CHAPTER IV

The Legal framework: Strength and Implementability

Challenges

Interrogating the RTI Act:
The aim of this chapter is to trace the research problem in the existing and available legal framework for Right to the Freedom of Information especially since placing the problem in its present legal context would help to answer one of the very important research questions i.e. What are the key areas of conflict between the quasi judicial mechanisms provided for in the Act and the judicial redressal mechanisms available to the citizens at large? One of the objectives of this research is to delineate the key areas of conflict between the quasi-judicial mechanisms which is available in the Act and judicial redressal mechanisms available to the citizens.

An attempt has been made to locate the argument that the Right to Information Act in its present form cannot be an effective tool for citizen’s empowerment. Many issues and lacunas such as absence of an in built performance appraisal system, monitoring within departments, scope and haziness of the ‘exemption’ clause weaken and delay access to the right and correct information. RTI is not a one stop shop for extracting information hence while it alerts bureaucracy and acts as a motivator for good record keeping, the administrator continues to have the last laugh as citizens sweat through many windows seeking relevant information. Alternatively, RTI is vulnerable to misuse by both bureaucracy as well as citizens with vengeance as the noble idea lags behind in search for legal insight and technical corrections.

The Right to Information Act has inherent lacunae in as much as its clauses that are open to interpretation and at the moment there are various conflicting interpretations that are being given by Public Information Officers, Information Commissioners and judicial courts. At times there are conflicting orders that are given by Information Commissioners who are appointed under the Act itself. Even though the Act has become effective in most parts of India, nevertheless it seems to be a piecemeal
legislation. A paradoxical situation may be created where at one time it may seem that this is a piecemeal legislation and at other times it may seem that it has given too much power in the citizen’s hands. The Act may have create more confusion and less citizen’s empowerment. It is this issue, inter alia, that this Chapter attempts to analyse in the background of the legal framework that supports the Right to Information Act. The present legal framework that exists in India for freedom of speech and expression and right to information has been analysed empirically in this research for which purpose, a review of the existing law is made. The Prime Minister of the country had made a statement regarding the review of the Act in the Lok Sabha when he stated that “I would only like to see that everyone, particularly our civil servants, should see the Bill in a positive spirit; not as a draconian law for paralyzing Government, but as an instrument for improving government-citizen interface resulting in a friendly, caring and effective Government functioning for the good of our people”. He further said, “This is an innovative Bill, where there will be scope to review its functioning as we gain experience. Therefore, this is a piece of legislation, whose working will be kept under constant reviews.” (2nd A.R.C. 2006). This research attempts to analyse whether such review has taken place or not and whether it has provided the desired results. Besides, the exemption clause of the Act allows for denial of information to the public on grounds of national security or personal information which dilutes the purpose for which the Act was established. On the other hand, in a lot of instances information given under the RTI Act to one citizen, jeopardizes the privacy of another citizen and in the absence of a Right to Privacy law in India leads to a complex situation. The fundamental aspect of the Right to Information Act 2005 shall be examined in this chapter to advance this argument. The empirical study conducted under the present research is also based on this chapter.

The previous chapter has extensively dealt with the position of the right to know in the framework of the constitutionally guaranteed freedom of speech and expression and also the growth of information related jurisprudence in various parts of the world so also in India over little more than two decades in the post independence India,

---

1 Right to privacy is the right to personal autonomy. The U.S. Constitution does not explicitly provide for a right of privacy, but the Supreme Court has repeatedly ruled that this right is implied in the zones of privacy created by specific constitutional guarantees. It is the right of a person and the person’s property to be free from unwarranted public scrutiny or exposure- Black’s law dictionary, 7th edition:1325
therefore this is not the subject of discussion again, with a view to avoid reiteration of already discussed theme, except occasional references which is essential to elaborate upon the subject and also when circumstance arises to approach the theme for it is grounded on historical evidences or reference of those instruments. On the other hand, adequate engagement into exploring the legal framework in accordance with the normative structure of right to information legislation in India has primarily been made in this chapter for the purposes of understanding the legislative arrangement presently available in India in the matter of Right to information and its interface with the constitutionally guaranteed Freedom of Speech and Expression.

In order to explore the legal framework in India in its totality, a thematic exploration has been made into the constitutional provisions pertaining to the concept of information. This has been done because constitutional provisions have a substantial bearing on the legislation governing right to information, as it explores the dissemination of information in its many forms. Similar references about other Legislations such as the Official Secrets Act 1923, and various other rules such as The Right to Information (Regulation of Fee and Cost) Rules,2005, dt.1-10-2005, [Amended by (Amendment) Rules,2006, dt.17-5-2006], The Central Information Commission (Appeal Procedure) Rules,2005,dt. 28-10-2005, The Lok Sabha Secretariat Right to Information (Regulation of Fee and Cost) Rules,2005, The Rajya Sabha Secretariat Right to Information (Regualtion of Fee and Cost) Rules,2005, the Notification for Designation of Central Assistant Public Information Officers (CAPIOs), dt.6-10-2005, Form of Appeal under Section 19(1) of the Right to Information Act, 2005, any existing legislations such as the Censorship and Post and Telecommunication Acts, Atomic Energy and Industrial Disputes Acts (where certain specific kinds of non-disclosures are mentioned), The Commissions of Enquiry Act, 1952 and above all, the Constitution of India that have direct bearing on the rationale behind the promulgation of the Right to Information Act in India.

Primarily, in this chapter engagement into the Right to Information Act 2005 has been attempted for purposes of better appreciation of the implementation aspects of the Act and to critically analyse the various important sections of the Act for better appreciation of the spirit with which the legislation was initiated, followed by a comparative analysis of the first uniform legislation of India enacted in 2000 and the
reincarnated law of 2005. This review also attempts to provide an introduction to the Right to Information legislation in India and describes the principles and major provisions of the Right to Information Act 2005 while analyzing the normative structure. Also, this chapter analyses the role of the judiciary in implementing the Act since the judiciary was seen as a pioneer in implementing the Act in letter and spirit because much of the work that the judiciary does is open to public scrutiny. The onus that is placed by the government of India on the judiciary towards the end of ushering an era of transparency and openness is evident from the fact that Rs.700 crore have been allocated to the judiciary for an e-governance project which would bring about systematic classification, categorization and standardization of documents and records (Second Administrative Reforms Commission, First Report, June 2006: Preface)\(^2\)

**Right to Information and the Constitutional framework:**

Even though the RTI Act has only recently seen the light of the day, it has been embedded in the Constitution of India since its inception. The Indian Constitution which came into effect from 26\(^{th}\) January 1950, after Independence of India from the British Empire on 15\(^{th}\) of August 1947, had made Freedom of Speech and Expression a fundamental right. The Constitution of India is the paramount guarantor of freedom of speech and expression. It can be said that as far as the RTI Act is concerned, it seems that we have strayed from the letter and spirit of the Constitution in first not implementing the RTI Act until 2005 and in the second instance, after its execution not implementing it in letter and spirit. In consonance with the words of Abraham Lincoln who has described “democracy” as a Government of the People, by the People and for the People, India is a democratic country and takes pride in being a vibrant democracy where the rights of all citizens are protected and guaranteed. However, one of the variables of a truly effective and functional democracy is the right to know. For India to be a truly functional democracy, it is essential that its citizens have the basic rights that are fundamental to the functioning of a democracy.

The Constitution of India begins with the preamble which states that -

“WE, THE PEOPLE OF INDIA HAVING SOLEMNLY RESOLVED TO
CONSTITUTE India into (SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC,
REPUBLIC) and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and opportunity;
And to promote among them all
FRATERNITY assuring the dignity of the individual and the (UNITY and
INTEGRITY of the Nation);
IN OUR CONSTITUENT ASSEMBLY THIS twenty sixth day of November, 1949
do, HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS
CONSTITUTION.”

Moreover, the Constitution of India guarantees to all its citizens certain civil liberties
that are considered essential for the development of the personality of every
individual and are considered necessary for basic human dignity. These civil liberties
take the form of fundamental rights. Article 19(1) (a) of the Constitution of India
states that, all citizens shall have the right to Freedom of Speech and Expression.
Article 19 clause (2) of the Constitution of India states, “Nothing in sub-clause (a) of
clause 1 shall affect the operation of any existing law or prevent the State from
making any existing law in so far as such law imposes reasonable restrictions on the
exercise of the Right conferred by the said sub-clause in the interest of (the
sovereignty and integrity of India) the security of the State, friendly relations with the
foreign State, Public order, decency or morality or in relation to contempt of court
defamation or incitement to an offence)”.

Various jurists have upheld that freedom of speech and expression includes freedom
of right to information. Without free flow of information, the citizens of India cannot
be ensured of the freedom of speech and expression. The Government functions and
workings should be totally transparent and unambiguous and the three
instrumentalities of the State i.e. the executive, the legislature and the judiciary should
be prevented from indulging in any activities that result in withholding or giving false
information to people.
The freedom of speech and expression includes the right to receive information and to impart information amongst others. Freedom of speech and expression is essential for self-attainment and self-fulfillment. Many ideas can be circulated through right to information and free flow of information.

The right to impart and receive information is a species of the right to freedom of speech and expression guaranteed by Article 19 (1) (a) of the constitution. A citizen has a fundamental right to use the best means of imparting and receiving information. In modern constitutional democracy, it is axiomatic that citizens have a right to know about the affairs of the Government which has been elected by them and one that seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognized limitations; it is, by no means, absolute. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19 (1) (a). Therefore, disclosure of information in regard to the functioning of the Government must be the rule and secrecy must be an exception.

Moreover, the right to information is a basic human right and Article 19 of the International Covenant on Civil and Political Rights (ratified in 1978) declares that freedom to hold opinion, receive and impart without interference, and to seek, and receive and impart information and ideas through any media and regardless of frontiers is a fundamental right of an individual.

**Importance of right to freedom of speech and expression:**

For necessary value addition to this thesis, it is important to understand the role that access to knowledge plays in a vibrant democracy such as that of India. Access to knowledge is guaranteed to citizens under the Right to Information Act 2005. The citizens have the fundamental right to know what the government is doing in their name. This freedom to know flows from the Constitution. Article 19 of the Indian Constitution guarantees freedom of speech and expression to all citizens of the country. It has been held by the Supreme Court of India in Dinesh Trivedi. M.P. v. Union of India that to ensure the continued participation of the people in the
democratic process, they must be kept informed of the vital decisions taken by the government and the basis thereof. Democracy, therefore, expects openness and openness is a concomitant of a free society. Article 19, as explained earlier in the chapter is a bundle of rights. One very important part of this bundle of rights is the right to information. Article 19 is not an absolute right and is most definitely subject to certain reasonable restrictions. Similarly, the right to information which guarantees that the citizens should be provided information about public authorities, is not an absolute right. The Act also provides certain restrictions to the dissemination of information which are encapsulated in section 8 of the Act and has been elaborated in the chapter later. It has been held by the Supreme Court of India in Dinesh Trivedi. M.P. v. Union of India5 “it is important to realize that undue popular pressure brought to bear on decision makers in government can have frightening side effects. If every action taken by the political or executive functionary is transformed into a public controversy and made subject to an enquiry to soothe popular sentiments, it will undoubtedly have a chilling effect on the independence of the decision maker who may find it safer not to take any decision. It will paralyse the entire system and bring it to a grinding halt. So there are two conflicting situations almost enigmatic and the answer is to maintain a fine balance which would serve public interest.” 6 Freedom of Speech is the lifeblood of a democracy. The free flow of information and ideas informs and mobilises political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice in the country. With the globalization of trade and industry and a well knit world today, the disclosure of information is of utmost importance and for this purpose, various conventions have

4 Reasonable restrictions on fundamental rights can be in the form of restrictions on rights due to security of the nation, public order, decency, morality, defamation, contempt of court etc.
5 1997 4 SCC 306
6 The Dinesh Trivedi case pertains to a petition demanding the disclosure of the Vohra Committee report which was set up by the Union of India on 09-07-1993 to take urgent stock of all available information about the activities and links of all mafia organizations/elements, to enable further action. During 1995, a young political activist named Naina Sahni was murdered and one of the persons arrested happened to be an active politician who had held important political positions. Newspaper reports published a series of articles on the criminalization of politics within the country and the growing links between political leaders and mafia members. The attention of the masses was drawn to the existence of the Vohra committee report. It was suspected that the contents of the report were such that the Union government was reluctant to make it public. As a consequence of the controversy the Union government agreed to place the report before Parliament.
been held at national and international levels, which suggest imparting of information qua the working of the information to its citizens subject to such restrictions being imposed by the law in the interest of security of the country etc. In Union of India v. Association for democratic Reforms it has been held by the Supreme Court of India that “The right to get information in democracy is recognized all throughout and it is a natural right flowing from the concept of democracy.” Moreover Article 19(1) and (2) of the International Covenant on Civil and Political Rights, states that (1) Everyone shall have the right to hold opinions without interference. (2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Provisions of other Acts and statutes that support freedom of information to citizens:

Even though India did not have a freedom of information law till 2005, there have been some legislations in India that have kept in mind the importance of openness and have guaranteed the same through various provisions. Provisions in specific acts have been made that ensure that information under certain circumstances shall be provided to the seeker of such information. Even though the provisions are not absolutely true to the spirit of the right to information act which calls for complete openness, the researcher mentions a few stipulations here to generate an idea about the kind of provisions that exist in Indian legislations in which information can be provided easily to the applicant. In this context provisions were made in various Acts of India, passed by the legislature for imparting information to the citizens from time to time which inter-alia include provisions in Act such as the Indian Evidence Act (1872), the Factories Act (1948), Water (prevention and control of pollution) Act (1974) etc.

7 2002 (5) SCC 294
8 The Indian Evidence Act 1872 was originally enacted by the British in India and has been continuing till date with some amendments. It contains rules and procedures regarding the admissibility of evidence in Indian courts of law.
9 The Factories Act 1948 is a legislation for governing the health, safety and welfare of factory workers in India.
10 The Water (prevention and control of pollution) Act 1974 was the first legislation enacted for the prevention and control of water pollution which has provided for the setting up of Boards to prevent and control water pollution.
In respect of trials and court procedures and for the purpose of providing evidence to
the court, sections 74-78 of the Indian Evidence Act 1872, give right to the person to
know about the contents of public documents and in this connection section 76 of the
Indian Evidence Act lays down that public officials shall provide copies of public
documents to any person, who has the right to inspect them. However, this is a
conditional right and the act defines in details the circumstances under which such
provision can be applied. Further, under the Indian Factories Act (1948), compulsory
disclosure of information has to be provided to factory workers regarding dangers
including health hazards arising from their exposure to dangerous materials and the
measures to overcome such hazards.

Under section 25 (6) of the Water (Prevention and Control of Pollution) Act 1974,
every state is required to maintain a register of information on water pollution and it is
further provided that so much of the register as relates to any outlet or any effluent
from any land or premises shall be open to inspection at all reasonable hours by any
person interested in or affected by such outlet, land or premises. This is one of the
enabling provisions of the Water Act that is in consonance with the spirit and
objective of the right to information law. Under section 33A of Representation of the
people act 1951\(^\text{11}\) a candidate contesting elections is required to furnish in his
nomination paper the information in the form of an affidavit concerning: (i)
accusation of any offence punishable with two or more years of imprisonment in any
case including the framing of charges in pending cases; and (ii) conviction of an
offence and sentence of one or more than one year imprisonment. Declaration of
assets has also been made a mandatory requirement under this act. The Environment
(protection) act 1986\(^\text{12}\) and the Environmental Impact Assessment Regulations
provide for public consultation and disclosure in various circumstances. e.g. the
Environmental Impact Assessment regulations allow for a procedure for public
hearing and publication of the executive summary of any proposal for any project
affecting the environment by the person seeking to execute that project. This
provision is meant to facilitate citizen input. The foregoing sections of certain Indian

\(^{11}\) Representation of People’s Act 1951 is an act to provide for the conduct of elections to the houses
of Parliament and to the house(s) of the legislature of each state. The act also provides for the
qualifications and disqualifications of members.

\(^{12}\) The Environment Protection Act 1986 provides for the protection and improvement of the
environment.
legislations are enabling features which follow the spirit of the right to information of transparency and openness in public functioning.

**Various judgements of courts of law that support the freedom of information:**

The concept of democracy is based upon political discourse. It has been held in Secretary, Ministry of Information and Broadcasting, Government of India v. Cricket Association of Bengal\textsuperscript{13} that political discourse plays an important role in facilitating criticism endeavors in all suggestions. And it is no hidden truth that healthy political discourse is possible only if citizens are informed about the working of the government and its functionaries. Various jurists have upheld that freedom of speech and expression includes freedom of right to information. Without free flow of information, the citizens of India cannot be ensured of the freedom of speech and expression.

Article 19(1)(a) which talks about freedom of speech and expression is actually a bundle of rights. It has been observed in *Indian Express Newspaper Bombay Ltd. V. Union of India*\textsuperscript{14} by the Supreme Court that article 19(a) also covers the following:

\begin{itemize}
  \item [(a)] It helps an individual to attain fulfillment.
  \item [(b)] It assists in discovery of truth.
  \item [(c)] It strengthens the capacity of the individual participating in decision making.
  \item [(d)] It provides a maximum by which it would be possible to establish a reasonable peace between stability and social change.
\end{itemize}

Therefore, the obvious corollary that has been drawn by the court is that the right to information is a part of the constitutionally guaranteed, right to freedom of speech and expression.

The purpose of the press is to enhance and advance public interest without which a democratic electorate cannot make responsible judgment\textsuperscript{15}. Thus, the court has upheld the fact that a free press that provides updates about the government and bureaucracy

\textsuperscript{13} AIR 1995 (2) SCC 161
\textsuperscript{14} AIR 1986 SC 515
\textsuperscript{15} Indian Express Newspapers, Bombay Private Ltd. V. Union of India, AIR 1986 SC515
to the public is an essential element of the fundamental right to speech and expression. A free press leads to an informed citizenry.

The Supreme Court of India while interpreting Article 19 (1) (a) of Constitution of India further held that the right to information is a facet of the freedom of “speech and expression” as contained in Article 19 (1) (a) of the Constitution of India. Right to information, thus, indisputably is a fundamental right, a basic human right.

- In the matter of Benett Coleman and co. v. Union of India\(^{16}\): The Right to Information was held to be included within the right of freedom of speech and expression guaranteed by Article 19(1)(a).
- In the matter of Raj Narain\(^{17}\), the court explicitly stated that it is not in the interest of the public to “cover with a veil of secrecy the common routine business – the responsibility of officials to explain and justify their acts is the chief safeguard against oppression and corruption.”
- In the matter of S.P. Gupta v. Union of India\(^{18}\) the right of the people to know about every public act the details of every public transactions undertaken by public functionaries was described.
- In people’s union for civil liberties v. Union of India\(^{19}\) it was held that Right to Information is the facet of the freedom of speech and expression as contained in Article 19(1)(a) of the Constitution of India, Right to Information is thus indisputably a fundamental right.

The rationale for these judgements and the entire discourse in this thesis is people’s empowerment through access to information. Equality of opportunity is the building block for a democracy and one of the most important ways to provide equality of opportunity is by providing access to information to people.

Thus, it may be seen that even though the Constitution of India guarantees Freedom of Speech and Expression to the citizens of India and that various courts have upheld the right to freedom of speech and expression, the actualization of this right has been made possible only through the Right to Information Act 2005.

\(^{16}\) AIR 1973 SC 60
\(^{17}\) AIR 1975 SCC 428
\(^{18}\) AIR 1982 SC 149
\(^{19}\) PUCL v. UOI (AIR 2004 SC 1442: 2004 2 SCC 476)
The process of promulgation of the law of right to information in India:
The Press Council of India (PCI) drew up the first major draft legislation on the Right to Information in 1996. The draft affirmed the right of every citizen to information from any Public Body. Significantly, the term ‘Public Body’ included not only the State, but also all privately-owned undertakings, non-statutory authorities, companies and other bodies whose activities affect the public interest. Information that cannot be denied to Parliament or State legislature cannot be denied to a citizen either. The draft also provided for penalty clauses for defaulting Authorities.

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

Finally in 1997 a conference of Chief Ministers resolved that the Central and State Governments would work together on transparency and Right to Information. Following this, the Centre agreed to take immediate steps in consultation with the States, to include freedom of information legislation, along with amendment of Official Secrets Act, and the Indian Evidence Act, before the end of 1997. The Central and State Government also agreed to a number of other measures to promote openness. These included establishing accessible computerized information centres to provide information to the public on essential services and speeding up on-going efforts to computerize government operations. In this process particular attention would be placed on computerization of records of particular importance to the people, such as land records, passports, investigation of offences, administration of justice, tax collection, and the issue of permits and licenses.
In 1997, two States passed Right to Information legislation and the Government of India appointed a working group, headed by former bureaucrat and consumer right activists H.D. Shourie to grasp what was required in the freedom of information bill. And finally Freedom of Information Act came into force in India in 2002. However, the Freedom of Information Act lacked practicability and transparency. The government decided to repeal the Freedom of Information Act and in the proposed legislation to provide an effective framework for effectuating the right to information.

Thus, the Right to Information Act, 2005 which came into force in India in totality with effect from 12th October, 2005 is regarded as a milestone in the Indian history of social legislation. It repealed the Freedom of Information Act (2002) and the Official Secrets Act 1923. There is an important question that is raised while drafting of a legislation which is that of drawing a line between what information to be released and what to exempt from public release. Barry Conway in his essay in the book titled Right to Know edited by Donald C. Rowat said that the effectiveness of the freedom of information must be measured instead by the nature and degree of impediments on the primary level of access of information. A skill in legal draftsmanship could have led to the removal of the ambiguities in the Act.

The Right to Information Act within a framework of Human Rights:

It was during the 20th century that Human Rights became a hugely discussed topic and the movement got momentum when the world at large recognized that human dignity and rights cannot be compromised at any cost and are very important.

Many international constitutions i.e. the constitution of many European countries have favoured the need for Human Rights. The Human rights were guaranteed by “Magna Carta” in London in the 13th century, by the adoption of rights, the United States declaration of Constitution and the Constitution of the United States in 17th and 18th Century and the French declaration of the right of man in the 19th century. However, the first real concrete step towards guaranteeing Human Rights at the International level came with the adoption of the Universal Declaration of Rights adopted by the United Nations Organizations on 10.12.1949. The United Nations General Assembly

---

20 Tami Nadu and Goa were the first two states to take initiative in this matter.
adopted the declaration of the rights in 1959. There have been many more such international covenants. Human Rights are essential to control the resources which meet the basic needs for human beings which include the right to a good and safe environment and the right of every citizen of the planet to receive information. No law can worked smoothly unless there is interaction from the public. To ensure that human conduct is in accordance with the prescribed law it is necessary that there should be appropriate awareness about the law requirement and what the law consists of. Unless the nitty-gritty of law and other administrative aspects of the States are known to the public it will be impossible for public to assert their rights.

**Normative structure of the right to information act 2005:**

While examining the normative structure, it comes to notice that the right to information legislation provides a statement of objective of the law at the outset of the Act, in which the context in which the Act has been enacted is stated. The basic structure of the Act is mainly three fold: It provides a general right of access to public records to the public which can be exercised by clear and precise written requests to the public authority concerned. Secondly, there exist exemptions under the Act that can be used to restrict the dissemination of information and thirdly, there exists an appeal mechanism that ensures that denial of information is reviewed appropriately.

It states that this is an Act to provide for setting out 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. It further adds that towards this purpose, this Act seeks to constitute a Central Information Commission and State Information Commissions.

The most important and significant aspect of the Right to Information legislation is that it gives legitimacy to citizens to demand information from the public authorities. This is the enabling clause of the Right to Information Act 2005 and the rest of the discourse about this Act emanates from this enabling clause which is enshrined in Section 3 of the Act.

Section 3 of the Act states that subject the provisions of this Act, all citizens shall have the right to information. It is pertinent to note that two things are distinctly clear
from this section. Firstly, that this section provides the guarantee to the citizens of India to receive information and secondly that this right is subject to restrictions that are imposed by this Act.

Taking this discourse further, this section does not make it clear from where such information can be received and it restricts itself to the providing and receiving of information, it does not clarify, what shall be done once the information has been received by the citizen. This has been one of the criticisms of the Act and the dilemma of a citizen when he/she realizes that the information that was sought has been made available, however there is an inherent defect in the facts that have been provided. One of the staunch criticisms of this Act is that grievance redressal mechanism is not available in the Act.

There have been many instances wherein a citizen who has received information has later found it to be a challenging task to seek redressal for the inherent lacunae that is seen in this information. The provisions of this Act that prohibit certain information to be provided to the citizens are listed in Section 8 of the Act.

**Applicability:**
The Right to Information Act, 2005, Act No.22 of 2005 came into force with effect from 12.10.2005 It extends to the whole of India except Jammu and Kashmir. The provisions of sub-section (1) of section 4, sub-sections (1) and (2) of section 5, sections 12, 13, 15, 16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment. The Act was amended vide General Statutory Rules (GSR) 347, dated 8.10.2005. The Right to information Act framework now in operation is a uniform system across the country with only one exception of excluding Jammu and Kashmir. The fundamental purpose of the Act is to enhance and support democratic form of government, by providing information to the common public such that they can influence public policy and to hold the government accountable for what it does and such that it the citizens are able to vote in an informed manner.
**Institutional arrangement:**

The Act seeks to establish a number of authorities and institutions, which can facilitate the providing of information to the citizens. These institutions have been created both at the Central and State levels. The Act prescribes for the designation of senior level officers in public departments as Public Information Officers (PIOs) and Assistant Public Information Officers (APIOs), who shall be responsible for the dissemination of information to the general public.

Certain defense establishments are excluded from the ambit of the Right to Information Act because of reasons of national security. A list of such organisations is included in the Second Schedule. However, under section 24 of the RTI Act, such exemption from disclosure of information does not include information relating to human rights violations and corruption. Moreover, the organizations included in the Second Schedule need not appoint Public Information Officers, which can lead to an ambiguous situation since there would be no forum available for making requests for information pertaining to allegations of corruption and human rights violation. To this end, the first report of the Administrative Reforms Commission has made the following recommendations:

(a). The Armed Forces should be included in the Second Schedule of the Act
(b). The Second Schedule of the Act may be reviewed periodically.
(c). All organizations listed in the Second Schedule have to appoint PIOs
(d). Appeals against orders of PIOs should lie with CIC/SICs. (this provision can be made by way of removal of difficulties under section 30)

**Definitions:**

The laws in India defines various words and terms used in the body of the text at the beginning which serves the purpose of understanding the meaning of the terms used in the text of the legislation. Such definitions are also incorporated in the law relating to information. The Right to Information Act 2005 contains a number of definitions in Section 2 of the Act which provides expressions to various terminologies used in the body of the statutes. These definitions are succinctly reviewed below:

The term “information” means any material in any form, including records, documents, memo, e-mails, opinions, advices, press releases, circulars, orders,
logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any law for the time being in force. The establishment of an Information Commission headed by an Information Commission gives a stronger force to the principle of public access.

As is apparent from the definition that has been provided for in the Act, the term “information” includes a plethora of material that may be held by a government office in various forms. There have been many interpretations and orders’ regarding this issue and the definition of the term information has become clearer over the passage of time. Soon after the Right to Information Act came into effect, there was a huge debate whether ‘file notings’ are covered under the definition of information and whether they should be revealed or not. The bureaucracy was very aggressive in keeping file notings as a secret and did not want to part with them because file notings reveal them totally. According to the RTI law, file notings are not exempted from disclosure unless they fall under general clauses of exceptions and exemptions, defined in section 8 of the law. Still, the state machinery had wanted to secure file notings and was perhaps never comfortable with their access by citizens. The Right to Information Act, had faced turbulence from the bureaucracy much before it could complete its first year of completion. A powerful lobby of the bureaucracy tried to prevail over the coalition government at the Centre and convinced it to amend the law. Termed by many as a retrograde step, the proposed amendment was far reaching because it envisaged barring 'file notings' from access by citizens. But file notings are everything in the process of decision making, and if they are blocked, it drops an iron curtain on public records, which is against the very aim of the RTI law. File notings can save thousands of crores of rupees for a nation like India. Enron is the example of a disastrous deal for high cost electricity between Dhabol Power Company (of Enron) and Maharashtra Electricity Board, guaranteed by Government of Maharashtra and Government of India, which ran into trouble and ultimately closed down. All this could happen because the terms of agreement were kept secret and not revealed in spite of the demand from non government organisations in Maharashtra. The people now have the right to demand such information which would otherwise be hidden in the form of file notings. Parivartan, a voluntary organisation, obtained file notings regarding the privatisation of water management in Delhi, in 2005. The notings
revealed that Pricewaterhousecoopers did not even qualify in the preliminary round, but the World Bank twisted the arm of the Delhi Government to cancel bids, force rebidding and ultimately changed the selection criteria. File notings also revealed that some honest officers had protested. If Parivartan had not exposed this using the RTI Act, the deal could have made the Delhi citizens shell out more than 10 times the present rates of water. File notings create a paper trail which is at the heart of the RTI Act and access to the same constitutes an effective functioning of the Act. The proposed denial of the same would have been unconstitutional, undemocratic and would run counter to the norms of transparency in the government.

Even after the Chief Information Commissioner had given an order to the effect that file notings should be made a part of the information to be disseminated to an applicant under the RTI Act, the officials at the Department of Personnel and training did not implement the same and were compelled to do so after an order in the nature of a warning from the Chief Information Commissioner. The nature of file notings is inevitably that of advice, opinions, recommendations or suggestions etc., which are specifically covered by the above definition of 'information'. Exempting file notings would mean limiting the expressions such as 'file', 'information', 'opinions' and 'advice' in Section 2(f) in the Act. Similarly exclusion of notings would completely nullify the operation and the import of Sec. 4(1)(c) and (d) which requires every public authority to proactively "publish all relevant facts while formulating policies or announcing the decisions to affected persons" and "provide reasons for its administrative or quasi-judicial decisions to affected persons."

Sec. 4(1) (b) of the Act makes it mandatory for every public authority to publish amongst other things - "the procedure followed in the decision making process, including channels of supervision and accountability" and "the norms set by it for the discharge of its functions."

The category of 'file notings' does not figure under Section 8(1) of the RTI Act, which lists out the types of information that the government is under "no obligation to give any citizen". Thus, the file notings come firmly within the access as per the RTI Act and must be made public on request. Even where notings may fall within the Section 8 criteria, they can still be made public where the public interest is served in
disclosing the information. As regards cabinet papers, Section 8 mentions cabinet papers including records of deliberations of councils of ministers, and provides that "decisions and the material on the basis of which decisions were taken shall be made public after the decision has been taken". Clearly, the Act requires that not only must decisions be made public, but the reasons and the material on the basis of the decisions be made public after the matter is complete and over. Even cabinet papers which may otherwise be exempt from disclosure, under Sec. 8(1)(i) of the Act are still ultimately subject to disclosure.

There is now a proposal from the ruling government to amend the law so that that the material on the basis of which decisions were taken is deleted from clause 'F' of Section 8. The proposed provision says: "No cabinet paper would be disclosed even after a decision has been taken." This would put cabinet notes, records and other documents based on which the decisions are taken, also out of the reach of access and out of the Central Information Commission. The central government has every authority to amend this access legislation. Apart from this general power, Section 30 of the Act empowers to remove difficulties, hindrances and obstacles to give full effect to the goals and objectives of the law. Under Section 25(3)(g) of the Act, Ministries can also recommend amendments for enforcing the right to access information. But the proposed amendments are neither initiated by ministries nor intended for removing any difficulties. Instead they propose to destroy the accessibility to a maximum extent. If the amendment is really needed, it should have been based on the practical experience. The RTI law also needs to be made difficult to amend as any political party at the office might be interested in hiding any sort of information from the people. Finally, it is for the people to secure the hard-earned right to information.

In January this year, ruling in a case concerning the refusal of the public sector Telecommunications Consultants India Ltd. (TCIL) to provide a file noting, the Central Information Commission (CIC) ruled that unless the public authority clearly specified that the file notings relate to commercial confidence or trade secret or intellectual property or available to TCIL in its fiduciary relationship, the appellant should be given file noting on the document specified.
On 1 December 2005, Prime Minister Manmohan Singh had instructed the Department of Personnel and Training (DoPT) to exempt file notings on identifiable individuals, organisations, appointments, and matters relating to inquiries and departmental proceedings from the purview of the RTI Act. However, the government had said that substantive file notings relating to plans, schemes, programmes and projects of the Government related to development and social issues could be disclosed. Reacting to this, Dr O.P. Kejriwal, one of the Central Information Commissioners, wrote a letter to the central government opposing the order. He described it as the first blow to the Act widely seen to be one of the most important pieces of legislation to have been enacted in independent India.

As the backdoor methods did not work, and rulings from Information Commission are apparently opposing these attempts, the Union Cabinet on 20 July 2006 announced its decision to amend the law to exclude notings on files by officials from the ambit of this law so that the CIC's decisions on notings would become ineffective. The proposed amendment also accedes to the UPSC's request that the sensitive area of its selection process be put out of the RTI law's purview.

It is a principle of administrative law that the cabinet decisions and debates should be revealed to the people, unless they disclose any sensitive and security information. Neither the UK nor USA or Australia have exempted file notes from the access to public. In India also, both the Judiciary and Parliament are long used to functioning openly without any adverse effects and it is only the bureaucracy that presently functions under this unnecessary veil of secrecy. Amending the law to take away file notings from the public domain is a retrograde measure that will appease only that miniscule part of officialdom that stands to unduly benefit from such secrecy and denies the people the benefit of their own information, their empowerment and active participation in democratic decision making process.

The character of state and sovereignty is manifest in three important wings- Executive, Legislature and Judiciary. As the open trial is the basic norm of judicial enquiry, the courts always function in public, while every aspect of proceedings in legislature is reported in media or recorded and made available to all. Most of the legislative proceedings are now being telecast live.
The only wing that runs in secrecy is the Executive. The decisions at the Council of Ministers level or secretary level are not easily available to common people which leads to absence of accountability of decision makers. Even if the decisions are made available by spokesperson of the cabinet, the reasons for decision, and different opinions expressed before they arrived at that particular decision are usually beyond access. This has been our Executive's culture, and seen from this vantage point, the RTI law of 2005 was a path-breaking legislation that gave people the power to demand information that is rightfully theirs.

In sum, the promotion of "transparency and accountability" in the working of public authorities - the stated object of the landmark RTI legislation - does not stop merely with making the decisions of government public. It also lies - and critically - in making it possible for people to know on what grounds these decisions were taken. Access to file notings by officials is necessary to evaluate the process of decision-making, to understand such things as which options were considered, which were not, and why some were rejected. It is not proper to close the doors before they are fully opened and the 'enlightenment' transformed into empowerment.

As is clear from the definition of ‘information’ in the Act, this information can also pertain to a private body which can be accessed by a public authority under any other law for the time being in force. However, there is stiff resistance by private bodies regarding information that should be revealed to the public. Moreover, “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

a) Inspection of work, documents, records;
b) Taking notes, extracts or certified copies of documents or records;
c) Taking certified samples of material;
d) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

Public Information Officers have often cited various reasons for denying information to applicants in the form that has been demanded by the applicants.
It is a generally accepted principle that there must be exceptions to providing information to the public under the RTI Act, however, the degree, kind and definition of harm that is necessary to claim these exemptions is a matter of debate. According to GB Sharma in Right to Know of Donald C. Rowat, to resolve this problem due weight has to be given to two main factors. The first one being that modern governments function in a system which is at arm’s length from other bodies, be they state level or municipal level in nature. This creates an almost disjoint in the minds of the public as far as the various instruments of the state are concerned. The second one according to him is that the government gathers information to allow it to fulfill its duties and responsibilities towards the government and if the access to government defeats the very purpose of collecting the information then there exists the need for exemption. According to GB Sharma, the exemptions that allow a public authority to deny access to information broadly fall into three categories, according to the manner in which they are drafted. The first one is the ‘Injury-test exemption’ in which the government refuses to release certain information because its release would be injurious to national defence or any other reason that the government deems fit under law. A subjective assessment of an injury is being made by giving this defence and because such exemptions are based on a vague and general criteria, they are more likely to give rise to disputes between government institutions and the applicants. The second category of exemptions are defined as the ‘Class-test exemptions’ which are nothing but clearly defined categories of government records or exemptions that are not liable to be given under the Act. It may not be evident but these exemptions aim at protecting a public or private interest and at preventing injury. An example of this class may be certain documents. These exemptions are easy to apply and less likely to give rise to disputes because they are based on criteria that are objective and quite readily verifiable. There are a third category of exemptions which are known as mixed exemptions, which contain both injury and class tests.

Fair use/public good: this term allows for parody, commentary and criticism. A lot of information under the Right to Information Act, even though it is exempt from public disclosure, can be made public if it is information that is necessary for fair use or for public good.
The concept of Ombudsman or Information Commissioner:

In the international scenario, while the development of freedom of information laws was taking place, it was felt that unless the Information Commissioner was given enough power to ensure that the public has access to documents, it would be impossible to give teeth to the legislation for freedom of information laws. Various terminologies are used for Information Commissioner, such as Ombudsman, in New Zealand he is called the Parliamentary Commissioner. Some important descriptions of the term Information Commissioner are, “Everybody knows the meaning of ‘Ombudsman- he is someone to whom any citizen may take complaints about the actions of people in the government service. The Ombudsman will listen, examine, and try to obtain redress of an injustice or amends for a grievance.” (R.B.C., 1971:11)

“It is the function and duty of the Ombudsman to investigate any decision or recommendation made, including any recommendation made to a Minister, or any act done or omitted, relating to a matter of administration affecting any person or body of persons in his or its personal capacity, in or by any department or agency, or by any officer, employee or member thereof in the exercise of any power or function conferred on him by any enactment.” (Alberta Statutes, 1967:Chapter 59,sec.11(1)

The Ombudsman is in Canada has been given a lot of power to act as an instrument for social reform and to try to use his office as a tool to better the condition of society. In Canada, the Ombudsan is required to maintain secrecy in respect of all matters that come to his knowledge. However, this in contrast to the situation in Sweden and India where the information laws require the ombudsman to open up all the communication that is receives.

India has followed in the footsteps of the US, where the access to information is of prime importance and the first step and redressal of the wrong follows later, if at all. Thus, implying that the principle of access precedes the principle of redressal of wrong.21

---

21 Principle of access for the purpose of this thesis refers to access to public documents and other information that legitimately belong to the common public. Principle of redressal of wrong pertains to correction of a wrong that has been committed by bureaucratic action or inaction. It is the next stage of the right to information act, the first being providing the information, which does not involve redressal of complaint, if any.
Security:

“There is always a tendency in government to confuse secrecy with security. Disclosure may be uncomfortable, but it is not the purpose of democracy to ensure the comfort of its leaders.” (Wide, 1973:45). All countries, at some point in time have had to deal with the dilemma of how to strike a balance between national security and providing information to the citizens. For example in the British system, there exists the norm of D- notices which is an administrative procedural notice that the administration sends out to the press that is not legally binding but is still followed by the press except in a few exceptional cases. It is essentially a notice that informs the press that specific items of information are considered to be secret by the government and should not be published. Perhaps, the D notice is followed because of the risk of prosecution under the Official Secrets Act. In the context of India, continuing with the Official Secrets Act 1923 alongside with the RTI Act, would be akin to flying an airplane with one wing. Rowat (1981) has opined that there may be need for secrecy in matters of national security, espionage etc. however, to sacrifice accountability at the pretext of maintaining bureaucratic secrecy is not justified in a mature democracy. It is important to note that the definition of official documents/ records should not only include the documents that are prepared by the government offices but also those that are received by a public authority. “If an elected official of government wrongs us, our remedy against him or her is at the polling booth on Election Day, but if an appointed official of the civil service makes a decision or takes action that we feel is unfair or unjust, our only remedy prior to the establishment of an Ombudsman was lengthy, expensive and very often inadequate court procedures...It has been to redress the balance between the citizen and the state that people in recent years have turned to the Ombudsman institution.” (Maloney, 1979:37)

Conclusion:

The above chapter outlines the legal framework within which the Right to Information Act has been promulgated and subsequently being implemented. Firstly, the chapter outlines the aim of the chapter which is to analyse the right to information act in the backdrop of the various legal provision and national and international case laws. Secondly, the chapter locates the right to information act within the Constitution of India. It also explains in detail the importance of the right to information act and briefly mentions provisions of other statutes that are in consonance with the spirit of
the right to information act. The chapter also outlines the various important judgments of the Supreme Court and the High Court pertaining to the right to information act, it outlines the process of promulgation of the right to information act in India. Right to information has also been studied with respect to human rights in India and the normative structure of the Act has also been detailed in the chapter for a better understanding of the workings of the Act. The chapter outlines through its various components, how the right to information Act is not a clear and precise piece of legislation in as much as it leaves a lot of scope for interpretation. It has also created a quasi-judicial body of institution which has not lessened the burden of judicial courts as RTI related matters are still reaching courts of law for adjudication under the writ jurisdiction of courts. Moreover, the Information Commissioners who are appointed under the Act give many contradictory orders which dilute the efficacy of the legislation. The exemption clause of the Act leaves much to be desired. Undoubtedly, the new information law is a substantial achievement however, it needs to be implemented in the right spirit and there is need to strengthen it and the present Act merely outlines the legal framework. The coming chapters throw some more light on the issues raised and discussed by the current chapter.