speech and expression and Article 21, right to life and personal liberty would become redundant if information is not freely available. Articles 39(a), (b), (c) of the Constitution make provision for adequate means of livelihood, equitable distribution of material resources of the community to check concentration of wealth and means of production. As today, information is wealth, hence, need for its equal distribution can not be over emphasized. Taking a cue from this constitutional philosophy, the Supreme Court of India found a habitat for freedom of information in Articles 19 (1) (a) and 21 of the Constitution. Certainly, poverty of information depreciates life and stultifies free speech. Thus in India right to information is a basic human right which can not be abridged, only reasonable restrictions can be imposed and that too on the grounds mentioned in Article 19(2) of the
Constitution. Information in public sphere is owned by the people and government is only a trustee. Unique fact is that in India right to information is a direct consequence of people movement for reaching socio-economic justice to the deprived sections of the society whose entitlements under rural development schemes were being deprived due to lack of information on developmental projects. It is heartening to note that the highest Bench in India while recognizing the efficacy of the 'right to know' which is a sine-qua-non of a really effective participatory democracy raised the simple 'right to know' to the status of a fundamental right. This concept of 'right to know' is part and parcel of freedom of speech and expression and is thus a fundamental right guaranteed under Article 19 of the Constitution. It is also equally paramount consideration that justice should not only be done but also be public recognized as having been done.*2

In Dinesh Trivedi-vs- Union of India,*3 a political activist was killed. One of the persons arrested was a known politician. A committee*4 was set up to inquire into the activities and

* 3. (1997)4 SCC 306
* 4. Vohra Committee Report
links of mafia organizations and criminalization in politics. The committee submitted the report which was not made available to public. A writ petition was, therefore, filed in the Supreme Court under Article 32 of the Constitution. Allowing the petition, issuing directions, and emphasizing on the right to know, the court stated that-

“In modern constitutional democracies, it is axiomatic that citizen have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate social policies of governance aimed at their welfare”.*

It was observed that –

Democracy.... Expects openness and openness is a concomitant of a free society, sunlight is the best disinfectant.*

3.1 (a) **Article 19 of the Constitution of India and Open Government:**

After the 44th Amendment Act, 1978, the Constitution of India guarantees six fundamental rights under Article 19 of it and the

---

* 5. Dinesh Trivedi-vs-Union of India; (1997) 4 SCC 306
* 6. Ibid at P-314 (SCC) (Per Ahmadi, C.J.)
same may be styled as the seven ‘freedoms’ : viz (1) Freedom of speech and expression, (2) Freedom of Assembly, (3) Freedom of Association, (4) Freedom of movement, (5) Freedom of residence and settlement and (6) Freedom of profession, occupation, trade or business. However, the scope of the guarantee has been defined by limitations contained in the Article itself. According to M.P. Jain, freedom of speech is the bulwark of democratic government. The freedom is essential for the proper functioning of the democratic process. In Union of India-vs-Motion Picture Association,*7 it was held that “free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of different view points, debating and forming one’s own views and expressing them, are the basic ideas of a free society. This freedom alone makes it possible for people to formulate their own views and opinions of a proper basis and to exercise their social, economic and political rights in a free society in an informed manner. Restraints on this right have been jealously watched by courts”

* 7. AIR 1999 SC 2334; (1999) 6 SCC 150
In S. Rangarajan –vs- P. Jagjivan Ram,*8 it was held that- “The democracy is a government by the people via open discussion. The democratic form of government itself demands by its citizens an active and intelligent participation in the affairs of community..... The democracy can neither work nor prosper unless people go out to share their views”

In Secretary Ministry of Information and Broadcasting, Govt. of India –vs- Cricket Association of Bengal,*9 after citing Art. 10 of the European Convention on Human Rights, it was observed, “The freedom of speech and expression includes the right to acquire information and to disseminate it. Freedom of speech and expression is necessary for self expression which is an important means of free conscience and self fulfillment. It enables people to contribute to debate on social and moral issues. It is the best way to find a trust model of anything, since it is only through it that the widest possible range of ideas can circulate. It is the only vehicle of political disclosure so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of all sorts.

The right to communicate, therefore, includes right to communicate through any media that is available, whether print or electronic or audio-visual, such as advertisement, movie, article, speech etc."

It is well known that democracy is based on free debate and open discussion and therefore it is the only correction of Governmental function in a democratic set up. If democracy means government of the people, by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making choice, free from general discussion of public matters is absolutely essential. Manifestly, free debate and open discussion, the most comprehensive sense, is not possible unless there is a free and independent press. Indeed the true measure of the health and vigours of democracy is always to be found in its press. Look at its newspapers- do they reflect diversity of opinions and views, do they contain expression of dissent and criticism against governmental policies and actions, or do they obsequiously sing the praises of the
government or lionize or deify the ruler. The newspapers are an index of the true character of the Government whether they are democratic or authoritarian.*10

In a landmark judgement in Union of India –vs-
Association for Democratic Reforms,*11 a three judge bench comprising Justice M.B. Shah, Justice P.V. Reddy and Justice D.M. Dharmadhikari held that the amended Electoral Reforms Law passed by the Parliament is unconstitutional as being violative of a citizen’s right to know under Article 19(1)(a) of the Constitution. In this case the petitioners for Democratic Reforms filed a PIL and requested the court for a direction to implement the recommendation made by the Law Commission in its 170th Report. On May 2, 2002 the Supreme Court delivered a judgment and directed the Election Commission to issue a notification making it compulsory for those who contest elections to make available information about their education, assets, liabilities and criminal antecedents for the benefit of voters. The Election Commission acted upon the order of the court and issued the

* 10. Maneka Gandhi-vs- Union of India; AIR 1978 SC 597; (1978)1 SCC 248
notification making it compulsory to provide above informations before filing their nominations for contesting elections. Thereafter, Parliament amended the Electoral Law (Representation of peoples) Act, 2002 and negativated the court’s judgment and Election Commission notification and subsequently as per the amended R.P.A., the concerned datas such as assets and liabilities etc. are required only from the candidates those who are elected and not from the other candidates. In this context a clear discussion is made in detail the later part of this chapter 1.

The PULC*12 moved the court challenging the validity of Electoral Reforms Law as being violative of a citizen’s right to information under Art 19 (1)(a) of the Constitution. Section 33 of the amended RPA provided “notwithstanding anything contained in any judgment of any court or any order of the Election Commission no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made there under”. Thus the amended RPA provided that only candidates who are elected were

* 12. PUCL vs Union of India; AIR 2003 SC 2363
required to give details of their assets and liabilities to the concerned presiding officers of the Houses, and not the MP's who are not elected. The court held that Parliament had no legislative competence to direct court. The Parliament can not declare that the law declared by the Supreme Court is not binding. The court restored its Mat 2, 2002 verdict and directed the Election Commission to issue a fresh notification for the implementation of its judgment. Keeping the amended RPA in mind the court asked whether there was any necessity to keep the voters in dark about any murder, dacoity or rape committed by a candidate or about his ill-gotten money which could be used for election. Justice Shah said that the judgment was aimed at cleansing the democracy of unwanted elements and give the country a competent legislature.

The Supreme Court has given a broad dimension to Art. 19(1)(a) by laying down the proposition that freedom of speech includes not only communication, but also receipt of information. Communication and receipt of information are the two sides of the same coin. Right to know is a basic right of the citizens of a free country and Art 19(1)(a) protects this right. The right to receive information springs from the right to freedom of speech and
expression enshrined in Art 19(1)(a). The freedom to receive and to communicate information and ideas without interference is an important aspect of the freedom of speech and expression. Without adequate information, a person can not form an informed opinion. When allegations of political patronage are made, the public in general has a right to know the circumstances under which their elected representatives got such allotment. In case of a matter being part of public records, including court records can not be claimed.

It has already been stated that Art 19(1)(a) of the Indian Constitution stated about the freedom of speech and expression as fundamental right. It includes (a) The right to free speech and expression includes the right to receive and impart information. For ensuring free speech right of the citizens of the 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 in all issues.

touching them.*15 (b) Right to know is implicit in the right of free speech and expression. Disclosure of information regarding functioning of the Govt. is the rule.*16 (c) Freedom of speech include the right to know every public act everything that is done in a public way, by their public functionaries.*17 (d) Freedom of speech and expression includes the right of the citizen to know about the affairs of the Government.*18 (e) Right to freedom of speech and expression would cover in its old right of the voter to know the antecedents of the candidates who is contesting the election. The said right of the voter can be abridged only by passing a legislation as provided in Art 19 (2)*19 (f) Right to privacy, i.e. from unreasonable search to seizure.*20 (g) Right to information is a facet of the right to freedom of speech and expression and hence a fundamental right,*21 though it does not carry with it an unrestricted right to gather information.

*15. Secretary Ministry of Information and Broadcasting, Govt. of India-vs-Cricket Association of Bengal, (1995)2 SCC 161
*16. S.P. Gupta-vs-Union of India; 1981 (Supp) SCC 87
*19. Peoples’ Union for Civil Liberties--vs-Union of India; (2003)4 SCC 399; AIR 2003 SC 2363
*20. District Registrar and Collector-vs-Canara Bank; AIR 2005 SC 186 (20.05) 1 SCC 496
In recent times, the right of the citizens to obtain information from the Government in regard to the functioning of the government has come to the forefront in all democratic countries. To ensure the continued participation of the people in the democratic process, they must be kept informed of the vital discussion taken by the Government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. But the said right is also subject to reasonable restrictions. In the interest of security of state such reasonable restriction is always permissible which is inserted under Art. 19(2) of the Constitution of India. The right to know relating to public affairs has been held up as a 'basic right' under the Constitution of India. The right to receive information may be deduced as a counterpart of the right to impart information, which is an ingredient of the freedom of expression guaranteed by Art 19(1)(a). It was held in that case, that people at large have a right to know in order to be able to take part in a participatory development of the industrial life and democracy. Right to know is a basic right which citizen of a free country aspire in the broader horizon of the right to live. In this age, in our land, under Art 21 of

* 23. R.P. Ltd. -vs- Indian Express; AIR 1989 SC 190; (1988)4 SCC 592 (para 35);
 Indian Express-vs-Union of India; AIR 1986 SC 515; (1985)1 SCC 641 (para 66)
* 24. Nakkeragopal-vs-State of Tamil Nadu; (2001)4 CTC 423 (Mad)
our Constitution, that right has reacted a new dimension and urgency. That right puts better responsibility upon those who take upon themselves the responsibility to inform. A person campaigning for a public interest drive has to keep in mind always national security and national interest since it is above the right to information of citizens.\textsuperscript{25}

In Hanif Nanji Gawda-vs- State of Karnataka\textsuperscript{26} it was held that- any limitation would be justified only where the strictest requirement pf public interest requires.

It is, therefore. Clearly mentioned that the concept of open government is the direct evolution from the right to know which inferred in the right to freedom of speech and expression as it is guaranteed under Art 19(1)(a) of the Constitution of India. We must all be aware of the course that we are setting for the future of democratic governance. That is why the ‘right to know’ is the most fundamental of all those rights, which are critical for upholding human dignity.

\textsuperscript{25} S.P. Anand-vs- Union of India; AIR 2000 MP 47
\textsuperscript{26} 1997 AIHC 78 (Kant)
3.1 (b) **Article 21 of the Constitution of India and open Government:**

The Constitution of India defines Art. 21 as “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The Article 21, prior to the decision in Maneka Gandhi’s case*27 guaranteed the right to life and personal liberty to citizens only against the arbitrary action of the executive, and not from legislative action. The state could interfere with the liberty of citizens if it could support its action by a valid law. But after the Maneka Gandhi’s decision Article 21 now protects the right of life and personal liberty of citizen not only from the Executive action but from the Legislative action also. A person can be deprived of his life and personal liberty if two conditions are complied with, *firstly*, there must be a law and *secondly*, there must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable which embodies the principles of natural justice.

* 27. Maneka Gandhi-vs-Union of India; AIR 1978 SC 597
Accordingly, the court gave a new dimension to Article 21 by the decision in Maneka Gandhi's case. It held that the right to 'live' is not merely confined to physical existence but it includes within its ambit the right to 'live with human dignity.' Similarly, the court in Francis Coralie-vs- Union Territory of Delhi,*28 had clearly mentioned that the right to 'live' is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with follow human being. As if, under the umbrella of Article 21 of the Constitution of India the court reiterated that right to 'live' includes "the right to live with human dignity." Hence, it is implied that to live with human dignity every citizen must have been informed about the functioning of the government. It is because, the right to information confirms the

* 28. AIR 1981 SC 746
constitutional right to information, which is a part and parcel of both the Articles 19 as well as 21 of the Constitution of India. Obviously in a democratic set up, as it means government of the people, by the people, so every citizen have got the right to know or right to be informed in all other matters except and otherwise restricted by the statute itself. The concept of open government is a direct throw from the concept of right to know as well as the peoples access to information. At present, being a citizen in a democratic country every kind of information relating to governmental functioning is needed by him for the uplifting of the nation in the modern democratic set up. As enumerated under Article 21 of the Constitution, “no person shall be deprived of his life and personal liberty” and also “right to live with human dignity”, so every citizen should have been informed regarding the subjects as and when it is needed. To have a dignified life, it is the constitutional right to the citizen to enjoy the fundamental rights. ‘Right to vote’ is a fundamental right in which voters have right to know about their candidates, ‘Right to life’ and ‘personal liberty’ as enumerated under Article 21 of the Constitution of India are nothing but the two sides of the same coin. Without liberty to individual anybody’s life will be regarded as an incomplete one. Also ‘right to live with human dignity’ is a part and parcel to
'right to life' which is recognized as a fundamental right under Article 21 of the Constitution of India. Therefore, access to information about governmental proceedings is also an implied provision to 'right to know' and the same is considered to be a valuable instrument in a democratic country. The 'life' and 'personal liberty' can not be fulfilled unless people have much more information about the functioning of the government. Accordingly, right to 'life' and 'personal liberty' includes 'right to live with human dignity' and the same includes citizen's access to information and in the same way the people in a democratic country might have the utility of 'openness of government.' That is why Article 21 of the Constitution of India have an indirect relation of the concept of 'openness of government'. By reading Art. 21 along with Several Directive Principles, such as Articles 39(e) and (f), 41 and 42, the Supreme Court has given a very broad connotation to Article 21 so as to include therein "the right to live with human dignity." The concept "derives its life breath from the Directive Principles of the State Policy"*29

* 29. Bandhua Mukti Morcha-vs- Union of India; AIR 1984 SC 802
3.1. (b) (i) **Right to privacy vis-à-vis open Government**

The Constitution does not grant in specific and express terms any right to privacy as such. This right to privacy is not enumerated as a Fundamental Right in the Constitution of India. However, such a right has been culled by the Supreme Court from Art 21 and several other provisions of the Constitution read with the Directive Principles of State Policy.*

In R. Rajagopal-vs- State of Tamil Nadu**31, popularly known as ‘Auto Shanker Case’, the Supreme Court has expressly held the ‘right to privacy’ or the right to be let alone is guaranteed by Article 21 of the Constitution. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters. None can publish anything concerning the above matters without his consent whether truthful or otherwise and whether laudatory or critical. If he does so, he would be violating the right of the person concerned and would be liable in an action for damages. However, position may be differed if he voluntarily puts into controversy or voluntarily invites or raises a controversy.

* 30. Part-iv of the Constitution of India
Through ‘right to privacy’ is guaranteed under Article 21 of the Constitution yet restrictions can be imposed on it for the prevention of crime, disorder or protection of health or morals or protection of rights and freedom of others. Hence, ‘openness’ will come in that situation so that the wrongdoer should have been punished or to be compensated. On in other words it can be expressed as exception on to the rule of Right to privacy, which entails two conditions –

*Firstly*, if the publication of any matter is based on public record including court record it is unobjectionable and the right to privacy no longer exist, but it becomes a legitimate subject for comment by press and media among others. It takes in to account the matters of ‘decency’ too under Art. 19 (2) specially in case of female where she is the victim of sexual assault, kidnapping, abduction or the crimes of like nature.

*Secondly*, the right to privacy or remedy of action for damage is not available to public officials so long as the criticism concerns the due discharge of their public duties, unless the official can establish that the statement had been made with reckless disregard of truth.
Thus, the Apex Court held in the instant case*32 that the state or its officials have no authority in law to impose prior restraint on publication of defamatory matter. The public officials can take action only after the publication if it is found to be false.

In state of Maharashtra -vs- Madhulkar Narain Mardikar,*33 it has been held that the ‘right to privacy’ is available even to a women of easy virtue and no one can invade her privacy. A police Inspector visited the house of one Banubai in uniform and demanded to have sexual intercouse with her. On refusing he tried to have her by force. She raised a hue and cry. When he was prosecuted he told the court that she was a lady of easy virtue and therefore her evidence was not to be relied. The court rejected the argument of the applicant and held him liable for violating her right to privacy under Article 21 of the Constitution.

In Ms X -vs- Mr Z*34 the court held that the right to privacy, though a fundamental right forming part of right to life

---

* 32. R. Rajagopal-vs- State of T.N. AIR (1994)6 SCC 632
* 33. AIR 1999 SC 495; (1991)1 SCC 57
* 34. AIR 2002 Delhi 217
enshrined under Article 21, is not an absolute right. Thus, when such right has become a part of the public document, in that case a person can not insist that his right to privacy is being violated. Hence, it can be ascertained that the concept of 'openness' works on or puts limitation on the constitutionally derivative right to privacy when such is the matter of public and court record and then, if there is genuine publication of criticism regarding the discharge of public duty by public officials openness of governmental works sometimes imposes limitations to the right to privacy.

3.1 (b) (ii) Telephone Tapping : an Invasion on Right to privacy :

In a historic judgment in people's Union for Civil Liberties-vs-Union of India, popularly known as 'phone Tapping case'. The Supreme Court has held that telephone tapping is a serious invasion of an individuals right to privacy which is part of the right to 'life and personal liberty' enshrined under Art 21 of the Constitution, and it should not be restored to by the state unless there is public emergency or interest of public safety requires. The petition was filed by way of a public interest litigation under Art 32 of the

* 35. AIR 1997 SC 568
Constitution by the people's union of Civil Liberties- a voluntary organization- highlighting the incidents of telephone tapping in the recent years. The petitioners has challenged the constitutional validity of section 5 of the Indian Telegraph Act, 1885 which authorizes the central or state Government to resort to phone tapping in the circumstances mentioned therein. The writ petition was filed in the wake of the report on 'Tapping of Politicians Phones' by the central Bureau of Investigation (CBI).

The court has expressed displeasure that the state has so far not framed rules to prevent misuse of the power. Therefore, the court laid down exhaustive guidelines to regulate the discretion vested on the state under section 5 of the Indian Telegraph Act for the purposes of telephone tapping and interception of other messages so as to safeguard public interest against arbitrary and unlawful exercise of power by the Government. In the absence of just and fair procedure for regulating the exercise of power under section 5 (2) of the Indian Telegraph Act, it is not possible to safeguard the rights of citizens guaranteed under Arts 19(1)(a) and 21 of the Constitution.
Hence, the court has laid down the following procedural safeguards for the exercise of power under section 5(2) of the Indian Telegraph Act-

1) An order for telephone tapping can be issued only by the Home Secretary of the Central Government or the State Governments. In an urgent Case, the power may be delegated to an officer of the Home Department of the Central and State Governments not below the rank of Joint Secretary.

2) The copy of the order shall be sent to the Review Committee within one week of the passing of order.

3) The order shall, unless renewed, cease to have effect at the end of two months from the date of issue. The authority making the order may review before that period if it considered that it is necessary to continue the order in terms of section 5 (2) of the Act.

4) The authority issuing the order shall maintain the records of intercepted communications, the extent the material to be disclosed, number of persons, their identity to whom the material is disclosed.
5) The use of the intercepted material shall be limited to the minimum that is necessary in terms of section 5(2) of the Act.

6) The Review Committee shall on its own, within two months, investigate whether there is or has been a relevant order under section 5(2) of the Act.

7) If on investigation the Review Committee concludes that there has been contravention of the provisions of section 5(2) of the Act, shall set aside the order. It can also direct the destruction the copies of the intercepted material.

8) If on investigation the Review Committee comes the conclusion that there has been no contravention of the relevant provision of the Act, it shall record the finding to that effect.

Surveillance per se may not violate individual or private rights including the right to privacy. Right to privacy is not enumerated as a Fundamental Right either in terms of Article 21 of the Constitution of India or otherwise. It, however, by reason of an
elaborate interpretation by this court in Kharak Singh-vs-State of UP*36 was held to be an essential ingredient of 'personal liberty'*37. Accordingly ‘talking on telephone’ is included to ‘Right to Privacy’ which is the right of a person. Under the coverage of such right the bureaucrats, the Politicians and the Administrative bodies are often trying to transmit their views more or less with evil intentions and the same can be regarded as misuse of power, corruption etc, be the hurdle for the development of a nation. It is, therefore, in such a situation indeed necessary to ‘restrict’ their ‘right to privacy’ and the Legislature play a pivotal role to make a new legislation so that it can be included within the grounds of restrictions under Art. 19(2) of the Constitution of India.

3.2 : The Assam Right to Information Act, 2001 vis-à-vis open Government:

Prior to the Right to Information Act, 2005, the Assam Right to Information Bill was proposed with a view to provide for right to access to the information to the citizens of the State and in relation to the matters connected therewith or incidental thereto. It is

* 36. AIR 1963 SC 1295; (1964)1 SCR 332
expedient to provide for right of access to the information to the citizens of the state so as to promote openness, transparency and accountability in administration and thereby to ensure effective participation of people in the administration and thus making democracy more meaningful. Accordingly the Act was enacted in the year 2001\textsuperscript{38} and for which the Governor of the state of Assam gave his assent on 1\textsuperscript{st} May, 2002.\textsuperscript{39} Afterwards it came into force after the State Government’s Official Notification published in the Official Gazette.\textsuperscript{40} It consists of 11 sections and through these provisions it maintains to provide informations amongst the citizens of the country as and when it needs. It provides for maintenance of records by the every office of the State Government or Public Authority under section 3 of the Act. Section 4 of the Act generally provides for the right to seek, receive and impart information to every citizen along with the Official Secrets Act, 1923 (Central Act No XIX of 1923). The remaining provisions of the Act from sections 5 to 11 ascertained about the procedure for supply of information, Appeals, Power to

\textsuperscript{38} [Published in the Assam Gazette Extraordinary (No. 256), dated 1\textsuperscript{st} March, 2002] PP-1984

\textsuperscript{39} [Published in the Assam Gazette Extraordinary (N. 357) dated 7\textsuperscript{th} May, 2002] PP-3014-3023

\textsuperscript{40} (With effect from 01-02-2004), vide Notification No AR.5/2001/Pt/275, dated the 8\textsuperscript{th} December, 2004, [published in the Assam Gazette Extraordinary (No 239) dated 8\textsuperscript{th} December, 2004]
Moreover, since the enactment of the statute it acts for the benefit of the citizens of the state to have adequate information from the functioning of the governments and promote them (the citizens of the state) for a more effective and participatory democracy. From the very day of its effectiveness*41 the Act always trying to promote the concept of openness, transparency and accountability in administration and accordingly the people can participate in the administration actively. Unlike the state of Assam the other different states of the country also have taken some effective measure for the enactment of their state Information Acts. Hence, specifically the citizens of the state of Assam etc. are more advance in this aspect as because after three years back of its effectiveness, the Right to Information Act, 2005 (Central Act 22 of 2005) came into force throughout the country in the field of ‘information regime.’

* 41. w.e.f. 01-12-2004
Hence, at present in addition to this Assam Right to Information Act, 2001 we are having the central legislation in this field which strengthen the concept of openness of government as well as the democracy in its true sense of the term.

3.3. Restrictions under the Right to Information Act, 2005

Every citizens shall have the right to information, subject to the provisions of the Act. It provides the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. According to this Act, the Central Public Information Officer or State Public Information Officer has to provide information as per the specified provision of it. But in certain circumstances the concerned officers may reject the same for any of the reason specified in sections 8 and 9.

Section 8 of the Act provides restrictions on informations, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or
economic interest of the state, relation with foreign states, forbidden informations disclosure of which would cause a breach of privilege of Parliament or State Legislature, informations relating to commercial confidence, trade secret or intellectual properties, the disclosure of which would harm the competitive position of a third party, information on fiduciary relationship, confidential information of foreign land, information relating to the physical safety of person, cabinet papers, information relating to personal information and information prohibited under the Official Secrets Act. 1923*42 are subject to overriding public interests. A public authority may allow access to information where disclosure in public interest outweighs the harm to the protected interests.

Under section 9 of the Act, a request for information may be rejected where such request for providing access would involve an infringement of copyright subsisting in a person other than the state.

*42. The second Administrative Reforms Commission headed by Veerappa Moily has recommended that the Official Secrets Act, 1923 be repealed because it is incongruous with the regime of transparency in democratic society—The Hindu, Delhi Ed. June 11, 2006 P-10
The Act further restricts information relating to certain governmental organizations listed in 'Second Schedule'. Such organizations include Intelligence Bureau, Research and Analysis Wing of the Cabinet Secretariat, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotic Control Bureau, Aviation Research Centre, Special Frontier Force, Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police, Central Industrial Security Force, National Security Guards, Assam Rifles, Special Service Bureau, CID, CBI, Dadra and Nagar Haveli and Special Branch and Lakshadweep Police. Agencies specified by the State Governments through a Notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human right valuations could be given but only with the approval of the Central or State Information Commission.

Hence, the statute itself have mentioned various restrictions through its inserted provisions. We are in a democratic country and at this present stage it is needless to say that every
information should reach to the people so that we may expect for good governance as well as an open government. It is worth mentioning that the right to information is integral to fundamental freedoms but there are various factors obstructing this right. The custodian of such information as have great public interest relevance often resist disclosure for fear of exposure. It is necessary, therefore, to survey these foci of resistance and to study what steps have to be taken for the free exercise of the informational right of the citizen. Right to information and communication has its link with the right to literacy as basic to the value of information needs to be stressed. Language is the vehicle, literacy is the capability and together communications becomes a reality. Therefore, the right to information has, as its cornerstone, the right to literacy. India and some other Third world countries have still a large barren human area of illiteracy and therefore of informational impenetrability. Whenever we have to cross such barrier, then we can expect a free and an informative society which can formulate an ‘open government’.

Hence, from the above discussion it may be further ascertained that, there has been an almost unstoppable global trend towards recognition of the right to information by countries,
intergovernmental organizations, civil society and the people. The right to information has been recognized as a fundamental human right, which upholds the inherent dignity of all human beings. The right to information forms the crucial underpinning of participatory democracy- it is essential to ensure accountability and good governance.

The greater the access of the citizen to information, the greater the responsiveness of government to community needs. Alternatively, the greater the restrictions that are placed on access, the greater the feelings of 'powerlessness' and 'alienation'. Without information, people can not adequately exercise their rights as citizens or make informed choices.

However, the free flow of information remains severely restricted by three different factors. They are- (a) The legislative framework includes several pieces of restrictive legislation, such as Official Secrets Act, 1923; (b) The pervasive culture of secrecy and arrogance within the bureaucracy and (c) The low levels of literacy and rights awareness amongst the people of India.
It is therefore, emphasized that the grounds on which information may be refused are rather vague and omnibus. Some phrases through which restrictions are permissible seems to be outside the limits drawn by Art 19(2) of the Constitution of India. In section 8(1)(a) of the Right to Information Act, 2005 enumerates that information which would prejudicially affected the sovereignty and integrity of India and security of the state could be validly refused, and the same have already stated earlier of this study. However, can information be refused on the ground of strategic or economic interests? Art 19(2) of the Constitution does not permit restrictions on freedom of speech on these grounds. Writ petitions would also lie against the decisions of appellate authorities which would be tribunals within the meaning of Articles 227 and 136 of the Constitution of India. We would like to keep our fingers crossed. The Act may be functioning properly in the near future so that the people in the participatory democracy may expect the responsiveness of the government as it needs.
3.4 Parliamentary Privileges under the Constitution of India and open Government:

The constitutional provisions regarding privileges of the state Legislature and Parliament are identical. Articles 105 and 194 provide for privileges of the Legislature in India. While Article 105 deals with Parliament and Article 194 deals with State Legislatures. The Constitution expressly mentions two privileges, namely- (a) freedom of speech in the Legislature and (b) right of publication of its proceedings.

The House of commons in England, passed a resolution on July 16, 1971, waving its privilege as regards the publication of its proceedings. Such publication is no longer to be regarded as a breach of privilege of the House except when the proceedings have been conducted within closed doors or in private, or when such publication has been expressly prohibited by the House.

In India, however, the position in this respect remains as it was in Britain before 1971. The House of Parliament in India still
enjoy the same power as the House of commons did before 1971 in this respect. In the famous Searchlight Case,*43 the Supreme Court has ruled that publication of inaccurate or garbled version of speeches delivered in the House, or misreporting the proceedings of the House amounts to a breach of privilege of the House.

The court has also held that publication by a newspaper of a portion of a member’s speech in the House which the speaker had ordered to be expunged would amount to breach of privilege of the House for which it can take action against the offending party. The effect in law of the order of the speaker to expunge a portion of the speech of a member may be as if that portion had not been spoken. A report of the whole speech in such circumstances, through factually correct, may, in law, be regarded as perverted and unfaithful report of a speech i.e. publishing the expunged portion in derogation of the orders of the speaker passed in the House may, prime facie, be regarded as constituting a breach of privilege of the House.

* 43. M.S.M. Sharma-vs-Sinha; AIR 1959 SC 395; 1959 Supp(1) SCR 806
Besides the above, the House in India have claimed a few more privileges with respect to the publication of their proceedings. Following constitute breach of privilege of a House. They are—

a) Disclosing the proceeding of a secret session of the Parliament.

b) Misrepresentation of a report of a Parliamentary committee by a newspaper.

c) Misreporting or misrepresenting the speech of a member of a House of Parliament.

d) Misreporting or misrepresentation of the proceeding of the House.

e) Report or the conclusions of a committee of the House ought not to be publicized, disclosed or referred to by anyone before the same are presented to the concerned House,
f) No document or paper presented to a committee should be published before the committee's report is presented to the House.

Reference may be made in this connection to L.N. Phukan-vs-Mohendra Mohan.*44 There a case of breach of privilege of the House arose because the newspaper published the report of the enquiry Commission when it was under the active consideration of a committee of the House.

Had the report of the enquiry Commission been published before it reached the committee, no case of breach of privilege would have arisen because the enquiry Commission can not be regarded as an organ of the House as it is appointed by the government under an Act of Parliament- The Commission of Inquiry Act, 1952

*44. AIR 1965 A&N 75
g) Premature publication of proceedings of a committee of a House, or the report, or the conclusions arrived at by the committee, or the proceedings of a meeting thereof before the committee completes its task and present its report to the House.

h) Premature publication of motions tabled before the House.  

From the above, it may be observed that such legislative Privileges do somewhat adversely affect the freedom of the press as the press is not free to publish the proceedings of a House freely; the press has to take care not to publish anything which may amount to a breach of privilege of any House. This results in substantial restriction on the freedom of the Press. Which is provision of right to freedom of speech an expression as guaranteed under Art 19(1)(a) of the Constitution of India. Therefore, in a democratic country people’s consciousness and active participation in the governmental proceedings are the basic ingredients and as such the concerned citizen of the country should have been informed up-to-date as they

* 45. Refer to Jain, M.P. : Parliamentary privileges and the press, Ch.-7
need. But the law of the land (i.e. the Constitution) itself have given such a ‘veil’ more or less that is regarded as a barrier to have an absolute ‘open government’. Inserting Articles 105 and 194 of the Constitution of India regarding Parliamentary Privileges, it has given certain power upon the members of the Parliament as well as the members of the State Legislative Assemblies, by which, under such veil they are doing so many illegalities that can not be coming to the lime-light because of such legislative means. Until and unless such veil is not removed or the concerned barrier is not yet broken, none can expect good governance and the proper functioning of the Right to Information Act, 2005 will become inoperative in its true sense. Accordingly we will be unable to have an open government as a whole.

Therefore this research study has directly emphasized that the Parliament should try to make some new legislations through which the citizen of the country may have a new flow of inquisitiveness regarding the proper functioning of the government in a participatory democracy so that the same might be able to remove the earlier interrupted stakeholders easily. Otherwise, we will be
always shouting for an 'open government' but with all such barriers we might have vague democracy and the members of the Parliament, the members of the state legislative Assemblies as well as the ministers, through bureaucrats are always doing any kind of works i.e. legal or illegal without any hesitation and the handicapped citizens will be the silent spectators of it. It is worth mentioning that the people of India always in need of and 'inter-active democracy' through which they can participate freely and have got every information as they need.

3. 5 Article 19(2) of the Constitution of India and the open Government

The Constitution of India under Article 19(2) have mentioned certain grounds on which restrictions on the freedom of speech and expression can be imposed. These restrictions was imposed according to the Constitution (First Amendment) Act, 1951 and the Constitution (Sixteenth Amendment) Act, 1963.
Since right to information is a constituent of the freedom of expression under Article 19(1)(a), the amended Sec. 33(B) of Representation of People Act, 1951 which provides that notwithstanding anything contained in the judgment of any court or directions issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the rules made there under, is on the face of it beyond the legislative competence, as the Supreme Court has held that the voter has a Fundamental Right under Article 198(1) to know the antecedents of candidate and was therefore ‘ultra vires’ Article 19(1)(a).*46

It has been said that although elections are fought by political parties, the same would be a force if the voters are unaware of the antecedents of candidates contesting elections and it would be a vote without any basis. Such elections can not be considered as free or fair. The concomitant of the right to vote which is the basic postulate of democracy is two fold. They are –

a) Formulation of an opinion about the candidates and,

* 46. PUCL-vs-Union of India; AIR 2003 SC 2363; (2003)4 SCC 399
b) The expression of choice by casting a vote in favour of the candidate preferred by the voter.*47

In Peoples Union for Civil Liberties,*48 the petitioners sought disclosure of information relating to safety violations and defects in various nuclear power plants, the court upheld the contention of Union of India that data about fissile materials are matters of sensitive character which may enable the enemies of the nation of monitor strategic activities and therefore any information relating to training features, processes or technology of nuclear plants can not be disclosed.

Right to information is a small surface of the right to freedom of speech and expression as contained in Article 19(1)(a) of the Constitution. Hence, right to information indisputably is a Fundamental Right. But the right does not carry with it an unrestricted right to gather information. A reasonable restriction on the exercise of the right to know or right to information is always permissible in the interest of the security of the state. Generally, the

* 47. PUCL-vs- Union of India; AIR 2003 SC 2363; (2003)4 SCC 399
* 48. PUCL vs Union of India; (2004)2 SCC 476; AIR 2004 SC 1442
exemptions/exceptions under the laws referred to in Article 19(2) entitled the Government to withhold information relating to the following matters –

a) International relations.

b) National security (including defence) and public safety;

c) Investigation, detection and prevention of crime;

d) Internal deliberations of the Government;

e) Information received in confidence from a source outside the Government;

f) Information which if disclosed, would violate the privacy of the individual;

g) Information of an economic nature (including trade secrets) which, confer an unfair advantage on some persons or concern, or, subject some persons or Government to an unfair disadvantage;

h) Information which is subject to a claim of legal professional privilege, e.g. communication between a legal adviser and the client; between a physician and the patient;
i) Information about scientific discoveries,*49

j) Much of this has been covered by the Right to Information Act.2005

In a democratic country the basic objectives of the people is to have informations which is better known as ‘openness’. Through the concept of openness of government the people might have gathered every kind of information and the same is concomitant of a free society. In this respect the Delhi High Court in Association for Democratic Reforms-vs- Union of India,*50 has emphasized that the right to receive information acquires great significance in the context of elections.

It is now common knowledge that there is criminalization of politics in India. It is a matter of great concern that anti-social and criminals are seeking to enter the political arena through the mechanism of elections to State Legislatures and even to Parliament. Parliament has not yet been able to enact a law to uproot

* 49. PUCL -vs- Union of India; (2004)2 SCC 476; AIR 2004 SC 1442.
* 50. AIR 2001 Del. 126, 137
the veil. In this scenario, the Delhi High Court has sought to cleanse the electoral process through the mechanism of the right to know of the people. The Delhi High Court has ruled that from every candidate for election, the Election Commission shall secure for the voters the following information –

1) Whether the candidate is accused of any offence punishable with imprisonment.

2) Assets possessed by the candidate, his or her spouse and dependant children

3) Facts denoting the candidate’s competence and suitability for being a Parliamentarian. This should include the candidate’s educational qualification.

4) Any other relevant information regarding candidates’ competence to be a member of Parliament or State Legislature.

On appeal, the Supreme Court substantially agreed with the Delhi High Court. The Court has upheld the right of a voter to know about the antecedents of his candidate as a part of his
Fundamental Right under Art. 19(1)(a). Democracy can not survive without free and fairly informed voters. The court has observed –

".....One-sided information, disinformation, mis-information and non-information will equally create an uniformed citizenry which makes democracy a free..... Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions".*51

The founding father of our Indian Constitution had kept so many 'pin-holes' in the majority provisions of our Constitution. Therefore it is quite easier to do any evil deeds by the Executive as well as the Ministers, through bureaucrats with a corrupt intention. Certain statutory protected umbrella like restrictions, secrecy etc. are always the barrier of democracy and accordingly no good governance will be there. That is why, the needy people may be deprived of such information as they needs. On the other hand the government officials are working arbitrarily under such protective veil which are available on their hands. Until and unless such veils are not removed, the people of the country always face a problematical situation and the

*51. Union of India-vs- Association for Democratic Reforms; JT 2002(4) SC 501
same will become the hurdle of a good participatory democracy. Hence, my observation directly emphasized that the Legislature must try to remove such holes by enacting some new legislations so that the people of our country be able to have a free, fair and informative democratic country.

3.6 Restrictions under the Indian Evidence Act, 1872:

In India the governmental privilege to withhold documents from the production in courts is claimed on the basis of section 123 of the Indian Evidence Act, 1872. This section says that, a court can not require a person to give evidence from an unpublished official document and published official record relating to affairs of State except with the permission of the officer as the head of the department concerned who shall give or withhold such permission as he thinks fit. The privilege extends to confidential official communications under section 124 of the Act. The privilege also extends to the inter-departmental correspondence, to a report of a Public Service Commission submitted to the appropriate government in respect of disciplinary matters affecting a servant.*

* 52. Emperor-vs- Mir Mohammad Shah; AIR 1985 Sind. 50
The ordinary rules of evidence and procedure requiring both the parties to a legal dispute to produce all relevant evidences in their possession and power are relaxed when the dispute is between a private individuals and the State, a Government Department or a public authority. The rationale behind these privileges are the requirement of public interest, i.e. the production of unpublished record would cause injury to public interest, whenever a conflict arises between public interest and private interest, the latter must give in to the former. Thus the government enjoys a great privilege by withholding material and relevant documents from the court.

The Supreme Court in State of Punjab-vs- Sodhi Sukhdev Singh,*53 which is an important case on the point, held that it can not hold an inquiry in the possible injury to public interest which may result from the disclosure of the document in question, that is the matter for the authority to decide. But the court asserted its competence to hold a preliminary inquiry and determine the validity of the objections to its production. The court observed that section

---

* 53. AIR 1961 SC 493; (1961)2 SCR 371. This case has been overruled in the leading case of S.P. Gupta vs President of India; AIR 1982 SC 149; 1981 Supp SCC 87
123 of the Evidence Act, 1872 is qualified by section 162 of the Act. Section 162 requires that a witness summoned to produce a document shall bring it to the court. If there is any objection to its production its validity will be decided by the court. Thus, the government has not the exclusive power to refuse the production of an official unpublished record in a court of law. In the present case of Sodhi Sukhdev Singh, the recommendations made by the Union Public Service Commission and discussion thereon in the Council of Ministers Concerning disciplinary proceedings against the respondent were held as privileged. Kapoor J., however, thought that the privilege was absolute and the court had no power to examine whether the matter was privileged or not. Subba Rao. J., on the otherhand wanted to see the privilege in the context of a welfare state. He was of the view that the power of the Court was overriding.

The Supreme Court through Gajendragadakar, J. warned against the misuse of such privilege. He stated that there has, however, to be taken to see that interests other than the interest of the public do not masquerade in the garb of public interests and take undue advantage of the provisions of section 123. It was further stated
that under section 162 of the Evidence Act, 1872, the court has the overriding power to disallow a claim of privilege raised by the state in respect of an unpublished document pertaining to matters of state; but in its discretion, the court will exercise its power only in exceptional circumstances, when public interest demands, that is, when the public interests served by the disclosure clearly outweigh that served by the non-disclosure. One for such illustrations is where the public interest served by the administration of justice in a particular case overrides all other aspects of public interest.

State of Uttar Pradesh –vs- Raj Narain,*54 is another important ruling of the Supreme Court on this issue. The case arose out of the refusal of the U.P. Government to produce a document-Blue Book- issued by the Central Government. This booklet contained instructions for the safety of the Prime Minister when on tour. This booklet was claimed as a piece of evidence by the petitioner Raj Narain Singh in an election dispute. The High Court of Allahabad refused to concede the privilege on two grounds : (1) That a portion of the booklet had been quoted in the Lok Sabha and as such it has ceased to be unpublished document and (2) that the privilege

* 54. AIR 1975 SC 865
was not claimed at the first instance\textsuperscript{55} The Supreme Court allowed the appeal and set aside the order passed by the High Court of Allahabad.

Finally Raj Narain's Case lays down the following propositions of law –

1) The publication of a part of the document does not render the whole document as published one.

2) The affidavit claiming privilege is not final and the court can always examine the document and satisfy itself that the document needs protection.

3) A privilege can not be denied merely on the ground that the affidavit was effective.

4) The Court in appropriate cases, may exclude evidence which may be contrary to public interest.

Hence, it is clear from the above that the government have no exclusive privilege to refuse the production of any document

\textsuperscript{55} Raj Narain Singh –vs- Indira Gandhi; AIR 1974 All. 324
in the court. The court has power to inspect the document claimed to be privileged and then to decide if the privilege is acceptable or not. In doing so the court has to maintain a balance between the public interest and the rights of the citizens. If the affidavit filed by the government does not adequately bring out the involvement of public interest consequently upon the disclosure of the document, the court may reject the government's plea of privilege.\textsuperscript{56}

In State of U.P.-vs- Chandra Mohan\textsuperscript{57} the court emphasized that, it is not the confidentiality of the record which determines the privilege. The service records of a government servant are confidential, but are not privileged in a proceedings in which the government servant has impugned the compulsory retirement as being mala fide or arbitrary.

By the seven member bench of the Supreme Court was again examined the law of government privilege on the public interest immunity in the historic judgment S.P. Gupta-vs-President of India,\textsuperscript{58}, popularly known as the transfer of judges case, the court by

\textsuperscript{56} State of Orissa -vs- Jagannath; AIR 1977 SC 2201
\textsuperscript{57} AIR 1977 SC 2411
\textsuperscript{58} AIR 1982 SC 149
majority decision overruled the ruling given in State of Punjab-vs-Sodhi Sukhdev Singh. Justice P.N. Bhagwati, J. (Venkataramiah and Desai, J.J., Concurring) examined section 123 and section 162 of the Evidence Act, and said that in India the only provision under which public interest, immunity can be claimed is section 123 of the Evidence Act. This section according to D.A. Desai J., enacted a century ago to project the interest of empire builders must change in the context of Republican Government and the open society. Similarly, venkataramiah, J., was in favour of narrowing down the meaning of ‘affairs of state’ used in section 123 of the Indian Evidence Act, 1872. Hence, the court has construed government privilege restrictively.

In giving a new orientation to the statutory provision in question, Bhagwati, J. emphasized that, “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.” He observed that, “The citizen’s right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic

* 59. AIR 1961 SC 493; (1961) 2 SCR 371
state. And this is why the demand for openness in the government is increasingly growing in different parts of the world”.

The provisions relating to this privilege were thoroughly examined by the Supreme Court in S.P. Gupta-vs- President of India. And the position now is that the court has to perform a balancing exercise and after weighing the one competing aspect of public interest against the other, decide where the balance lies. This balancing is to be performed even where an objection to the disclosure of the document is taken on the ground that it belongs to a class of documents which are protected irrespective of their contents because there is no absolute immunity for documents belonging to such class.

Therefore from above, it may be ascertained that the government can withhold the documents for the interest of the people under the veil of its privilege and can refuse the production of such document either in court or any other adjudicatory body.

* 61. AIR 1982 SC 149
* 62. Followed in people’s Union for Civil Liberties-vs- Union of India; AIR 2004 SC 1442, 1458
But the exact meaning of the word 'public interest' is neither clear nor certain, so under the guise of this word it is often seen that the administrative authority always takes the privilege to use their discretionary power and thus it leads some times either the abuse of power or misuse of power, paving the way for corruption.

Therefore, it has become necessary in the present day context that the Judiciary must give some clear guidelines regarding the concept of 'public interest', so as to cheek and control the governmental works under the veil of privileges or in the name of public interest.

3.7. Critical Analysis to the Official Secrets Act, 1923:

The Official Secrets Act, 1923 is India’s anti-espionage Act held over from British colonization. This Act prohibits disclosure of information indiscriminately. If we go for the background of the Act, then we may know the purpose of the Act for its enactments. The main aim and objectives of the Act is to provide for protection of Official Secrets in India. Firstly, Indian Official Secrets Act, 1889
was enacted and accordingly it was amended by the Indian Official Secrets (Amendment) Act, 1904. Afterwards, Official Secrets Act, 1911 was brought into force in India. It was recognized with passage of time that it is unsatisfactory to have two separate laws simultaneously in force in India. The need was felt to consolidate the law. As a result Indian Official Secrets bill was passed by the Legislature, which received its assent on 2\textsuperscript{nd} April, 1923

This Act of 1923 is a replica of the Official Secrets Act, 1911 in Britain. It deals with two aspects. They are (a) espionage or spying activity and (b) disclosure of other Secret Official Information. The former is dealt with by section 3 and the latter by section 5 of the Act. This section 5 is quite omnibus. Section 5 of the Act virtually prohibits disclosure of any information which government considers to be confidential. Really speaking, there is nothing objectionable in providing punishment for government servants who divulge confidential information. Such confidential information need not be regarding the security of the state or defence. We must make a distinction between information about decisions which are already public.
The civil Service Conduct Rules provided that civil servants shall not divulge official information. Any kind of information must be given by the spokesman of the government. In the name of freedom of information, there should not be freedom to leak confidential information. In Kerala-vs-K. Balakrishna, it was held that the expression 'official secrets' refers to secrets of one or the other department of the government or the state and that the budget papers were official secrets, which could not be published until the budget was actually presented to the legislature. However, the Official Secrets Act, 1923 prohibits not only civil servants but also any other person from giving information, which is classified by the executive as secret. Further, the Act makes punishable the sharing of information even by a civil servant who has retired or left the government service. What is objectionable with section 5 is that it imposes a blanket ban on providing information, which is contained in unpublished official records. What kind of information can not be disclosed must be precisely defined. It should be only such information the disclosure of which would harm the security of the state, or the sovereignty or integrity of India or information regarding

*63. Rull 11, the central civil Services (conduct) Rules, 1964 made under Art 309, the Constitution of India and r.9, the All India Services (conduct) Rules, 1968 under S.3(1), the All India Service Act, 1951
*64. AIR 1961 Ker 25
foreign relations, defence or investigation of crime. There must be a time limit for such a ban. After the lapse of a prescribed period, the disclosure should not attract any penal consequences. Such disclosure benefits the nation.

After a long time of Independence of our country, we have unfortunately continued the colonial tradition of secrecy in administration. The manual of departmental security instructions classifies documents into the following categories. They are- (1) Top Secrets; (2) Secret; (3) Confidential and (4) Restricted. The official information covered by the section is also extremely broad. Any kind of information is covered provided it is ‘Secret’. This includes any official code, pass ward, sketch, plan, model, article, note, document or information. The only qualification is that it should be ‘secret’. Nowhere the word ‘secret’ or words ‘official; secrets’ are defined in the Act.

It is clear from the above all that the Act extends only to official secrets and not to secrets of a private nature. Hence, the Act extends to secrets of a ministry or department of the government, but
not to an incorporated body like a university, government company or public corporation. As if, the Act defines no proper definition, hence, it is the duty of the government to decide what it should treat as secret and what not.

Once again, it can be revealed that the Official Secrets Act, one of the most dubious heritage of the British Indian Government because it proved convenient for the officers to suppress the freedom movement effectively. In the wake of partition riots following Independence, the Act was not repealed. Presently, in the name of curbing sub-national movements by cultural, ethnic, linguistic and religions minorities, regionalism etc. the elected Government of India preferred to continue this Act. No attempt was ever made to dismantle it. In fact, the rulers improved upon it from time to time.

The British Raj has been consigned to the National Archives and the very system of government, full of colonial and feudal trappings, has undergone a dramatic change under a democratic system. Hence, the Official Secrets Act seems to be
totally irrelevant and needs to be thrown into dustbin. In repealing the Official Secrets Act, if not, the amendment in its ridiculous section 5, is opposed by the British framed bureaucracy in our country India. It is this bureaucracy which is also creating hurdles in the enactment of the Right to Information Act as well as ‘openness’ of the government. Because these bureaucrats enjoying and exercising uncontrolled and unbridled discretionary powers, do not want the ‘openness’ of the government and the ‘Right to Information.’ Secrecy is resorted by the government and its officers to hide corruption, faults and mistakes in the name of the national interest or public interest.

Secrecy was the watchword in primitive era of democracy due to the concept of collective responsibility. But with the passage of time, this concept of secrecy has eroded slowly and gradually due to recent developments of overloading of governmental functions in all walks of life and concept of ‘openness’. Due to greater role of government, it has been subjected to clarification in various issues and policies in cases of governmental accesses and deficiencies. The Official Secrets Act is just an anarchistic piece of legislation, serving as a relic of the British Raj.
Regarding Freedom of Information and Official Secrets Act a report was compiled by the Centre for Policy Research a few years ago and observed that the Official Secrets Act has inculcated an administrative culture or attitudinal bias strongly disposed towards restricted disclosure rather than transparency. Justice V.R. Krishna Iyer has ruefully commented, “Secrecy is the allergy of transparency. It is either a tragedy or a force or both. The country unfortunately is still steeped in secrecy. Howala and Bofors, among other things would have surfaced earlier but for secrecy. The Official Secrets Act should be abolished as a piece of legislation.”

Moreover, through this analytical study on the Official Secrets Act, 1923 the word ‘secrecy’ also regarded as one of the another barrier of accountability as well as transparency. Governmental Secrecy is a ‘protective veil’ towards the ministers and the governmental officials in various departments through which maladministration, corruption etc. can easily be happened. Whenever question arises upon such matters, then they have a readymade answer in their hands that it is for the ‘public interest’ and by opening
it, it can not be destroyed. Therefore, such draconian laws must be abolished as a piece of legislation for the greater benefit of the citizen of our country.

3.8 **An analysis on the Public Records Act, 1993 and its relation to open Government:**

The creation, maintenance and retrieval of an access to the public records of the Central Government, Union Territory Administrations, public sector undertakings, statutory bodies and corporations and Commissions and committees of the central Government or the Union Territory Administration are at present governed by executive instructions. Since such instructions are subject to change without any notice, they affect the functioning of that Government, Union Territory Administrations and statutory bodies etc, as also the presentation of facts of history in their proper prospective. It was proposed to provide legal cover for the responsibilities of the records creating agencies and the archives with respect to the arrangement, management, custody, disposal, deposit and preservation of an access to the public records so that our public records are not only authentic but also proposed to constitute
the Archival Advisory Board to advise the Government on matters relating to the public records and proper administration of the provisions of the Act.*65

Thus, the objective of the Public Records Act, 1993 is to regulate the management, administration and preservation of public records of the Central Government, Union Territory Administrators, public sector undertakings, statutory bodies, corporations, commissions and committees constituted by the Central Government or a Union Territory etc. Again section 2 (e) of the Act defines the term 'Public Records' which takes into account only the followings –

i) any document, manuscript and file;

ii) any microfilm, microfiche and facsimile copy of a document.

iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and

iv) any other material produced by a computer or by any other device of any records creating agency.

* 65. The Public Records Act, 1993
So, while perusing the above definition, it occurs to mind that the definition is not so clear as to which documents are to named as documents of 'Public Records'. It will and it may create a lot of confusions for the common people while seeking any information in regard to some particular documents. Hence, such confusion and ambiguity needs to be made clear either by the Parliament through further enactments to that effect or by the Supreme Court through interpretation.

Despite the above, the instant Act under section 3 has given ample power to the Central Government to co-ordinate, regulate and supervise operations etc. of public records and has provided a detailed list of functions to that effect. It is to be mentioned that the detailed list of functions reveals the fact that every aspect has been touched with to maintain, preserve and administration of public records- and which also imports the idea of reasonable restrictions on ‘openness’ and it supports the ‘Right to Information’ too.

Therefore, except of vague definition of the word ‘public records’, the Act otherwise is a good legislation. What is
required now is that to keep pace with the concept of ‘Right to Information’, the meaning and extent of the word ‘public records’ need to be clarified and then only the moist over the reasonable restrictions on openness of government will go.

3.9 The Commissions of Inquiry Act, 1952 and open Government:

Inquiries and investigations are important methods of acquiring information. Such information is needed as feedback for policymaking by the government. It is also a source of information for people. Various statutes provides for such inquiries and investigations*66 Parliament enacted the Commissions of Inquiry Act, 1952, which authorizes the Central and State governments to appoint inquiry Commissions to make inquiries in matters of public importance. Both the Central and State Governments can appoint a Commission of inquiry under section 3 of the Act. The Central Government may appoint such a Commission to make an inquiry into any matter relatable to any of the entries enumerated in List I or List III in the Seventh Schedule of the Constitution of India. Similarly, a State Government may also appoint such Commission to make an

inquiry into any matter relatable to any of the matters enumerated in List II or List III in the Seventh Scheduled of the Constitution.*67

It was held that a state government could appoint a Commission, to inquire into the cause of disturbance and the circumstances, under which the Border Security Force (B.S.F.) open fired.*68 The Central Government can appoint a Commission of inquiry to inquire into a matter falling within the purview of a state government, if it falls within its plenary legislative power, but a state government can not appoint a Commission of inquiry, to inquire into matters falling within the purview of the Central Government. The centre has appointed Commissions, to inquire into the conduct of state ministers.*69

Privatized judicial procedures in authoritarian in camera atmosphere, may even be branded as command performance or coloured concoctions. The right of the public to watch, intervene and participate in open inquiries is a branch of the citizen’s right to know,
its very life-breath. Exceptions and exclusions may be necessitated by extraordinary circumstances but the rule shall not be circumvented save minimally.

Certain reports like the Thakkar Report and the Ranganath Misra Report are Privatized unblushingly, the former shocke and stain on judicial morality and the latter less so, leaving the people to surmise that the product is pre-fabricated. It is an act of informational Cowardice to retreat from public view the forms of recording the truth, apart from the institutional injustice to the judges themselves. There is another malady for which not the patrons- the Ministers- but the beneficiaries- the judges- are responsible.

When Commissions prolong their enquiries and produce reports which are shelved for long in governments’ pigeon-holes, matters of public importance suffer fade-out and the people are stultified by denial of information. The right to know, demanded in burning rage and urgent mood by an anxious people, is frustrated under such circumstances, public memory being notoriously short. In most such legislations, Governments enjoy the option to accept or
reject the report which means, that a cunning Administration may use Enquiry Commissions as crisis avoidance tactics, the end product being conveniently discarded if unfavourable. Thus, unless meaningful mutations in the Commissions of Inquiry Act, 1952 are made from the angle of Freedom of Information, Commission strategy may prove to be informational treachery. More or less the same infirmities afflict the law and the result when the inquiry or inquest is held by administrative agencies or experts.*70

Number of people's Commissions have undertaken enquiries in our country India. One of which investigated into the Delhi massacre following upon the late Prime Minister Indira Gandhi's assassination. There is a tragic facet to these people's Commissions. They have no facilities and the Government tries to debunk their operations. With all these handicaps, there is need to persist in the processes of public inquiries as objectively as possible and as effectively as circumstances permit. The people have a right to know, and in time. The Press, which is supposed to be the great mediator, also ignores people's commissions and never seriously attempts to stir public conscience. Arun Shourie, with bitterness

* 70. Justice Krishna Iyer, V.R.: Freedom of Information; P-357
complains about the partisan role of the press ignoring enquiries where the poor suffer and exaggerating where VIPs are involved. This is a capitalist bias all over the world.

The democracy of information through public enquiry commands certain basic standards even if they very from the Indian carbon copy of the English Statute. The public enquiry shall be truly public, with access to the public, reception of evidence from the public and opportunity for intervention by the public through social action groups or activists. The report of the enquiry where the commission should also enjoy powers of summoning searching and seizing materials relevant, should also be made public. The final peace is the report available to the public. This fulfillment will suffer stultification if the report is kept secret from the people or the Parliament.

Therefore, from the above, it is obvious to say that the report of the Enquiry Commission must reach to the people in time. Otherwise, the society in this democratic country might be in dark
and the same will hamper for the better fulfillment of the openness of government.

3.10 **Role of Ombudsman and Open Government:**

One of the major problems created by over governance resulting from the welfare state is paucity of methods for the redressal of grievances of the citizens against the administration. The judicial control has its own limitations and legislative control has become ineffective. The Parliament has lost much of its power to check the executive. The result is that the executive with its 'cast-iron party majority has too easy a time' in defending itself against complaints of all types. To overcome this lacuna of modern administrative process, the new enthusiasm, almost a new religion called *Ombudsmania* is sweeping through the democratic countries.*71

Ombudsman provides a valuable method of investigating complaints against Government departments. Citizens' complaints against the administration are investigated by experienced staff who are not members of the departments concerned. His findings of fact

---

*71 Wade, H.W.R: The Ombudsman "The Citizen’s Defender", Law and the Commonwealth, 4-5 (First ed. 1971), as quoted in Joshi, K.C. An Introduction to Administrative Law, (First ed 2006) at P-271*
and his reasoned conclusions in a complaint may ultimately be published and thus errors and mistakes committed by Government officials in handling citizens' affairs are exposed. A complaint need not establish a breach of law; maladministration causing injustice is enough. On the whole, Ombudsman seeks to hold the balance between the citizen and the state and thus he contributes to the greater efficiency and humanity of the administrative process.

Administrative delay and discourtesy are proverbial. The mechanism and procedure to redress the grievances of the individual against the administration are inadequate. The administration in India has been acquiring vast powers in the name of socio-economic development and, thus, chances for administrative excesses and abuse of powers abound. Therefore, close supervision over the administration, and a mechanism for redressal of grievances become essential. If in countries like New Zealand, England or Australia which have a high standard of administration, cases of maladministration can be found, there is no gainsaying the fact that many more such cases will be revealed here if there were a proper mechanism for investigation. The procedures to redress individual
complaints through the courts or the legislature or the administration are as inadequate as in other common-law countries. There is a peculiar element present in the Indian situation which is not so much manifest elsewhere, viz, widespread public suspicion of administrative corruption which has very much undermined public confidence in the administration and has very much corroded its moral authority and image. Conferment of large administrative and discretionary powers breeds corruption and, therefore, if the administrator knows that his decisions are subject to scrutiny by an independent authority, he will be more careful in arriving at his decisions and be less tempted to misuse his powers and show undue favour to any one. Impelled by these considerations, the Central Government took some steps in the past to create the Ombudsman system but somehow all these steps proved abortive.

Maladministration which is the primary concern of the Ombudsman in other countries was thus proposed to be kept out of the purview of the Indian Ombudsman under the 1977 Central Bill. This was not proper. There is a great need for an institution, independent of the executive, to supplement system of judicial control
over administrative action in view of the limitation of judicial review so as to reduce the sense of grievance presently nursed by the people against the administration. The Administrative Reforms Commission under the Chairmanship, of the Prime Minister at the time had suggested the installation of such an institution in its very first report, but when he was himself the Prime Minister he failed to implement what the commission had recommended. It has been suggested that, so far, the institution of Ombudsman has succeeded only in countries with small population and that in a populous country like India, the Ombudsman may be overwhelmed with complaints of maladministration and allegations against the administration. The appointment of one Lokpal and a number of Lokayuktas takes thus factor into consideration. Further being a federal country, the central administration is not concerned with the totality of governmental functions but only with a portion of these, the other portion being discharge by the states, and each state may have its own Ombudsman system. Specialized Ombudsmen for specific activities may also be thought of. In the long run, however, it is necessary to improve the tribunal system in India so that tribunals can provide an effective review-mechanism of administrative decisions. To the extent, tribunals can provide such a review, the need to resort to the Lokpal
would be reduced. Also, it has been the experience of the Ombudsmen in other countries that many grievances against the administration arise because of the failure of the administration to give reasons for the decisions taken by it and that if reasons are given as a matter of course then the number of complaints may be reduced. It will be a great advantage to the individual affected by an administrative action if the administration were it is acting. He can then decide whether he should challenge the action or not in a court of law.

The conseil d'Etat in France has gone far in the direction of requiring administrative decisions to contain reasons. In 1950, it annulled a decision in which no reasons were given. In England, the Tribunals and Inquiries Act, 1958 imposes a statutory duty to give reasons, if requested, for decisions by most tribunals and by ministers required to hold statutory inquiries. In America, the courts insist that administrative decisions must contain at least the findings upon which they are based.*72 In India as well such a rule be promoted. Therefore, if the administration in India were made to adopt the practice of furnishing reasons for its decision to a person

* 72. Wade; Administrative Law, 464 (1977)
feeling aggrieved by it, then the number of complaints flowing to the Ombudsman may be reduced and become manageable. In any case, there is a great need to supplement the existing mechanism to supervise administration in India, and the experiment of the Ombudsman is worth a trial. It is bound to result in the improvement of administrative procedures affecting the individuals dealing with the administration.

Therefore, from the above short discussions it can further be added that being a populous country like India we are having every kind of legislations in the field of administration. But it is seen that the function of such legislations are not proper. Like wise the institution of Ombudsman is also in the same pattern. It is because, due to over burden with complaints of maladministration and allegations against the administration, the institution can not be functioning properly in time. And as such the suggestions of the research scholar are similar to the Law Commission of India*73 that, the creation of an office of ‘litigation Ombudsman’ to whom prospective litigations may (not must) have recourse for their

* 73. Law Commission of India : 100th Report on Litigation by and against the Government, Ch-3
grievances of a justiciable character. The point to note is that the proposed office is to deal with cases of legal nature, not with cases of maladministration—cases of impropriety rather than of illegality. If the same will come onto force then the democratic country like India with a huge number of population might have the solutions in time and be able to have a participatory democracy. At the present stage, the principal aim is to fulfill the needs of the citizen in proper time, everything must be informed and then the true nature of openness of the Government will be there. Finally, it can be said that the “institution has not failed us, we have failed the institution.” Under the existing constraints, perhaps a special Bench in High Court and the Supreme Court to deal with corruption cases will be a better alternative.

3.11 Role of media for promoting openness of the Government:

In democracy, the press or the media is regarded as the fourth state which transmits every kind of information as ‘News’ before the common people with impartiality in nature. The Press is an establishment where printing is done and the same was established under the Press & Registration of Books Act, 1867. On the otherhand
it is a medium of publication where the people may have every kind of information happens within or beyond the territory of our country. The journalist, those who are always working under the banner of it must act as a significant role for preparing any kind of information with courage and forbearance. Through a Press may be engaged in producing printed matters of various categories other than a newspaper such as books, pamphlets, posters, the production of a newspaper has engaged special attention of the Legislature since the advent of newspaper as an essential mass media and foundation of democracy.

It is clear that any decipherable information which is set down in a lasting form, such as a leaflet, notice, an invitation or even a visiting card, would be a ‘document’ and would be a ‘paper’ irrespective of its literacy or other value. It must, therefore, comply (unless exempted by notification under S. 21) with the requirements of S.3 of the Press & Registration of Books Act, 1867, because it relates to “every book of paper”. Hence, it is no longer to debate whether a notice or an one-sheet paper would constitute a ‘pamphlet’ or a book because if it does not come within the definition of a
'book', it would fall under the category of a paper which includes a newspaper too.

The term 'Freedom' means absence of control, interference or restriction. Hence, the expression 'freedom of the press' means the right to print and publish without any interference from the state or any public authority. But, as we will be seen presently, this freedom, like other freedom, can not be absolute but is subject to well-known exceptions acknowledged in the public interest, which in India are enumerated in Art 19 of the Constitution of India. Since in India, freedom of 'expression' is guaranteed by Art 19(1) (a) of the Constitution, and it has been held by our Supreme Court that freedom of the 'press' is included in that wider guarantee. Hence, the plea for the freedom of the press in our country is quite unnecessary. Nevertheless, the principles which lie at the background of freedom of the press and the limitations thereto are relevant to every legislation relating to the Press. Since its constitutionality can be challenged in India, it would be not only useful but also essential to keep before one's mind's eye the basic and historic principles on which the demand for freedom of the Press is founded. This has become particularly important in India, when the zeal for establishing
A welfare and socialist state is apt to relegate all individual rights to the background, for the time being.

A democratic political society or government which rests on the consent of the people and the contribution of their ideas to public questions can rest only on the free debate and free exchange of ideas amongst the people. On the other hand, the widest dissemination of information from diverse sources is necessary for public education, which is the foundation of a democratic society. Otherwise, it is by means of free discussion and criticism that the government remains responsive to the will of the people and peaceful change is effected and errors of government are peacefully corrected and eliminated through the process of popular government.

If democracy means government by the people themselves, whether directly or through representatives elected on the basis of public issues, the people must be allowed freedom of discuss public issues and to express their judgment. In short, democracy, i.e., government of the people by the people themselves, can not function unless the people are well informed and free to
participate in public issues by having the widest choice of alternative solutions of the problems that arise. Philosophically, the ultimate good in a free society can be reached only by a discovery of truth, and that can be achieved only by a free trade in ideas good and bad. In this context, a news regarding “Press, news channels need internal news Ombudsman” through which the eminent journalist N.Ram, Editor-in-Chief of ‘The Hindu’, a national daily newspaper had expressed his views regarding the need for an ‘internal news Ombudsman’ in the press and the news channels in the country. He was delivering a lecture on ‘Media ethics and police media relations’ organized by the Mumbai Police. Mr. Ram expressed his sadness through his speech that, “Unfortunately, no one else has taken this up (Except the Hindu which has a readers; editor) because you need to look inwards, It is simple and double, but it is deliberately being avoided.” Also terming ‘paid news’ one of the biggest challenges for the media and the press today, Mr. Ram lauded the Bihar elections last year, when it issued notice against 86 candidates with regard to paid news. “The paid news problem has shown that it is very difficult to police and the media”, he said. It was a part of the hyper-commercialization process.*74 Therefore, in short, it is quite

* 74. The Hindu; December 29, 2010 at Page-12
necessary that the media should be neutral and impartial in its nature and the proper news must be published with due verification on it and then a society might have an intellectual news and also have proper information in all the times.

Therefore, from the above elaborate discussion it is fully experienced that in a democracy, the media must take an active role to promote the country with the widest dissemination of information in time. The accountability and responsiveness are the basic elements of good governance will be hindered by the word ‘public interest’. So, the humble submission of the researcher in this regard is that it is quite and utmost essential for the proper utilization of the word ‘public interest’. Otherwise it will be another ‘protective veil’ of the government and they may use it at any time according to their own choice. If this type of practice will continue, democracy cannot survive and the citizen of the country may reach such a point where darkness will be prevailing and no democracy will function properly. Hence, it is indeed to say that restrictions should be there but through this restrictive umbrella no one must be covered for their
evil deeds and the same must be focused through media and the corrupt people must be punished at law.

3.12 Public Interest-vs- Good Governance:

Secrecy in government is the most important factor of corruption, inefficiency and irresponsiveness and an enemy to Good Governance. The Right to Information Act, 2005 is a landmark achievement and through which the corrupt politicians and bureaucracy would be exposed and hopefully people will enjoy a clean public life. The founding father of the nation, Mahatma Gandhi wanted complete Swaraj- social, political, economic so that the tall man is also provided the decent life. The ministers through bureaucrats or the government officials have been working under the banner of ‘secrecy’ in some matters which can not be disclose, because of ‘official secrecy’ and in the name ‘public interest’. But both of these two terms have been used by themselves with their vested interest and hidden corrupt motive. As a result, the citizens of our country are always depriving of having adequate and proper information regarding the governmental activities and going to be unaware day by day from the concept of ‘right to know’ and ‘right to
information’. It is because, there are several pieces of restrictive legislation such as the Official Secrets Act 1923. It is obvious that, everything can not be disclosed due to certain reasons like ‘national security’ etc. But for the responsiveness and the accountability of government there should be ‘limited openness of government’ to disclose the matter as needed. It is because, in a democracy the government is always accountable to the citizen of the country and as such it is the obligation of the government to submit their day to day accounts before the citizen through the vital role of media e.g. newspaper, television, internet etc. It is suggested that, it should be submitted every year and not after the completion of their five years tenure.

Every institution might be efficient and effective only when it will be functioning in a transparent, responsive and accountable manner. This is depending not only on the internal process of the institutions but also on the ability of citizens and external agent to enforce their rights, vis-a-vis these very institutions. Hopefully; the Right to Information Act, 2005, would make the citizens active, participative and articulate to make democratic processes a reality. In addition, Right to Information Act, 2005 would

Regarding the concept of ‘Good Governance’, it can further be explained thoroughly with the help of the following chart No. 3.1

* 75. Dr. Goel, S.L.: Good Governance- An Integral approach
From the above diagrammatic interpretation about the landmark for ‘good governance’, we may be able to have possible relevant ideas for the concept of ‘good governance’ and the same is the part and parcel to the ‘Right to Information Act, 2005’. Once again the two sensitive terms accountability and the responsiveness are the two sides of the same coin which are the integral part of ‘Good Governance’. Hence, in the name of ‘public interest’ the government can restrict such information which affects the citizens but under the same protection (i.e. public interest), in practice, some hidden corrupt intentions of the government may be fulfilled which are always a ‘News’ from mouth to mouth amongst the citizen of the country e.g. ‘Fodder Scam in Bihar, ‘Telecom 2G-spectrum allocation scam’*76 etc.

The Right to Information Act, 2005 covers all central, state and local government bodies and in addition to the executive, it also applies to the judiciary and the legislature. It covers all bodies owned, controlled or substantially financed, either directly or indirectly by the government and non-government organizations and

* 76. The Hindu; February, 2011
other private bodies substantially funded, directly or indirectly by the government. This would seem to include private schools, hospitals and other commercial institutions that have got subsidies in the form of land at concessional rates or tax concessions among others.*77 In addition to all these, the law also covers the private sectors as it provides the citizens access to all information that the government can itself access through any other law which are currently in force.

In the words of second Administrative Reforms Commissions, the Right to information Act, 2005 signals a radical shift in our governance culture and permanently impact all agencies of state. The effective implementation of this law depends on three fundamental shifts: **Firstly**, from the prevailing culture of secrecy to a new culture of openness; **Secondly**, from personalized despotism to authority coupled with accountability and **Thirdly**, from unilateral decisions making to participate governance. Obviously one single law can not change everything. But this fine legislation is an important beginning. Its effective application depends largely on the institutions created, early traditions and practices, attendant changes in laws and

* 77. Shekhar Singh and Misha Singh, "Changing Governance for ever, in Yojna, New Delhi, January, 2006*
procedures, and adequate participation of people and the public servants. The Commission firmly believes that the Official Secrets Act, 1923 in the current form is antiquated and unsuitable for emerging needs.

Hence, it may be summarized that in hand right to information is a statutory right under the Right to Information Act, 2005, subject to the provisions of that Act and while on the other, the Supreme Court of India has held in a number of cases that right to information is a derivative right under Article 19(1)(a) of the Constitution i.e. the freedom of speech and expression. But unlike Constitutions of some other developed countries, no fundamental right in India is absolute in nature, so is the case in respect of ‘Right to Information’ too as a statutory right. Again, reasonable restrictions on openness of government is a sine-qua-non of a participatory democracy.

It is also worthmentioning that the ‘Right to Information’ and concept of ‘Openness of Government’ are further

Thus, as a whole it can be held that right to information and openness of government with reasonable restrictions are two sides of the same coin. For healthy and smooth functioning in a democratic form of government, co-ordination between the two is must to make the legislators and the executives accountable to the people for good governance in a country like India.