RIGHT TO KNOW IN INDIA
CHAPTER—III

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The reality of freedom loses its human essence where there is a failure to create and monitor those basic jural postulates of governments' power to deny and peoples' right to claim information; human values and hopes dissolve like Dead Sea fruit.\(^1\) Freedom of information is the vanishing point of Indian jurisprudence.\(^2\)

The poignant paradox in the query - "India is free but are the Indians free?" could best be understood only through the following logical argument.\(^3\)

Participation of the people in the process of governance can only make them free. The government by the people means knowledge of public affairs and wisdom to share and steer, to criticize and correct the wrong doings of administration. Easy and effective access to information about everything that affects the public interest is the basis for knowledge as power.\(^4\)

The 'right to know' is thus, one of the most fundamental democratic rights, where vicarious participation of the people is the clan vital of our republic.\(^5\)

The logic of James Madison, the then President of U.S.A., made in 1822, is that a popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy; or, perhaps both. Knowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives. The logic has a relevancy to India today. The republic of
India is the land of scandals like Bofors and Bhopal gas Tragedy and it is blinded by the denial of information to citizens.  

In India, the political executive was indulging in the most reprehensible behaviour thereby habitually depriving the people of knowing about its doings.  

The Shah Commission of Enquiry observed with caution that more efforts at secrecy creates an atmosphere which becomes congenial for the functionaries of the states to abuse their authority.  

Secrecy in governance of India has a very long history of more than one and half century. In early 40s of 19th century, some of the civil servants were supplying information to the press relating to government's functioning which emerged as practice in India. It caused embarrassment to the government. With a view to curbing such a practice, the central government of India, issued a notification on August 30, 1843, asking the officials of the government to refrain from communicating any paper or information which are in their possession, to the outside world.  

During that time, the practice of supplying information pertaining to government matters to the press by some civil servants caused occasional embarrassment to the government. With a view to curbing such indulgence, the Governor General in Council notified to the officers of both civil and military services that the documents and papers which come officially to their possession, be made public or communicate to individuals, only with the prior consent of the government as they belong to the government alone.  

But the practice of purveying governmental information to the press and others, instead of being subsided
became more widespread. Some civil servants were found to be more closely connected with the press in India.\textsuperscript{12}

With a view to checking that practice with a firm hand in July, 1875, the government of India had laid down detailed instructions for regulating the contemporary administrative behaviour in relation to the emerging press in India.\textsuperscript{13} These rules required the fulfillment of the following three conditions:

Firstly, any public functionary, preparing to become a proprietor, either in whole or in part, of any newspaper or periodical, had to obtain the previous sanction of the government in writing. Such sanction was given in the case of newspapers or publications primarily devoted to the discussion of topics related to art, science or literature only. The government could withdraw the sanction, when it seems fit.

Secondly, public personnel could make public, any document, paper or information which they possess in their official capacity, however, only with the previous sanction of the government.

Thirdly, it was for the government to decide, whether any engagement of civil servants with the press was consistent with the discharge of their duties to their employer.\textsuperscript{14}

Even after wide circulations of these orders in 1875, the leakage of happening within the bureaucracy continued which became a cause of concern for the government. This compelled the government in December 1878 to remind all its officers that information received by them in their official capacity, whether from official sources or otherwise, which is not obviously intended to be made public, are at their personal disposal.\textsuperscript{15}
Till 1884, when the Secretary of State for India, while taking up the case for secrecy, wrote to the officers working in India for initiating appropriate action in this direction as secrecy in government was an internal affairs of the government of India. Finally, based on a copy of the Treasury Minute of 13th March 1884 regarding the premature publication of official documents, sent by the Secretary of State for India, the government of India on 16th August, 1884 issued a circular in the line of similar process adopted by the government in Britain. 

However, the government made departmental arrangements for imparting those information to the outsiders especially to the press, which in the opinion of the government, might be communicated unobjectionably. In 1877, the government had appointed a press commissioner to liaison with the press. Through only the commissioner, official papers or information were disseminated to the people.

The unauthorized disclosure of the confidential information of the government to the people outside the government, hitherto was punishable under the disciplinary rules; it was not made a penal offence though. But, it attracted penal action since 1889, when the British parliament passed its first Official Secrets Act. The statute was made applicable to any of Her Majesty’s dominions’ including India, with immediate effect.

However, the Official Secrets Act of 1889 provided that any law made by the legislature of any colonial government, which are consistent with the Act, Her Majesty may suspend the operation of the Secrets Act of 1889, within such British colonies.
The statute was virtually re-enacted for India by making it adaptable to India's own system of jurisprudence and administrations. The Official Secrets Act, that was passed in 1889, was a brief one consisting only of five sections.

The Act covered a wide area and was directed against espionage as well as against unauthorized persons receiving any official information. The overriding objectives of the Act was to prevent the disclosure of official documents and information. The offence is covered by the Act were -

1) the wrongful obtaining of information in regard to any matter of state importance; and
2) The wrongful communication of such information to unauthorise persons.20

The amendment of the above Act was made in 1904, making the law very harsh. It was provided therein that whoever, without lawful authority or permission went to an office had committed an offence under the Act. The amendment made all offences under the Act cognizable and non-bailable.21

Around that period of time, Indians were touching new level of political awakening. The emerging seditiousness and militancy in the country provided justification to Lord Curzon to adopt firm measures for official security. Accordingly, a provision for secrecy in official work was also incorporated in the Government Servants Conduct Rules, 1875. The rules provided that a government servants may communicate, any document or information obtained in the course of his public duties or prepared or collected by him in the course of those duties whether from official or other sources, to government servants of other
departments, or non-official persons or the press, only when the local government empowered him to do so.\textsuperscript{22}

In 1911, the parliament of Great Britain, replaced the earlier Act of 1889 by the new Official Secrets Act, by making it automatically applicable to India unless government of India had enacted a similar law for India.

The British Act of 1911, was amended by the Official Secrets Act of 1920. This amendment was done primarily to incorporate the experience gained during the First World War. But, as it was a period of political uncertainty for India, the government of India decided to stay and wait till the political picture became clear. It did not follow on the footsteps of Great Britain immediately. It was only after the Government of India Act, 1919 laid down the new framework of governance for India that the government of India took up the task of updating the arrangement regarding official secrecy.\textsuperscript{23}

However, the Official Secrets Act of 1889 continued in India until the passage of the Official Secrets Act, 1923. In February 1923, the central legislative assembly passed the Act, relating to secrecy in India.\textsuperscript{24}

**The Official Secrets Act, 1923**

The Official Secrets Act of 1923, was enacted in India, in strict compliance to the British Act of 1911. The Act aims at looking after two sets of events. They are -

Firstly, it is directed against espionage and the provisions that stand for penalizing espionage are made
favourable to the state making it easy to punish as individual, even on the basis of faint or incomplete evidence.

The Act provides that it shall not be necessary to show that the accused person was guilty of committing any particular act, which is prejudicial to the safety and interest of the state. Here, the interest of state meant the British colonial suppressions of Indians fighting for Indians. Safety of the state meant safety of British Colonial state that gagged Indian democratic aspirations. The accused person may be convicted where it appeared from the circumstances of the case or his conduct that his purpose was prejudicial to the safety or interest of the state.

The Act also provides that a person may be presumed to have been in communication with a foreign agent where he has visited the address of a foreign agent either within or without India or where the name or address of or any other information regarding a foreign agent has been found in his possession.26

Secondly, it covers the set of events that relate to communication of official information to the people outside the government.

The Official Secrets Act, 1923 which is an exact replica of the British Official Secrets Act, 1911, is of catch-all nature, and hardly anything can escape its staggering provisions26.

Provisions of the Act, cover all information, which a government servant happens to learn in the course of his duty. It makes a mere receipt of official information, even contrary to his
desire, an offence. The catch-all section had been incorporated in addition to covering a civil servant, categorises four situations in which other persons may also be brought into the net:

1) The information that government contractors and their employees learn in that capacity is treated as official;

2) Any person who is entrusted by a civil servant on confidence, with official information;

3) Any person possessing official information, which he obtained in contravention of the Act;

4) Any person obtaining possession of a secret official code, word or password or of information about a defence establishment or other prohibited place, irrespective of the means of obtaining it.27

The operative area of the Official Secrets Act, 1923 was designed with the aim of unlimited expansion.28 It is quite evident from the Speech of Hari Singh Gaur, made in the legislative assembly. While participating in the debate, he argued with clarity that the provisions of the Act are so wide that it will have no difficulty whatsoever in running in any body who peeps into an office even quite innocently to know the time of holding the next meeting of the Assembly or whether a certain report on the census of India has come out and what is the population of India recorded in that period. In that view of the matter, he advised the government not to use the provisions in a manner calculated to abridge and thwart popular liberties.28 But, the above advice has gone unresponded by the government of India. The press and the people have been controlled by the tendency of secrecy of the government.
The Act does not define the word "secret" or the word "official secret" anywhere. As such, it is for the government to decide as to what should be treated as secret and what not. In such a situation, the government may treat any information as secret only because its disclosure may embarrass the government, even where there is no danger to national security or public safety or any other public interest. Even pointing out pro-government suggestions based on the information would be considered as offence.

The Memorandum of Instructions regarding the Treatment of Secret and confidential papers issued on July 11, 1917, focuses on the mechanics of secrecy-management through those officials who are charged with the responsibility of securing compliance with the Official Secrets Act. The detailed and copious instruction projects the gradual transformation of secrecy in official India, into a kind of secretism. The secrecy's progeny includes 'top secret', 'secret', 'confidential', and 'for official use only' each with its own elaborate rituals.

India got independence in 1947 and became a republic in 1950. The theory and practice of secrecy created by the colonial government contained even after ringing in of independence. The government of India had preferred to continue the Official Secrets Act of 1923, which is still active. Some terminological changes took place making them consistent with the terminology of the Constitution.

In 1967 the Official Secrets Act, 1923 was amended. It made most of the offences cognizable and punishable with long period of imprisonment. Though parliament was aware of the
dangers of spying in the state of India, it was not attentive to the wider implication in keeping governmental functions under a thick cloak of secrecy. As a result, parliament's relationship with the executive became weak and apparently parliament remained poorly informed.

The Official Secrets Act is a legislative measure for keeping the people in dark about what has been happening within the governmental apparatus. It helps the political leadership to pursue courses of action, which may be highly detrimental to public life. The leadership could commit all kinds of wrong and keep the affairs secret from the outside world.

In India, since mid-sixties and more particularly, since early seventies, scandals about white-collar crimes have been unmasked. But, the Official Secrets Act helped the government conceal any information about its functioning from the people.

In 1977, Janata Party came to power and by way of fulfilling its commitment made in its election manifesto of promoting openness in government and a promise for a free society, the then Home Minister, Charan Singh constituted a working group comprising of officials from the cabinet secretariat, the Ministry of Home Affairs and the Ministers of Finance and Defence to find out whether the Official Secrets Act, 1923 could be modified so as to enable greater dissemination of information to the people.

The working group comprised only of bureaucrats, to who secrecy is a well-known device and their choice promotes
and helps strengthen the power, position and minimize criticism of their action, argued that the Official Secrets Act, 1923 does not stand in the way of free flow of information to the people. The 'no-change' recommendation of the working group only confirmed the earlier position.39

On 30 August, 1978, in a reply to a question raised by Jyotirmoy Basu in the Lok Sabha, pertaining to, bringing an Act to guarantee access to all official documents other than the highly sensitive genuine ones dealing with national security, the Minister of State, Minister of Home Affairs said that the Official Secrets Act, 1923 has been amended time to time to meet their requirements. The provisions of the Act are designed primarily to safeguard national security and not to prohibit legitimate access to official documents. No legislation other than the Act is considered necessary.40

The bureaucrats enjoying and exercising uncontrolled and unbridled discretionary powers, do not want the government to be open and the people to have the right to information. The government resorts to secrecy and the officers serving under it, under the coverage of the Official Secrets Act, conceal corruption, faults and mistakes in the name of national interest, in pretention.41 Indian bureaucrats considered corruption as offences and national assets deserving utmost secrecy.

Due to the concept of collective responsibility of the cabinet, secrecy was the password in primitive stage of democracy. The British Raj in India, that was full of colonial and feudal trappings, has undergone a dramatic change in the democratization process. Therefore, the Official Secrets Act
seems to be totally irrelevant in the democratic era and context. But the Act, which is an anarchistic piece of legislation serving as a relic of the British Raj and colonial repression is still in force even after fifty three years of India becoming a republic through the constitution adopted in 1950. In terms of democratic information regime, post-republic governance of Indian people by their government is not much different from that of the British colonial repression of the Indian people.

**Constitutional Perspectives**

The Constitution of India does not specifically provide for a right to information. However, the Indian courts especially the Supreme Court of India, on a number of occasions, have upheld the view that no democratic government can survive without accountability, and the basic postulates of accountability is that the people should have information about the functioning of their own elected government. Through different pronouncements, the Supreme Court linked right to information to fundamental right of freedom of speech and expression guaranteed by the Constitution, observing that the citizens in a democracy have a right to know.

The Government of India Act, 1935, which is one of the primary bases of the Constitution of India, made no mention of the right to know. The Constitution also guarantees various fundamental rights. But, it does not expressly incorporate the 'right to know', like the freedom of press, in part-III- the chapter on fundamental rights.
At the time of framing of the Constitution, the United Nations, on 10th December 1948, adopted the Universal Declaration of Human Rights. The Declaration provides, for the right to seek, receive and impart information and ideas through any media and regardless of frontiers.

To the same effect, the International Covenant on Civil and Political Rights, adopted in 1966 that came into force in 1976, reinforces the right of access to information as a fundamental and universal human right.

India has signed and ratified the international instruments, the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights in 1979. Accordingly, the government of India is under international human rights obligation to explicitly recognize the right to information to its citizens.\(^4\)

The Universal Declaration of Human Rights, 1948 and two covenants of 1966—the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights are complementary to constitutional framework.\(^4\) The Constituent Assembly was concerned primarily with the welfare of the mass besides emphasizing the ameliorative role of the state.\(^4\)

The preamble, fundamental rights and directive principles of state policy and the subsequently included Fundamental Duties jointly guarantee the basic human rights and duties of the citizens of India.\(^4\)

While enacting the preamble and other parts of the Constitution, founding fathers could not appreciate that there was
a constitutional compulsion for formulating a national policy on freedom of information by breaking away from the secrecy syndrome. Part III of the Constitution guaranteeing fundamental rights, has not contained express provision for a right to information against the law of secrecy; a British legacy. It has not institutionalized a free speech system for democratizing public power into fuller disclosure and sensitizing the apathetic populace into responsible action based on free information.

The Constitution nullifies arbitrary decision of the Supreme Court in Maneka Gandhi's case, any legislation that regulates the judicially created right to know must conform to two basic conditions. They are:

I) freedom is fundamental and the restrictions thereon are only exceptions,

II) restrictions can survive the constitutional screening only then they are right, just and fair and not arbitrary, fanciful or oppressive.

The Supreme Court in Maneka's case made it clear that non-arbitrariness is the universal imperative to validate any restriction on a fundamental freedom. When freedom of information is denied in certain classes of cases, that classification must be right, just and fair; otherwise it would violate the Constitution. It is seen that overbroad classification is as good as resting arbitrarily wide power.

The Constitution guarantees to the people the freedom of speech and expression, of association and union, the right to practise any profession, occupation, trade or business. The freedoms covered by it cannot be curtailed without the
element of reasonableness; and what is right, just and fair is reasonable.63

Exercising the right to free speech depends on availability of ideas to express. With the availability of the necessary preliminary of relevant information only and knowledge, one can form and communicate thought or meaningful views. It is freedom of information which makes freedom to practise a profession, calling trade or business meaningful.64 No one can exercise right to free speech in vacuum bereft of information and basic knowledge of an issue. Justice Iyer observes that the right to know is at the root of all the rights guaranteed in Article 19(1); and where one fundamental right depends for its real exercise on the concomitance of another right, both are fundamental.65

Right to freedom of speech and expression guaranteed by the Constitution may not include all aspects of right to information. Because the right to freedom of speech and expression is available only against the state as defined by Article 12 of the Constitution. But, the right to know may be necessary not only against the state but also against various entities such as companies registered under the Companies Act where shareholders are entitled to information, manufacturers or traders against whom the consumers have right to information. As such right to information may not always be co-extensive with the right to freedom of speech and expression.66

Right to know or the right to access to information is a constitutional issue that assumes critical importance in seeking relief for Bhopal-gas type disasters. In complex technical issues pertaining to industrial and environmental disasters, because of
non-availability of complete information, victims get difficulty to establish responsibility in legal actions in identifying the culprits. More so, where giant corporations or the government itself are the wrongdoers.

In the above situation, it is impossible for the ordinary citizens to gather full details to support his cause of action. The court must compel the defendants to provide full and complete information to the petitioner.

In India, up till now, in absence of express statutory provisions, either constitutional or statutory, only the courts have read it as ancilliary to the freedom of speech and expression and right to life and personal liberty through the medium of interpretative logic. The Supreme Court in both Maneka Gandhi and Prabha Dutti cases, made observations in support of the claim of Bhupal victims to have complete information from government, where necessary through constitutional compulsion.

The Supreme Court, in S.P. Gupta's case, while asserting that the correspondence between various functionaries which took part in the appointment of judges must become a part of the public knowledge, articulated the right to open government that based on the right of the people to know. The right to know, in that situation exists independently of the right to freedom of speech.

Right to know is also an integral component of the right to life and personal liberty that is protected by the Constitution. In Francis Corali Mullien, the Supreme Court pointed out various dimensions of personal liberty which included right to live with human dignity and all that go along with it,
namely the base necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings.

Since Supreme Court in Probhakar Sanzgiri’s case\textsuperscript{63} recognised that even a prisoner was not denuded of his right to write or send his manuscript out, the right to know is a part of personal liberty. Right to know as a part of personal liberty requires to be reconciled with the right to privacy, which is also included in personal liberty.\textsuperscript{64}

Right to privacy is an ancilliary to right to life and personal liberty of an individual citizen, which is guaranteed by the constitution.

Telephone tapping would infringe the right to privacy of an individual, unless it is permitted under procedure established by law. In Peoples' Union for Civil Liberties case\textsuperscript{66}, the Supreme Court issued guidelines for the exercise of power of interception of telegrams under the Indian Telegraphs Act, 1885.

The Supreme Court in Dr. Takugh Yeptomo's\textsuperscript{66} case held that where a prospective spouse has an apprehension that the other prospective spouse is suffering from AIDS, the former has a right to seek information about the latter's disease from him or from the hospital where blood reports of the latter are available. The right is a part of the right to life guaranteed by the Constitution.

The Constitution of India lays down the procedure that the arresting authority has to follow while arresting a man. It provides the following four features:
The right of the arrested person
1) to be informed of the grounds of arrest;
2) to consult with and to be defended by a legal practitioner of his choice;
3) to be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate; and
4) to freedom from detention beyond the said period except by order of Magistrate.67

The above rights guaranteed by the Constitution are absolute in themselves and they do not have to depend on other laws.68 The validity of a law, which authorizes deprivation of personal liberty, depends on its compliance with the requirements of the provisions of the Constitution.69

The Constitution provides the above rights as fundamental rights and give fundamental guarantees.70 In S. Krishnan's71 case, the Supreme Court observed that it is the duty of the court to see that the right is kept fundamental and the fullest scope is given to the guarantee. It is also the duty of the court to ensure that the right and the guarantee are not rendered illusory and meaningless. The Supreme Court also observed in Anwar's72 case that even a non-citizen can claim right under the constitution though he or she is not entitled to any fundamental right under the freedoms guaranteed by the Constitution.

To Justice Iyer, a prisoner or bonded labourer may challenge his servitude when he can enjoy the right to get at the
facts and the law validating his plea. On the same reasoning, right against exploitation and other guarantees in part III of the constitution become meaningful when the foundational information is freely available to the people by direct or vicarious access.\textsuperscript{73}

India chose the path of democracy, through the mechanism of constitution. The Constitution of India enjoins upon the state to promote the welfare of the people by security and protecting a social order, wherein the preambler mandate of justice shall inform all the institutions of national life.\textsuperscript{74} The directive principles of state policy envisaged in part IV of the constitution, without being enforceable are nevertheless fundamental in the governance of the country.\textsuperscript{75}

The best guarantee of the survival and strengthening of the democratic process is the well-informed people. People will be well informed. When information or knowledge is freely available. Knowledge is basically acquired at three levels:

1) infrastructural level- a person by possessing capacity for acquiring knowledge with the ability to read, write and learn;

2) higher level- which helps one gain skills, expertise and academic distinction;\textsuperscript{76} and

3) national level-by national or personal experience of the socio-political process.

The Constitution\textsuperscript{77} provides that the state shall endeavour to provide for free and compulsory education for all children until they compete the age of fourteen years and it shall
be done within a period of ten years from the commencement of the constitution. The Constitution makes a directive to the state to provide right to education along with right to work.

The state is under the constitutional obligation to guarantee equal opportunities and access to such education. The Constitution mandates that no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state fund on the ground only of religion, race, caste, language or any of them.

The Constitution guarantees right to equality thereby providing equality before the law and equal protection of the laws. It also enjoins the state not to discriminate against any citizen on grounds only of religion, caste, sex, place of birth or any of them.

The Constitution enjoins the state to direct its policy towards securing that the ownership and control of material resources of the community are so distributed as best to subserve the common good. To professor S.P. Sathe knowledge or information is also a resource which must be distributed to subserve the common good and it can be provided when access to knowledge is equally open to all.

The parliament of India unanimously passed the Constitutional Amendment Bill and incorporated a fundamental right to education for children in the age group of six to fourteen years. The Amendment inserted a new clause which provides that "the state shall provide free and compulsory education to all children of the age of six and fourteen years in such a manner as the state may, by law, determine."
Along with the fundamental rights, fundamental duties are also imposed upon the citizens by the 42nd amendment to the Constitution in 1976.

The Constitution speaks another dimension to right to know. The fundamental duties, provided therein and categorized as citizen's imperatives can be performed only with a wide ranging right to search and secure required facts. For example, the fundamental duty of a citizen to protect the environment, including forest, rivers and wild life thereby to show compassion for living creatures and in obeying the inviolable mandate depends upon the right to get the necessary facts and information about them regarding environmental pollution, ecological extermination and cruelty in vivisection.

Indispensability to fulfill citizens' fundamental duties is itself a fundamental right, and it is essential towards materializing the objectives embedded in fundamental duties fixed by the constitution. Justice Iyer opines that this will be a *reductio ad absurdum* otherwise. He further submits that all the facts and information covering almost everything stored in public, even in quasi-public files and books must be disclosed on citizen's requisition for effective performance by citizens of their fundamental duties. State can not defeat the constitution by labelling information as secret and confidential.

In his observation, Justice Iyer records that fundamental duties are also judicially enforceable; because they are not a part of part IV of the Constitution, which is non-justiciable.
The constitutional amplitude of part III and part IV-A protecting the citizens' right to information as basic to the right and duties created by the Constitution, is establish through judicial activism, where policy of secrecy sabotages paramountcy of constitutional rights and duties, judiciary defends the citizen's freedom. Because, howsoever high one may be, law is above him and the law is what the judges say it is. 82

There are certain constitutional provisions 83a which empowers that state executives - both national and state level - to exercise judicial power in specific and rare cases.

The Constitution provides that the President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence in certain cases. It also confers similar power on the Governor of a state.

In the exercise of the above mentioned power, there must be a reflection of proper application of mind of the executive in acting on relevant considerations. The decisions arrived at by the executives, in such cases, must be reasoned decisions. It has been held by the Supreme Court 83b that the exercise of the power of pardon by the above executives, is subject to judicial review.

Though the Constitution 84a provides that the question whether any and if so what advice was tendered by Ministers to the President shall not be inquired into any court; the Supreme Court in the verdict of justice P.N. Bhagawati 84b observed that although what such advice was, could not be enquired, the material on which such advice was based, could not be immune
from disclosure to the court. The Constitution does not bar the scrutiny of advice on any matters tendered by the council of ministers to the President. The courts have inherent power to look into the basis of the advice, in the interest of justice to the citizens. Thus, the people have right to know about the veracity of the above advice through the courts.

The Constitution also provides for the duties of the Prime Minister with respect to the furnishing of information to the President pertaining to the administration of the affairs of the union and proposals for legislation besides furnishing such information as the President may call for.

Resolutions or other deliberations at meetings of state cabinet and advice tendered finally, in pursuance thereof, are also immune from disclosure; but the court can look into them.

The Constitution provides for the powers, privileges and immunities of parliament and of the members and committees thereof. It imparts freedom of speech to parliament and immunities to members from any proceeding in any court in respect of anything said or any vote given in parliament. Any person is immune from any proceeding in any court in respect of publication he makes by or under the authority of either house of parliament of any report, paper, votes or proceedings.

The above provisions of the Constitution extends the privileges to those persons, who by virtue of the constitution have the right to speak in, and otherwise take part in the proceedings of a house of parliament or any committee thereof.

The Constitution also contains similar provision applicable for the state legislatures. This provides specifically the
powers, privileges and immunities of the legislative assemblies and of the members and committees thereof.

There have been conflicts between privileges of parliament and fundamental rights of citizens, right of the press on the one hand and jurisdictional tensions between parliament and the courts on the other hand. The parliamentary privileges vis-à-vis fundamental rights and the courts remains in fluid state. Because the codification of the other privileges, powers and immunities to be made by the parliament remains a distant possibility. However, once they are codified the courts will be entitled to examine the validity of the codification.87c

The Constitution\textsuperscript{88a} empowers the President to issue an ordinance if he is satisfied that circumstances exist which render it necessary for him to take immediate action and such satisfaction has to be on the advice of the cabinet. The law-making power of the President is co-extensive with the law-making power of parliament, except the duration, as regards all matters. The power of the president is subject to constitutional provisions, particularly those regarding fundamental rights.\textsuperscript{88b}

However, the Supreme Court, in a case\textsuperscript{88a} arising out of the similar ordinance-making power vested in the Governor by the Constitution,\textsuperscript{89b} held that re-promulgation of an ordinance was a fraudulent exercise of power. Now at least the judicial review of the President’s satisfaction is theoretically possible, and the government will have to give more obvious reasons for justifying the issuance of an ordinance.\textsuperscript{90} Through the exercise of judicial review, an inherent constitutional power of the judiciary, the motive behind the promulgation and re-promulgation of ordinance, comes to light and the people could know about it.
The Constitution further provides for the power of the President to make regulations for certain union territories for the peace, progress and good government of the union territories. However, whenever any body is created to function as a legislature for the union territory of Pondicherry the President shall not make any such regulation. But, whenever such body is dissolved or functioning of that body remains suspended on account of any action taken under any such law, during such period of dissolution or suspension, the President may make regulations for the peace, progress and good governance in that union territory.

There are provisions in the Constitution providing for formulating conditions of service of public servants, serving the union government as well as state governments. These conditions include communicating adverse report by the controlling authority to the person concern and providing a chance of improvement in the performance of the public servant.

In the matters relating to recruitment and conditions of service of persons serving the union or a state, the Constitution provides that subject to the provisions of the Constitution, Acts of the appropriate legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the union or of any state.

The remarks in a confidential report are used as data of comparative merit when questions of promotion, confirmation, crossing of efficiency bar, termination of service of the employees in question arise. Therefore, the authorities concerned are bound
to supply a copy of the adverse remark to the employees in question within a reasonable time.\textsuperscript{92b}

In order to protect the civil servant against the political interference under the 'doctrine of pleasure'\textsuperscript{93a} there are certain safeguards.\textsuperscript{93b} Now, a specific contract can override the doctrine of pleasure.\textsuperscript{93c} Thus, the information pertaining to the manner of exercising the pleasure becomes available to the civil servant.

Thus, no person who is a member of a civil service of the Union or of an All India Service or a Civil Service of a state or holds a civil post under the Union or state shall be dismissed or removed or reduced in rank except after making an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.\textsuperscript{93d}

However, even in case of the three categories of persons\textsuperscript{94} wherein the requirement of being informed of the charges of being given an opportunity of being heard would not apply the government will have to give him information as to under which of the above three heads, his case falls.

The Supreme Court held that the subjective satisfaction of the authority that an enquiry was not practicable or expedient was subject to judicial review; which brings in the required information to persons. It has to be based on objective facts. There must be sufficient material justifying such dispensation of an enquiry.\textsuperscript{95}

In the sphere of proclamation of emergency\textsuperscript{96a} the Constitution empowers the President to proclaim emergency if he
is satisfied that a grave emergency exists whereby the security of India or of any part thereof is threatened, whether by war or external aggression or armed rebellion. In order to decide whether the President had applied his mind or had acted on irrelevant considerations or malafide, it would be necessary to have information as to the basis on which the decision had been taken.96b

Justice Bhagawati in his separate judgement in Minerva Mills case97 observed that total elimination of judicial review of the proclamation of emergency might amount to destruction of the basic structure of the Constitution and the constitutional amendment providing for the elimination of judicial review might be struck down. He conceded that proclamation of emergency could be challenged. On the ground mentioned herein above.

Similarly, the President has power98a to impose President's rule in a state if he is satisfied that a situation has arisen in which the governance of a state cannot be carried on in accordance with the provisions of the Constitution. It is difficult to successfully impugn any action mentioned above. However, the fact that it can be challenged on grounds, such as non-application of mind or application of irrelevant considerations or malafide exercise of power, reduces the secrecy and promotes openness which is the *sine qua non* of the right to information.98b
Statutory Laws

There are statutory laws providing for withholding of government-held information thereby keeping the people in dark about the functioning inside the government.

Another facet of right to know relates to public enquiries and access of the people to reports. It manifests through the demand of public to authentic information about matters of grave moment requiring authoritative investigation and reporting intelligently and with integrity. It helps the truth about the function of the government to come to light by satisfying the people conscience.  

People’s right to know also includes right to watch, intervene and participate in open inquiries. The rule may be circumvented by exceptions and exclusions that are necessitated by extraordinary circumstances only.

The Commissions of Enquiries Act, 1952, empowers the government to withhold reports under it by government functionaries on matters of grave public concern. Justice Iyer states that it has a fascist flavour and is a fragrant flouting of the freedom of information.

The Act authorises the appropriate government, either the union government or the state government or the state government by notification in the official gazette, to appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the commission so appointed shall make the inquiry and perform the functions accordingly.
The above cited Act provides that the appropriate government shall cause to be laid before the house of the people or as the case may be, the legislative assembly of the state, the report, if any, of the commission together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the commission to the appropriate government.

However, the amended Act 36 of 1986\textsuperscript{102b} conferred power to the governments to accept or reject the report of the commission. The government administration may now use enquiry commissions as crisis avoidance tactics and discard the report unfavourable to it.

Now, meaningful mutations in the Commissions of Enquiries Act, 1952 towards providing freedom of information are necessary with a view to saving the commissions strategy from being informational treachery.\textsuperscript{102c} Because the power of the government to withhold the report of the commission from the house, deprives the people of getting knowledge about it.\textsuperscript{103}

In India, number of commissions have been appointed to enquire into public events of grave moments. The reports submitted by those commissions have not been made public and concealed the findings in the name of confidentiality, allowing the real culpable motive to escape from popular criticism.\textsuperscript{104}

In the post-emergency regime, the Shah Commission was appointed to inquire into the facts and circumstances relating to specific instances of subversion of lawful process and well-established conventions, administrative
procedures and practices, abuse of authority, misuse of powers, excess and malpractices committed during the proclamation of emergency made on 25th June, 1975, and other misuse of powers, maltreatment, atrocities on persons arrested or detained and other related matters. The commission, for all its painstaking effort, ended up as 'sound and fury signifying nothing'.

The amendment made to the Commissions of Enquiry Act, 1952 in 1986 made the withholding of the Thakkar Report possible. The said report was an agenda for democratic action. Excessive and undue government secrecy breeds practices of sycophancy among the government officials which in turn, prevents the enlightened public opinion to guide supreme political power. In India, the people have no access to policy on government publications. Therefore, the vital government-held documents are simply unavailable, except as an act of favour or friendship; as some of them, though published by the government press, are made unpriced.

In India, the law of evidence also provides for withholding of government-held documents, on the ground that the documents relate to any affairs of the state.

In the matter of privilege to withhold disclosure of documents, the Indian Evidence Act, 1872 vests in the state the power to withhold disclosure of documents from courts. The Act provides for the right of a witness to object to the production of a document.

In Judge's Transfer case, the Supreme Court has held that the decision of the executive to withhold documents from disclosure before the court can not be considered to be final; the courts has the power to review even by inspecting the
document in question. The court further held that it was for the court to decide whether a document is to be withheld in public interest. The court also has held that privilege claimed by the government, therefore, could not be conceded.

The Atomic Energy Act, 1962, like the Official Secrets Act, 1923, also prohibits the dissemination of information to the people even in matters such as where atomic reactors are located, what hazards the surrounding population would be exposed to or what costs are involved therein. The Act clamps a restriction on freedom of information to the people and forbids entry into prohibited areas. Besides by virtue of unguided executive power vested by the Act, the central government has a right to refuse any information to citizens of India.

It is important to note that no rules regulating the restriction of information or of entry have, as yet, been framed. The Atomic Energy Act, 1962 makes the bureaucrats in central government the final arbiters of information even in relation to peaceful uses of atomic energy.

There may be intelligible discussion on nuclear issue by taking the nation into confidence, as the interests of the country are at stake. Executives may come and go but claims of the community become the casualty to radiation disaster. The plenary power of the bureaucrats vested by the above Act in refusing disclosure of information to the press and the people is unconstitutional.

In India, pollution legislation is also secretive in nature. For example, the Water (Prevention and Control of Pollution) Act, 1974 restricts the right of the people to obtain
information of the registers and the like to limited categories, which is a dark-room tactics of the Act. 113b

A reknown Supreme Court judge observes that information without communication is social suffocation and when the state itself practices interception or detention of thought or truth in transit and legitimises the violation of postal privacy by law, a free society ceases to exist.114

The Indian Post Office Act, 1898115a empowers the central government or the state government or any officer specially authorized, to direct interception and detention of postal articles. It has not specifically provided as to how the power is to be exercised and what class of officers are to be authorized to intercept the postal articles. There is no independent body to have the control over the act of interception done by the officers. It is also not amenable to review by any judicial authority.116b

The Indian Telegraph Act, 1885116a also vests similar power to the government to intercept telegraphic messages or to withhold them or not to communicate them. The Telegraph Rules116b made in the light of power conferred by the Act116c also contains power to intercept telephonic communications.

New communication systems and digital technology have made dramatic changes in modern life. Globally, electronic-commerce, E-mail etc. eliminate the need for paper-based transactions. In order to facilitate e-commerce there is a need for legal changes. The United Nations commission on International Trade Law -UNCITRAL- adopted the model on electronic commerce in 1996. The General Assembly of United Nations by its Resolution No. 51/162 dt.30th January, 1997, made a
recommendation that all states should have their laws, giving favourable considerations to the model law.

In conformity to the above United Nations model law, parliament of India has enacted the Information Technology Act, 2000. The Act not only transforms the model law into domestic legislation but also brings in a procedural infrastructure with a view to regulating the electronic market place. The Act\textsuperscript{116d} defines information to include data, text, images, sound, voice, codes, computer programmes, software and databases or micro film or computer generated micro fiche.

As regards access to computers and data, the Act authorizes the Controller of Certifying authorities (CCA) or any person he authorizes in this regard, to have access to any computer system, any apparatus, data or any other material connected with such system, for the purpose of searching or causing search to be made for obtaining any information or data contained in or available to such computer system.\textsuperscript{116e} It is applicable in those cases, wherein the person authorized has a reasonable cause to suspect that any contravention of the provisions of this Act, rules or regulations made thereunder has been committed by person in charge of the computer system.

The Act\textsuperscript{116f} provides that the appropriate government, by notification in the official gazette, declares any computer, computer system or computer network to be a protected system. It also provides\textsuperscript{116g} that any person who secures access or attempts to secure access to such a protected system commits an offence and he shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.
Till the other day, electronic media was run by the central government and exploited by politicians in power and also was under the commercial control of private corporations. The jurisprudence of electronic communication structured by the Covenant on Civil and Political Rights, 1966\textsuperscript{116h}, declared the freedom to receive and impart information and ideas through any media, positive freedom to a new corporation. The Prasar Bharati(Broadcasting Corporation of India)Act, 1990 was enacted, with a view to investing with it, a autonomy, professional integrity, functional accountability and social audit.\textsuperscript{116i}

The Act,\textsuperscript{116j} confers power to the central government to give directions to the corporation requiring it, in the interest of the sovereignty, unity and integrity of India or security of the state or preservation of public order, not to make a broadcast on a matter or to make a broadcast on any matter of public importance, specified therein in the direction.

The Act\textsuperscript{116k} confers power in the central government to obtain information, requiring the corporation to furnish such information as the government may consider necessary.

The above Act\textsuperscript{116l} further provides for report to parliament in certain matters and make recommendations as to action taken against the Board.

Where the Board defaults in complying with any directions issued under the provisions of the Act\textsuperscript{116m} or fails to supply the information required to be supplied,\textsuperscript{116n} the central government may prepare a report thereof and lay it before each house of parliament for obtaining any recommendation thereof as
to any action, including suppression of the Board, which may be taken against the Board.

The President may, on recommendation of the Parliament, by notification to that effect supersede the Board for such periods not exceeding six months, only after affording the board a reasonable opportunity of being heard. The President shall also consider the explanations and objections, if any, of the Board.¹¹⁷

In the sphere of security and defence, all matters pertaining thereto do not, require to be kept secret. Matters which are to be made available to public knowledge are kept secret by overbroad classification of documents. In the context, we may refer to the President's power to make the Transaction of Business Rules and the Government of India(Allocation of Business)Rules, 1961 which are known as Rules of Business. Till 1973, these rules were published; thereafter, the rules have been considered as confidential and secret. In order to know whether proper person has been exercising the power, access to these rules is necessary.¹¹⁸

Under the Constitution¹¹⁹a the President has to make the rules for the convenient transaction of the business of the government of India and for allocation of the said business among ministers. But, the common man does not have access to these rules.¹¹⁹b

In the name of freedom of information there should not be freedom to leak confidential information about the government functionary. The Central Civil Services(Conduct) Rules, 1964¹²⁰a provides that civil servants shall not divulge official
information. These rules are framed in compliance to the provisions of the Constitution of India.

For every citizen, information is the currency towards participating in the life and governance of society. The access of the citizen to information increases the responsiveness of the government to community needs. In the above context, at least a statutory right to information would be able to safeguard the public interest and in bringing a reformation in public administration. It promotes openness, transparency and accountability in administration, and makes the government more open to continuing public scrutiny.

The first major draft legislation on right to information was circulated by the Press Council of India in 1996. It was derived from a draft prepared in October, 1995 at the Lal Bahadur Shastri National Academy of Administration, Mussoorie by a meeting of social activists, civil servants and lawyers.

The Press Council's draft espouses the constitutional position that the right to information exists as a natural corollary to the fundamental right to freedom of speech and expression of the Constitution. It also affirmed the right of every citizen to information from any public body like corporation. The draft legislation had also provided for penalty for default in providing information. Provisions for appeals to the local civil judiciary against failure or refusal to supply the desired information.

Immediately thereafter, the government of India, constituted a working group with H.D. Shourie as its Chairman, for drafting a piece of legislation. The committee has submitted its report in May, 1997.
The drafting of Shourie group excluded or diluted many of the positive aspects of the press council legislation. It has widened the scope of exclusions enabling public authorities to withhold most of the information that do not subserve any public interest.\textsuperscript{124}

However, after a gap of time - almost three years in July, 2000 a bill in the name and style as "The Freedom of Information Bill, 2000" had been introduced in parliament. The parliament has enacted the Freedom of Information Act in December, 2002.\textsuperscript{125}

A close reading of the above Act reveals that the perpetuity of British colonialism is inherently entrenched therein. There are many avoidable defects and loopholes intentionally engrafted into the Act, which would clog the path of materialization of the right to information of the people.

The Act does not contain accurate formulation of the objects and reasons. In the introduction it required to contain the object and reasons stating the intention to give effect to the people's fundamental right to information, that emanates from the right to equality,\textsuperscript{126a} the freedom of speech and expression\textsuperscript{126b} and the right to life.\textsuperscript{126c}

The Act\textsuperscript{126d} does not provide for a strict mandate in order to upgrade record keeping and systems facilitating free flow of information. It is required to specify that within a certain time limit all departments must provide for certain kinds of information on notice board, in booklets duty simplified and computerized, in order of priority, such as food, education, health, environment etc.
It does not also contain provisions for proactive disclosure of information, which is required in the interest of illiterate and poor population who do not have the right to approach the government for information. Proactive disclosure must extend to fixing a duty upon the government to give information on certain matters like health and environment on a regular basis. The authority concerned should have been made liable for the damage or loss suffered by a citizen because of the neglect or delay in proactive disclosure of information.

The Act does not distinguish between ordinary information and information required on an urgent basis, such as information relating to life and liberty of a person. The standard time limit of 30 days laid down for all cases, within which period the information sought should be imparted to the seekers will render the information required on an urgent basis, useless and infructuous.

The time limit for refusing request by the authority possessing information is also 30 days. The period for sending notice to a third party or asking for additional fee is not included in this time limit. It also does not set the time limit for suo moto supply of certain types of information by agencies.

It contains wide ranging class exemptions, empowering the concerned authorities to withhold almost all the categories of information from the public domain. It should have stated that all the information, which are to be made available must be also available to the people.

The Act empowers Public Information Officer to reject a request for information, if such a request, in his opinion is
too general in nature or the volume of information required would involve disproportionate diversion of the resources of a public authority or would adversely interfere with the functioning of such authority or, *inter alia*, the request for information which would cause illegal invasion of the privacy of any person. It provides for an omnibus clause by giving the concerned authority that possesses the information of public need, to reject a request for information.

The Act empowers the competent authority to give access to that part of the record which does not contain any exempted information, severing it from any part containing exempted information. It is an unqualified power vested in the competent authority concerned. Peoples' right to information has a chance of infringement by such powerful authority—the custodian of government-held information.

There is no provision in the Act for fixing the specific accountability on a particular official in order to hold the person liable for delay in giving or wrongful refusal of information. As such, the need for enforcement of the right to information has not been fully addressed.

It also provides for two successive appeals within the structure of the government. It does not provide for any independent forum of appeal against refusal of requests for information by the above two official appellate authorities. It required to provide for an independent institution like a Commissioner for Right to Information or an Ombudsman which should function outside the influence of government.

It gives protection to any action taken in good faith by any official which is intended to be done under the Act or
any rule made thereunder as provided in the Act. Any suit, prosecution or other legal proceedings against such person acting in good faith is barred by the Act. Ample opportunities are given to the concerned authorities to declare all actions; however detrimental they might be, to the right to information of the people.

The Act has an overriding effect which provides that the provisions of Official Secrets Act, 1923 and every other Act shall cease to operate to the extent to which they are inconsistent with the provisions of this Act. The provisions of the Act are quite similar to there laws which are in operation. Therefore, the question of inconsistency as alluded to above does not arise.

It specifically excludes the jurisdiction of the court in total contravention of all norms of justice. Jurisdiction of the courts can only be excluded where another mechanism equivalent to a judicial process is made available.

The Act provides that the Act, shall not apply to the intelligence and security organizations that are specified in the Schedule by the central government. The central government is empowered also to amend the Schedule to include thereto or to omit therefrom any intelligence or security organization established by the central government or a state government. It vests full authority upon the central government and by exercising the power, it can debar people from getting any information even of routine and of ordinary nature.

The Act does not have the provisions as regards effective imparting of information to those people who do not have access to print and electronic media. The flow of informa-
tion is a *sine qua non* of an open government in a healthy democracy.

The provisions of the law are made applicable only to the government and its agencies. In today’s perspective, the Act has required to contain specific provisions by making it applicable to disclosure of information to be made by certain international agencies, non-governmental organizations and private companies. Because, the agencies undertake activities that might affect the public life in any way.

There is also no provision in the Act to make it obligatory on the local bodies, as competent authorities, to implement the right to information. Because, the mass interact with the local bodies. The Act also required to contain detailed provisions for public audit of local bodies by the local electorate; as envisaged in the Constitution.\(^{126p}\)

It is, no doubt, an important step towards an information regime and the system of governance. However, in the greater interest of good governance and open society, it required to provide for its sufficient publicity. It also required to contain provisions for imparting training to and orientation of government personnel in the culture of information sharing with the people.

Apart from the national legislative requirement in the country some of the states have already enacted their respective right to information laws.

In Assam, the Assam Right to Information Act, 2001 has been enacted by the Assam Legislative Assembly in its winter session in 2001. The Act does not contain provisions that help people to enjoy their right to information.
The Assam Act has an exemption clause which provides that subject to the provisions of this Act and the Official Secrets Act, 1923, every citizen in Assam shall have the right to information from the incharge official of the concerned office. The right to information is subjected to the provisions of the Official Secrets Act, 1923. Apparently, therefore, no information shall be available to the people.

The Act provides that notwithstanding anything contained in the provisions thereof, no person shall be given those information, which are enlisted therein. It provides that any person desirous of obtaining information shall have to make an application to the incharge of the office, along with the plea and in the manner prescribed therein.

On receipt of the application in prescribed form, the incharge concern may either accept or reject the request, within 30 days time.

The Act provides for the appellate jurisdiction of higher officers. An aggrieved person, on his request being refused by the incharge concerned on receipt of such order of refusal and on non-receipt of any communication within a period of next 30 days after the expiry of the first 30 days, may prefer an appeal before the controlling officer. The controlling officer after affording reasonable of being heard to the person affected, shall decide and dispose of the appeal.

It further provides for preferring a second appeal to the Assam Administrative Tribunal constituted under the Assam Administrative Tribunal Act, 1977. The second appeal must be preferred within next 30 days from the date of receipt of such aforesaid order.
The Assam Administrative Tribunal Act, 1977\textsuperscript{127j} provides that the Assam Administrative Tribunal, may, giving reasonable opportunity to the person affected of being heard, pass such order as it deems fit. It further provides\textsuperscript{127k} that every second appeal shall be decided and disposed of within 60 days from the date of presentation of the appeal.

In this entire process of appeal, as discussed above, a minimum period of 180 days is required. By that time some urgently needed vital information shall automatically become infructuous.

The Assam Right to Information Act, 2001\textsuperscript{127l} empowers the state government to remove any sort of difficulties, if it appears to them to be necessary or expedient. This is an unqualified power vested in the state government, which may be exercised against the public interest.

The Act\textsuperscript{127m} protects any action of the government, public authority, or any officer or functionary or any person, which in their opinion has been done in good faith. This is quite detrimental to the right of the people to information.

There is a penal provision\textsuperscript{127n} which provides that any incharge of the office, without any reasonable cause fails to supply information sought within the time limit fixed,\textsuperscript{127o} shall be liable to disciplinary action under the relevant service rules governing the services of the officer concerned. Disciplinary proceeding is a long process and it is much time consuming. The penalty under the service rules will in no way compensate the loss sustained by the person seeking information when he is unreasonably deprived of it.
The Act\textsuperscript{127p} bars the jurisdiction of courts in respect of any order made under this Act. Both the appeals, the first and the second are allowed to be decided and disposed of by administrative process as per provisions of the Act.\textsuperscript{127q} The judiciary has been totally debarred from judicial scrutiny of the appeals disposed of by the executive officers. This is derogatory to the right of the people to information. The judicial process is quite open but the administrative process is not open and transparent.

The legislative Assembly of the National Capital Territory of Delhi passed the Delhi Right to Information Act,\textsuperscript{2001} and on 14-05-2001 it received the assent of the Lt. General of Delhi. The effort to bring about transparency and openness in the administration in Delhi government through this Act, has sufficient scope to mislead the people of Delhi.

The Delhi Act\textsuperscript{128a} provides that every citizen shall have right to obtain information from a competent authority only as per the provisions of the Act. In the Act there is the exemption clause\textsuperscript{128b} which imposes restriction on right to information. These restrictions extend to almost all information ranging from information relating to an individual, to information in cabinet persons including records of the deliberations of the Council of Ministers, Secretaries and other officers.

The Act\textsuperscript{128c} prescribes the procedure for supply of information. Any person desiring information have made a request in writing or through electronic form to the competent authority. The competent authority, on receipt of such an application shall have the power, either consider it or reject the
request made for providing information. It mandates the competent authority rejecting the request, to communicate to the person making request, the reasons for such rejection, the period within which appeal against such rejection may be preferred, and the particulars of the appellate authority.

As per the provisions of the Act, any aggrieved person may prefer an appeal to the Public Grievances Commission within 30 working days, after the rejection of the request. The Public Grievances Commission shall have to dispose of the appeal within next 30 days from the date of filing such appeal.

The Act prescribe the punishment of a person responsible for furnishing any information, on his failure to furnish the information sought or for supplying false information. Imposition of penalty may be determined by the disciplinary authority as prescribed in the Rules, made under the Act.

The Act provides for establishment of a State Council for Right to Information, the Chief Minister, Government of National Capital Territory of Delhi as its Chairman with the Minister incharge of the Department of Administrative Reforms as member and such number of other officials, not exceeding ten of which three members shall be elected representatives of the Legislative Assembly including one woman nominated by the Speaker of the Assembly. The object of the Council shall be to promote the right to information and to deal with matters such as review of the operation of the Act and the rules made thereunder, administrative arrangements and procedures, research and management of information and to advice the government on all matters related to the right to information.
The Act\textsuperscript{128h} has the overriding effect over any other enactment of the Legislative Assembly of Delhi, when they are found to be inconsistent with the present Act.

The Act\textsuperscript{128i} gives protection to any official of the government from any suit, prosecution or other legal proceedings, for anything done in good faith. Wide scope has been given to the officials of the government-by the custodians of information and documents-by virtue of which they can declare every action done by them to be done in good faith.

The Act\textsuperscript{128i} vests with the government the power of removal of difficulties arising in giving effect to the provisions of the Act. Every government shall try utmost to protect their vested interest. There is no guideline enunciated by the Act for exercising such power by the government for removing any difficulty. This vitiates the objectives of the Act.

The Delhi Right to Information Act, 2001 has not provided anything of the worth. The Act in its present form cannot fulfill the objectives with which it has been enacted.

The Goa Legislative Assembly enacted the Goa Right to Information Act in 1997. The Act is almost similar to the Delhi Act of 2001. However, Goa is the first state in India which has enacted the law on right to information in state level.

The significant features of the Act is that the list of competent authorities was published in the Official Gazette.\textsuperscript{129a} The list is very much useful in deciding the appropriate competent authority to whom application may be made for supplying required information.
It is quite clear from the above discussion that information on the functioning of a large number of Goa Government departments, municipalities, panchayats, educational institutions, besides the government funded autonomous institutions can be obtained by effectively using the Goa Right to Information Act, 1997.

The Act\(^{129b}\) confers right on every citizen to seek information from a competent authority. It\(^{129c}\) prescribes the procedure for supply of information. The application should be made to the appropriate competent authority; generally in writing. The Act\(^{129d}\) vests right upon the competent authority, either to grant the request or to refuse it. However, it should be done within 30 days from the date of receipt of the application.

The Act\(^{129e}\) imposes restrictions on right to information. The competent authority is authorized to withhold various information. The list is very long. It also provides\(^{129f}\) that information which can not be denied to the state legislature shall not be denied to any person. There is no proper mechanism to ascertain the kinds of information which are denied to the state legislature. It is a discretionary power vested in the state government which can be discriminatorily exercised by it to the detriment of the people’s right to information.

The Act\(^{129g}\) vests appellate power in the Administrative Tribunal constituted under the Goa Administrative Tribunal Act, 1965. Any person, who has been aggrieved by the order of the competent authority or has not received any order, may appeal to the Tribunal within 30 working days. It also provides\(^{129h}\) that the decision of the Administrative tribunal shall be final. It has excluded the jurisdiction of any court. Like Delhi
Act, the above Act also provides for the state council for right to information.\textsuperscript{128} The Act\textsuperscript{128j} has provided for over-riding effect on any enactment of the legislative Assembly of Goa.

The Act\textsuperscript{128k} protects any person from any suit, prosecution or other legal proceedings for anything done in good faith. This has given an undue defence from judicial intervention to the declaration made by any official that he has done every act in good faith. There is no norms stipulated in the Act to ascertain what act has been done in good faith and what not.

The Legislative Assembly of the State of Tamil Nadu has also enacted the Tamil Nadu Right to Information act in 1997. Tamil Nadu is the second state in India to enact the law on right to information.

The Act\textsuperscript{138a} provides that every bonafide person requiring information may demand information in accordance with the provisions of the Act. The right to information of any person provided in the Act is directly subjected to the long list of exemptions enumerated therein.\textsuperscript{130b}

As per the provisions of the Act,\textsuperscript{130c} any person may make an application to the competent authority to have access to information sought. The competent authority may, either grant or refuse the request, within 30 days from the date of receipt of the application.

Any person, aggrieved by the order of refusal or for non-communication of any order from the competent authority, may file appeal to the government or to such authority as may be notified by the government. The Act provides that the decision of the government or, such authority, shall be final. It has totally excluded the scope of judicial intervention.
Like other respective enactments made by other states, the above Act also makes provisions for protection of any person from suit, prosecution or other legal proceedings for anything done or intended to be done in good faith. The mechanism for finding out the bonafide of the Act done, claiming to be in good faith, is not provided in the Act.

Further, the Act vests power on the government to remove any difficulties in giving effect to the provisions of the Act. It is again an excessive power given to the government. It is detrimental to the people’s right to information, sought to be given by the Act.
FOOT NOTES AND REFERENCES

2. id.
3. id.
4. ibid, pp. 26-27
5. ibid, p. 27
6. id.
9. Supra, note 7, p. 115
10. ibid, pp 115-116
11. ibid, p. 116 and with reference to August, 1884 public proceedings nos. 213-220, Home Department, Government of India
12. id.
13. id.
14. id.
15 ibid, Government of India, Home Department, Public Proceedings, January, 1879, nos. 95-96
16 ibid, Government of India, Home Department, Public Proceedings, August, 1884, nos. 214
17 supra note 7, p. 119
18 id.
19 Section 5; ibid pp. 119-120
20 ibid, p. 120
21 id.
22 Rule 17; ibid, pp. 120-121
23 ibid, p. 121
24 The Official Secrets Act, 1923 (Act No. 19 of 1923), p. 3
25 Section 3(2) and 4(2); ibid, pp. 3-4
26 Section 5 of the Official Secrets Act, 1923 is a replica of Section 2 of the British Secrets Act, 1911; supra note 7, p. 122
27 id.
28 ibid, p. 123
29 The Legislative Assembly Debates, Vol. III, part IV, 21 February, 1923 to 14th March, 1923, p. 2784
32 Supra, note 7 p. 124
The major decisions of the Supreme Court in favour of right to information of people linking it to fundamental right of freedom of speech and expression guaranteed under Article 19(1)(a) and right to life with dignity guaranteed under Article 21 of the Constitution are:

(ii) Maneka Gandhi v. the Union of India, AIR 1978, SC 597;
(iii) S.P. Gupta v. the Union of India, AIR 1981, SC 149;
(iv) Secretary, Ministry of I & B v. Cricket Association of West Bengal and Orissa (1995) 2SCC 161;
(v) Francis Curalie Mullin v. Administrator Union Territory of Delhi, AIR 1981 SC 746.


45. Dr. Paramjit S. Jaswal, Dr. Nishtha Jaswal, Human Rights and the Law, p. 62


47. id.

48. supra note ,p.334

49. id.

50. Article 14 of the Constitution of India

51. Maneka Gandhi v. Union of India, (1978) 1 SCC 248

52. supra note 1, p. 334-335; Supreme Court invoked Article 14, 19 and 21 of the Constitution in Maneka's case

53. ibid, p. 335; Article 19 of the Constitution.

54. id.

55. id.

56. S.P. Sathe, the Right to Know, p. 47; Article 19(1)(a) of the Constitution

57. (1978) 1SCC 248, 331

58. (1982) 1 SCC 6
60. S.P. Gupta v. Union of India (1981) supplement SCC 87
61. supra note 56., id
64. supra note 56, p. 48
65. People's Union of Civil Liberties v. State of Rajasthan, AIR 1997, SC 3011, dealing with Section 5(2) of the Indian Telegraphs Act, 1885
66. Dr. Tokugha Yepthomo v. Appolo Hospital, JT (1998) 7 SC626
67. A.K. Gopalan v. State of Madras, AIR (1950) SC 27 (para 243); Article 22(1) and (2) of the Constitution
69. Ram Singh v. State of Delhi, AIR 1951 SC 270(para 5); Articles 21 and 22 of the Constitution.
72. Anwar v. State of J & K, AIR 1971 SC 337 (para 4); A non-citizen can also claim benefit of Article 20, 21 and 22 but not of Article 19
73. supra note 1, p. 335; Article 23 and 24 protecting against exploitation of women and children
74. Article 38
75. Article 37
76. supra note 56, p. 2
77a. Article 45 provides for free and compulsory education to all children until they attain the age of 14 years;
77b. Article 41 provides for right to education along with right to work;
77c. Article 29(2) provides that no citizen shall be denied admission to any educational institution, inter-alia, on the ground of religion, race, caste etc.
77d. Article 14 guarantees right to equality and equality before law;
77e. Article 15 protects against discrimination on the ground of religion, race, caste, sex etc.
77f. Article 39(b) enjoins the state to direct its policy to securing ownership and control of material resources of the community;
77g. S.P. Sathe, supra note 56, p.3
78. Raj Kumar C., Human Rights and Human Development, an article published in Frontline, a national magazine in its March 1, 2002 issue, pp. 104-105; 93rd amendment incorporated Article 21A to the Constitution of India.
79. Article 51A was inserted by the Constitution (42nd Amendment) Act, 1976, Section II (w.e.f. 3.01.1977)
80. supra note 1, pp. 336-337
81. ibid, p. 337
82. id.
83a. Article 72(1) provides pardoning power to the President and Article 161 confers pardoning power to the Governor.
83b. Kehar Singh v. Union of India, AIR 1989 SC 653,
84a. Article 74(2)
84b. S.P. Gupta v. Union of India, AIR 1982 SC 149, paragraphs 60-61; and also in State of Rajasthan v. Union of India, AIR 1977 SC 1361, paragraphs 82-83, the Supreme Court observed on the confidentiality of cabinet decisions.
86a. Article 78
86b. (i) State of Punjab v. Sodhi Sukhdev, AIR 1961 SC 512, 532
(ii) State of Madhya Pradesh v. Nandlal, AIR 1987 SC 251
87a. Article 105
87b. Article 194
88a. Article 123
88b. The following decisions of the Supreme Court illustrate these aspects:
(i) State of Punjab v. Mohar Singh, AIR 1955 SC 84
(ii) Garg v. Union of India, AIR 1981 SC 2138,
(iii) Nagaraj v. State of Andhra Pradesh, AIR 1985 SC 551
89b. Article 213
90. supra note 56, p. 2
91a. Article 240
91b. Union Territory of:
   (a) the Andaman and Nicobar Islands;
   (b) Lakshadweep;
   (c) Dadra and Nagar Haveli;
   (d) Daman and Diu; and
   (e) Pondicherry.
91c. First proviso to Article 240
91d. Under Article 239A
91e. Second proviso to Article 240
92a. Article 309
92b. (i) Union of India v. E.G. Nambudri, (1991) 3 SCC 38, paragraph 6
   (ii) Baikuntha v. C.D. M.O., (1992) 2 SCC 299, paragraph 33
93a. Article 310(1)
93b. Article 311,
93c. (i) Purshottam v. Union of India, AIR 1958 SC 36, 41
93d. Article 311(2)
94. (a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
(b) Whether the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reasons to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the state it is not expedient to hold such inquiry.

96a. Under Article 352
96b. supra note 56, p. 28
98a. Under Article 356
98b. supra note 56, pp. 30-31
99. supra note 1, p. 356
100. id.
101. ibid, pp. 356-357
102a. Section 3(1)
102b. Inclusion of sub-section(5) to Section2.
102c. supra note 1, p. 357
103. supra note 56, p. 36
104. supra note 1, pp. 358-359.
105a. Under Article 352 of the Constitution
105b. supra note 1,p. 358.
106. Upendra Baxi, the Thakkar Report, An agenda for democratic action, an article published in Indian Express in its 6th April, 1989
107. id.
108a. Section 123 of Indian Evidence Act, 1872
108b. Section 162 in conjunction with Section 123
108c. S.P. Gupta v. Union of India, AIR 1982 SC 149
109. supra note 56, p. 35
110a. Sections 18 and 19
110b. supra note 1, p. 337
111. Section 18 of the Atomic Energy Act, 1962; Justice Iyer; supra note 1, p. 337
112. ibid, p. 338
113a. Section 25(b)
113b. supra note 1, p. 339
114. Justice Iyer; ibid, p. 53
115a. Section 26
115b. supra not 1, pp. 54-55
116a. Section 5(2)
116b. Rule 419
116c. Section 7
116d. Section 2 of the Information Technology Act, 2000
116e. Section 29
116f. Section 70(1)
116g. Section 70(3)
116h. Article 19
116i. Supra note 1, p. 36
116j. Section 23
116k. Section 24
116l. Section 25
116m. Section 23
116n. Section 24
117. Proviso to sub-Section 2 of Section 25 of the Act
118. supra note 56, pp. 34-35
119a. Article 77
119b. supra note 56, pp. 34-35
120a. Rule 11
120b. Article 309; Rule 15 and 17 of the Civil Service (Classification, Control and Appeal) Rules also provide for similar measures where a government servant communicate any official information to outsiders; ignoring the government injunction.
121. Harsh Mander, The movement for the right to information in India, a working paper series no. 14, National Centre for Advocacy Studies, Pune, July, 1999, p. 2
122. ibid p. 20
123. ibid, pp. 21-22
124. ibid p. 22
125. K. Subramanyam, Classified Culture-Yours Not to Reason Why, an article published in the Times of India, New Delhi, August, 13, 2002
126a. Article 14 of the Constitution
126b. Article 19
126c. Article 21
126d. Section 4 of the Freedom of Information Act, 2002
126e. Section 4
126f. Section 7
126g. Section 8
126h. Section 9
126i. Section 10
126j. Section 12
126k. Section 13
126l. Section 17, 18 and 19
126m. Section 14
126n. Section 15
126o. Section 16
126p. Article 243 J of the Constitution
127a. Section 4(1) of the Assam Right to Information Act, 2001
127b. Section 4(2)
127c. Section 4(1)
127d. Information enlisted in clause (a)(i) to clause (e)(iii) of Section 4(2)
127e. Section 5
127f. Section 6
127g. Section 6(3)
127h. Section 6(4)
127i. Section 3 of the Assam Administrative Tribunal Act, 1977
127j. Section 6(6) of the Assam Administrative Tribunal Act, 1977
127k. Proviso to Section 6(6)
127l. Section 8 of the Assam Right to Information Act, 2001
127m. Section 9
127n. Section 10
127o. Section 4
127p. Section 11
127q. Section 6
128a. Section 3 of the Delhi Right to Information Act, 2001
128b. Section 6
128c. Section 5
128d. Section 5(4)
128e. Section 7
128f. Section 9
128g. Section 10
128h. Section 11
128i. Section 12
128j. Section 16
129a. The Official Gazette, series 1, No. 49, dated 5th March, 1998; The authorities numbering 113 were enlisted therein
129b. Section 3 of the Goa Right to Information Act, 1997
129c. Section 4(1)
129d. Section 4(2)
129e. Section 5
129f. Proviso to Section 5
129g. Section 6(1)
129h. Section 6(2)
129i. Under Section 12
129j. Section 13
129k. Section 14
130a. Section 3(1)
130b. Section 3(2)
130c. Section 3(3)
130d. Section 6