CHAPTER-4

LEGISLATIVE PROVISIONS AND RIGHT TO INFORMATION

Introduction

In India, the right to information has been developed through diverse strands for almost the entire period of the country's independent history. Only now these strands have come together to form the 'critical mass' needed to crystallize the issue into positive action on the part of the people as well as the Government.¹

Until 2005, an ordinary citizen had no access to information held by a public authority. Even in matters affecting legal entitlements for such subsidized services as food for work, wage employment, basic education and health care, it was not easy to seek the details of decision making process that affected or harmed the person. Without access to relevant information, it is not possible for a common man to participate in a meaningful debate on political and economic options or choices available to him for realizing socio-economic aspirations².

Although the Constitution of India has guaranteed the freedom of speech and expression under Article 19(1), Even then a citizen had no legal right to know about the details of public policies and expenditures. Therefore, it was not possible for a common man to observe and scrutinize

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² M.M. Ansari(Information Commissioner) Impact of Right to Information on Development: A Perspective on India’s Recent Experiences (An invited lecture delivered at UNESCO Headquarters, Paris, France, on May 15, 2008), Central Information Commission New Delhi, p. 4.
public actions with a view to providing feedback for rectifying the deficiencies in policy planning and the execution of programmes.³

**Need for Legislation**

There is an imperative need for a legislation on Right to Information because, information can empower poor communities to battle the circumstances in which they find themselves and help balance the unequal power dynamics and unequal distribution of resources that exist between various kinds of marginalized people and their Governments. This transparent approach to working helps poor communities to be visible on the political map so that their interests can be realized. The Right to information is therefore central to the achievement of the Millennium Development goals⁴.

The culture of secrecy beginning from the colonial rule has insidiously encouraged rampant corruption. As a result huge amounts of public money were continually diverted from development projects and welfare schemes to private use through misuse of power by the authorities. Lack of openness and transparency in the functioning of the Government, provided a fertile ground for breeding inefficiency and lack of accountability in the working of the public authorities, which, in turn, has perpetuated all forms of poverty, nutritional, health and educational. In order to rectify the deficiencies in the mechanisms for ensuring distribution of entitlements, particularly pertaining to the basic human needs, the people in general and Non-Governmental Organizations, in particular, demanded for a greater access to the information held by the public bodies, which was acceded to by the Government in 2005⁵.

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³ *Ibid*
⁵ Ibid p.5
So, the battle for appropriate legislation for the right to information has been fought on two main fronts. The first is a demand for amendment of the draconian colonial Official Secrets Act, 1923 and the second is the campaign for an early and effective law on the right to information.6

The official Secrets Act has been used time and again to suit the purposes of the Government. Two infamous instances are related to this, one was the imposition of the Official Secrets Act to prohibit entry of journalists into an area where massive displacement was taking place due to construction of a large dam, namely the ‘Sardar Sarovar Project’ on the river ‘Narmada’ world’s largest dams displacing hundreds of people,. A strong movement against the construction of the dam has raised many pertinent questions about the nature of development and of the survival rights of the marginalized as well as the cost to the environment of such large “developmental projects”. A huge public debate and dissent was sought to be suppressed by the use of this law.7 Another instance which has been in the eye of an international storm during the last few years is the ‘Bhopal Gas Tragedy’8, the lack of information about this massive disaster continues to raise serious questions even today. The affected people are still asking about the Government's responsibility.9

A Working Group was formed by the Government of India in 1977 to look into the required amendments to the Official Secrets Act to enable greater dissemination of information to the public. The Working Group

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8 The Tragedy occurred in December 3, 1984, in which leakage of Methyl Isocynate gas from the Union Carbide factory in Bhopal, the capital of the largest state in India, claimed several thousand lives and maimed and handicapped at least the next three generations.
made some recommendations for changes in some statutes which protect secrecy such as the Official Secrets Act and also recommended a draft law on right to information. The development of public awareness and interest on the issue of right to information is evident from the fact that this Report was much more widely discussed by academia and the media than other such reports. However, this did not alter the fact that eventually this report too seems to have gone into cold storage. This group recommended that no change was required in the Act as it pertained only to protect national safety and not to prevent legitimate release of information to the public.  

In 1989, yet another Committee was set up, which recommended restriction of the areas where Governmental information could be hidden, and opening up of all other spheres of information. No legislation followed these recommendations. In 1991 sections of the press\(^\text{11}\) reported the recommendations of a task force on the modification of the Official Secrets Act and the enactment of a Freedom of Information Act, but again, it was of no use.

**Efforts for Legislation**

1. **Mazdoor Kisan Shakti Sangthan Campaign**

   In India, the campaign on the Right to information (RTI) was triggered off at the grassroots level by an organization called, the Mazdoor Kisan Shakti Sangthan\(^\text{12}\), in the 1990s. The movement was initially started to bring in transparency in village accounts. It was an offshoot of the demand made for minimum wages in rural areas. In Rajasthan, a State level Jan Sunwai was being organized to highlight the gaps between the promises of the State Government, provisions of law and the real

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\(^{10}\) The Hindu, 13 December 1991, p.8

\(^{11}\) Ibid.

\(^{12}\) It is the powerful union of agricultural labourers.
The Mazdoor Kisan Shakti Sangthan (MKKS) was engaged in a struggle for minimum wages on Government work sites. In 1992, it took small interest free loans from its members and started several Mazdoor Kisan Kirana, grocery stores where high quality groceries were supplied on low profit. The Mazdoor Kisan Shakti Sangthan (MKSS) activists, then, started demanding for accountability from the officers and the elected representatives. They realized the need to access to all records of local Government work in order to make the Government accountable.

In 1994, the Mazdoor Kisan Shakti Sangthan (MKSS) movement adopted the methodology of Jan Sunwais or public hearings. The public hearings organized by (MKSS) evoked great hope among the underprivileged people locally, as well as among the Government.4

On 5 April, 1995 the Chief Minister of Rajasthan announced that his Government would be the first in the country to confer to every citizen the right to obtain photocopies of all official documents related to local development work on deposit of a specific fee for the same. Exactly one year after the assurance of the Chief Minister, the Mazdoor Kisan Shakti Sangthan launched a 52 day long Dhama15 in Beawar16. At the end of the Dhama, the Deputy Chief minister made an astonishing announcement, that six months earlier, the State Government had already notified the right to receive photocopies of documents related to Panchayat or Village Local Government Institutions, the order of the State government was welcomed as a major milestone, because for the first time, it recognized the legal

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16 The demand was to press for the issue of administrative orders to enforce the right to information of ordinary citizens regarding local development expenditure.
entitlement of ordinary citizens to obtain copies of Government held documents.\textsuperscript{17}

This campaign for the Right to information had a major impact not only in the villages of Rajasthan, but it spread all over India and culminated into a great movement followed by a broader and more comprehensive discourse on issues of governance in India. This campaign also initiated a debate on the feasibility of Right to information Law in India.\textsuperscript{18} Although, Mazdoor Kisan Shakti Sangthan was a struggle of the rural poor, it caught the attention and got the support of a cross-section of the country's media,\textsuperscript{19} lawyers and jurists,\textsuperscript{20} academicians,\textsuperscript{21} and even bureaucrats and legislators,\textsuperscript{22} many of whom came together to form the National Campaign on the People's Right to Information (NCPRI).

The advocacy therefore ranged from the village level to the media, and to policy-making at the State level and at the centre. Non-Governmental Organizations and activists all over the country have adopted this strategy with minor changes in methodology.

2. The National Campaign on People's Right to Information

The National Campaign on People's Right to Information (NCPRI) was formed with the twin purpose of being a support group for the MKSS and to carry out advocacy on the right to information at the national level. The presence of senior and respected media persons, serving and retired bureaucrats, and members of the bar and Judiciary in the National

\textsuperscript{17} Aruna Roy and Nikhil Dey, ‘Fighting for The Right to Know in India, Development Dialogue’, Upasla, 2000, p77.
\textsuperscript{18} Mander and Joshi, ‘The Right to information movement in India’, Peoples Power for the control of corruption,CHRl,1998,p 40 (www.parivartan.com.)
\textsuperscript{19} Prabhash Joshi, Ajit Bhattacharjea and Bharat Dogra
\textsuperscript{20} P.B. Sawant, K.G.Kannabiran and Prashant Bhushan.
\textsuperscript{21} Shekhar Singh and Asmita Kabra.
\textsuperscript{22} Harsh Mander and Mathew Shankaran.
\textsuperscript{23} Kuldip Nayyar.
Campaign on People's Right to Information (NCPRI) make it an important nodal body. Members like Prabhash Joshi,\textsuperscript{24} have been keeping the issue alive through their writing and travelling around the country. The National Campaign also brought out a journal, ‘Transparency’ which proved to be very useful for campaigning and networking purposes.

3. \textbf{The Commonwealth Human Rights Initiative (CHRI) Campaign}

It is an independent, non-partisan, international Non-Governmental organization working for the practical realization of human rights. Commonwealth Human Rights Initiative (CHRI) viewed the right to information as providing a basic link between various human rights and promoted that perspective in its advocacy work. In mid-1997, when important developments were taking place both at the grassroots level and on the legislative front, Commonwealth Human Rights Initiative (CHRI) sought to engender a country-wide debate around the issue through dissemination of information. It produced a series of publications targeted at different levels to help simplify the issues. It has also conducted a number of workshops and other smaller meetings, mostly at the regional level but also nationally and internationally.\textsuperscript{25} The participants have been a mix of Non-Governmental Organizations representatives, academicians, lawyers and jurists, youth groups and students, media workers, bureaucrats, and people from other walks of life. The workshops are designed to elicit feedback on the information needs of people, problems of access to information and people's expectations from the law. Certain practical issues, such as the methodology for a people's audit using the MKSS model, are also discussed.

\textsuperscript{24} One of India's most senior journalists,
\textsuperscript{25} Harare, January 1999; Dhaka, July 1999; and Durban, October 1999.
It has also been involved in Governmental initiatives on the right to information in the States of Madhya Pradesh, Delhi, Karnataka and Rajasthan, as well as with the central Government. The Commonwealth Human Rights Initiative (CHRI) campaign has brought together people doing advocacy work at all levels and has forged links between actors working at different levels, both within civil society as well as with Government.

4. Consumer and other groups

Consumer groups have taken up the issue of the Right to information, as it is clearly of importance to consumer rights. For example in the early 1980s, the Consumer Education and Research Centre (CERC) in Ahmadabad conducted research on freedom of information laws in place in other parts of the world, in particular the drafted legislation in the USA and Canada, which was introduced into Parliament as a private member's bill. The Consumer Education and Research Centre also held a series of workshops on the issue. The strength of Consumer Education and Research Centre lies in their painstaking research and their grasp of grassroots problems in the context of consumer rights.

Many smaller groups and movements which have been struggling for various causes have also invoked the Right to information in their advocacy. Panchayat Bachao Abhiyaan, an informal movement in Bihar and Jharkhand, has been pushing for local elections to be held making the connection between the importance of political representation and citizens' entitlements. As part of their voter education programs they have been demanding the Right to information legislation. Some Non-Governmental Organizations (NGOs) have reinforced the demand for the right to

26 Elections to urban local bodies (ULBs) and village panchayats had not taken place for 22 years before April 2001.
information by holding 'transparency fairs' of their organizations, throwing open their own records. This is an important process as the first reaction of Governments to demand for transparency is often to accuse Non-Governmental Organizations especially those receiving foreign funds, of a lack of integrity and openness.\(^{27}\) In the course of the Consumer Education and Research Centre campaign on the issue, State and local level media, including radio and television, have covered the issue frequently and related it to local concerns.\(^{28}\)

5. Some Initiatives of the Bureaucracy

In India, some of the most practical moves for enforcing the Right to information have come from members of the bureaucracy and the politicians. This has been possible despite the consistent hostility of the Executive in general to transparency, and the fact that the bureaucracy as a whole is deeply corroded by corruption and nepotism.

Some experiments that bear mentioning are the ones using Information technology to revamp the system of recording information. As far back as 1985, the District Collector of Karwar District in Karnataka, one of the Southern states, diverted funds meant for a jeep in order to purchase a microcomputer which was successfully used as an analytical tool. In the first year after adopting this system, the district went up from being the 18th to the 3rd in the success rate for implementing development programmes. The success of this programme was in its replication to other Districts as a formal Programme named CRISP (Computerised Rural Information Systems Project).\(^{29}\)

\(^{27}\) This happened, for example, to the SWRC in Tilonia, Rajasthan.
Advocates of the right to information need to keep an eye on all these aspects and ensure that transparency is carried to its logical conclusion and the sources of the information and the generation of information is made equally transparent.

In recent cases Anna Hazare’s ‘Maran Varat’ is also a good example of Right to Information in India against corruption. He created a ‘Jan Andolan Organization’ to apply the Right to Information in Maharashtra. His fight created a new history and people got an equal right to create a law.

6. Parivartan

Parivartan was started by Arvind Kejriwal, an officer of the Indian Revenue Service, in the year 2000 among the working-class areas of East Delhi, to facilitate people’s access to Government offices. For about eight months, Kejriwal focused on assisting people at the Income Tax Office where he was employed. Kejriwal wanted to help the most deprived sections of the population, so, he shifted his energies to the Delhi Vidyut (Electricity) Board (DVB), a public utility that touched the lives of most citizens. When the Delhi State Government enacted the Right to Information Act in 2002, Parivartan decided to use it in its work in the lower middle-class localities of Lakshmi Nagar and Nand Nagar.

Parivartan activists had participated in a Jan Sunvai organized by the Mazdoor Kisan Shakti Sangthan in Beawar in April 2002. In December 2002, Parivartan organized its first Jan Sunvai on the issue of ration shops in Sundar Nagri, a lower middle-class locality in Delhi, where a

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30 Started on 5th April 2011.
32 Renowned Social activist, Anna Hazare’s Associate.
33 Interview with Arvind Kejriwal, 23, January 2006. See also Parivartan’s website http://www.parivartan.com
comparison of Government records of supply with the records of the shops revealed massive fraud. Parivartan has since moved ahead of the confines of the participatory role prescribed by the Government for Non-Governmental Organizations.34

There is a wide consensus among supporters of the Right to Information campaign that it is of paramount importance that a comprehensive and early legislation is passed which guarantees the right to information. Such a law must secure for every citizen the enforceable right to question, examine, audit, review and assess Government acts and decisions, to ensure that these are consistent with the principles of public interest and justice. It must bring within its purview the Judiciary and Legislature, while making Government explicitly responsible to supply information to the citizen on demand related to the corporate sector and Non-Governmental Organizations. It must also contain powerful provisions for penalties and should have an autonomous appeal mechanism. Most importantly, the proposed legislation must make disclosure the rule and denial of information the exception, restricted only to genuine considerations of national security and individual privacy, with the highly significant proviso that no information can be denied to the citizen which cannot be denied to Parliament and the legislatures. It would then truly be the most significant reform in public administration, legally empowering the citizen for the first time to enforce transparent and accountable governance.35

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The State Laws on the Right to Information

While the debate on the Right to Information was raging in the nation, a few States enforced their own Right to Information laws. Tamil Nadu and Goa were the pioneers to pass the law in 1997. Rajasthan, Maharashtra and Karnataka followed in 2000, Delhi in 2001 and Assam 2002. Uttar Pradesh adopted a Code of Practice on Access to Information (2000). Madhya Pradesh enacted its legislation on January 31, 2003, significantly, after the President had given his assent to the Central Legislation (Freedom of Information Act 2002).36

1. Tamil Nadu

Tamil Nadu was the first State to set an example by introducing the Right to Information Act in 1997. This act contains seven sections in all. Every person is given the right to access to information37, provided if it is relating to defence, security of the nation or if it is harmful for the conduct of international relations or affairs etc.38 Every Governmental action should be transparent to the public. To achieve this object, every citizen should be able to get information from the Government. Any person who wants to have access to the information may make an application to the Competent Authority in the prescribed manner39. It can be rejected, for reasons to be recorded in writing40. The aggrieved person, who has not received any order from competent authority within 30 days may file an appeal.41 The decision of the Government or such other authority as may be prescribed shall be final. If any difficulty arises in giving effect to the provisions of

37 Sec 3 of state of TamilNadu
38 Sec 3(2) of state of TamilNadu
39 Sec 3(a) of state of Tamil Nadu
40 Sec 3(b) of state of Tamil Nadu
41 Sec. 4 of state of Tamil Nadu
this Act, the Government may, make such provisions which are necessary or expedient for removing the difficulty. 42 The Government may make rules or issue notifications for carrying out the purposes of this Act, which has to be laid before both the houses. 43 There is no penalty clause and requesters may appeal only to the State Government, or any such authority as may be notified by the Government. The law is vague in its description of certain key areas, such as ‘public interest’, ‘public order’ and ‘public harm’. It does not have any provision for proactive disclosure of information.

2. Goa

It was the second State to enact the Right to Information legislation. Goa’s Right to Information Act was passed on 31 July 1997. It is known as one of the progressive legislations. It has the fewest categories of exceptions, a provision for urgent processing of requests pertaining to life and liberty, and a penalty clause. It is also applied to private bodies executing Government works. Despite claims made by the State Government, the Goa Act contains several peculiar provisions, which allow the State to withhold information without sustaining reasons for it. There was an enormous variation in charges levied for information. The law was not at all pro-active and it was not easy to understand formats which could be used by a layman for seeking information 44.

According to the Goa’s Right to Information Act, every citizen shall have the right to obtain information from a competent authority. It also

42 Sec 6. of state of Tamil Nadu
43 Sec. 7 of state of Tamil Nadu
includes the procedure for supply of information and restrictions on Right to Information.

Any person aggrieved by an Order of the Competent Authority, or any person who has not received any Order from the Competent Authority within thirty working days may appeal to the Administrative Tribunal constituted under the Act. The decision of the Administrative Tribunal shall be final. No order adversely affecting any person shall be passed except after giving that person a reasonable opportunity of being heard. Every appeal shall be disposed of expeditiously as possible and an endeavor shall be made to dispose of the appeal within 30 days from the date on which it is presented. It contains provisions relating to obligation on Competent Authority and penalties. It includes information about State Council for Right to Information.

The competent authority shall charge fees for supply of information which shall not exceed the cost of processing and making available of information.

3. Rajasthan

The struggle for the Right to Information in Rajasthan began by an initial demand for details of Panchayat level expenditure within four years it grew into a movement and a campaign for a comprehensive legislation at both the State and Central levels. The Rajasthan Right to Information law was finally passed in May 2000, but it came into force on 26 January
2001 after the rules were framed. The Rajasthan Act has 13 sections in all, 10 of which are established categories of exceptions.

According to the Rajasthan Right to Information Right to Information Act every citizen shall have right to obtain information from the incharge of office and such an incharge shall be liable to provide information under and in accordance with the provisions of this act. Any person seeking information shall make an application to the incharge of the office giving particulars of the matter relating to which information is sought. Upon receipt of an application the incharge of the office shall consider it and if the information is such which can be provided and does not fall within the categories of exemption the incharge office shall provide the information within thirty days of the receipt of application. The information sought may be made available in the form it is available by copying or photocopying the same. No legal proceedings shall be instituted for enforcing the right to information without first exhausting the remedies provided under this Act.

No suit, prosecution or legal proceedings shall lie against any person for anything done or intended to be done in good faith in pursuance to the provisions of this Act or rules made there under. The State Government and public bodies may suo moto exhibit or expose such information, from time to time, as may be considered appropriate in public interest, in the manner as may be prescribed.

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51 Section 3 of the Rajasthan Right to Information Act
52 Section 4 of the Rajasthan Right to Information Act
53 Section 5 of the Rajasthan Right to Information Act
54 Section 11 of the Rajasthan Right to Information Act
55 Section 12 of the Rajasthan Right to Information Act
56 Section 12A of the Rajasthan Right to Information Act
The State Government may make rules for carrying out the purposes of this Act. All rules made under this Act shall be laid before both the houses of parliament.57

Though the Right to Information is a part of the Rajasthan Government’s agenda, there has been no matching evidence of a pro-active campaign or an effort to change the prevalent culture of opaqueness and arbitrariness. Important shortcomings in Rajasthan’s law include many exemption provisions that have only given authorities ample leverage scope to deny all kinds of information. The provisions for suo moto disclosures are also weak. Moreover, the final appellant authority, the Rajasthan Civil Services Tribunal, was not a truly “independent appeal mechanism”58.

4. Delhi

In Delhi the legislature passed the Delhi Right to Information Act in 2001. This law is along the lines of the Goa Right to Information Act, containing the standard exceptions and providing for an appeal to an independent body, as well as establishing an advisory body to the State Council for Right to information.

In Delhi the law on the Right to Information was enacted following the initiatives taken by various civil society groups. The Delhi Right to Information Act came into force on October 2, 2001 and has been used to seek information on a variety of development works in construction of drains, sewers, roads, public toilets etc. Parivartan a civil society group conducted a first ever urban public hearing on 14th Dec. 2002 in

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57 Section 13 of the Rajasthan Right to Information Act
58 Dr Shalu Nigam, ‘About to your Right to Information’, We the Peoples Trust, New Delhi, 2008, p52.
Sundarnagari resettlement colony in East Delhi and unearthed corrupt practicies amounting to millions of rupees. 59

A person desiring information shall make a request in writing through electronic form, to the competent authority giving the particulars of the matter relating to which he seeks information 60. This law empowers any citizen to inspect any Government work or to demand sample of material. One can inspect an old work which has already been completed or an ongoing work. The requested information has to be provided within a month, failing which the concerned official could be penalized and would be liable to pay Rs 50 per day for any delay beyond 30 days, subject to a maximum of Rs 500 per application. It was also clearly stated that wherever the information is found to be false or has been deliberately tampered with, the official would face a penalty of Rs. 1000 per commitment, problems like difficulty in submission of application, information denial on incorrect grounds, half complete information provided, delay in and fear psychosis amongst officers and staff, high cost of accessing information was a major bone of contention between the civil society and the authorities 61.

Any person aggrieved by an order of the competent authority, or any person who has not received any order from the competent authority within thirty working days, may appeal to the Public Grievances Commission. The decision of the Public Grievances Commission shall be final 62. No suit, prosecution or other legal proceedings shall lie against any person for anything done in good faith or intended to be done in

60 Section-5 of the Dehli Right to Information Act
61 Ibid.
62 Section.7 of Dehli Right to Information Act
pursuance of this act. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general or special order published in the Official Gazette, make such provision not inconsistent with the provisions of this Act as appear to be necessary or expedient for the purposes of removing difficulty.

5. Madhya Pradesh

Although the State of Madhya Pradesh passed a Right to Information Act in March 1998, Presidential assent was refused and it has not come into force till date. The apparent reason for this is that the legislative competence to pass such a law rests with the Parliament. Executive orders on the Right to Information are, however, operational in close to 50 departments. The Act puts an unusual and welcome obligation on public bodies to make information available proactively, especially the information relating to health and security, through electronic and print media or any other method deemed fit. An application requesting information must be accepted or refused within 30 days of its receipt and reasons for any rejection must be given. The Act has 11 categories of exceptions, with procedures for appeals and revision. An official who breaches the law can be fined up to Rs. 2000. The Act sets up an Advisory Board with the Chief Minister as its Chairperson, including two members from non-governmental organizations, the press and the legal profession each.

A series of executive orders made to about 50 Governmental departments to provide information on request as well as a mandatory

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63 Secion 12. of Dehli Right to Information Act
64 Section 16 of Dehli Right to Information Act
65 Compiled as ‘Jaamane Ka Haq’ by the Department Of General Administration, State Secretariat, Government of Madhya Pradesh, Bhopal, India.
direction to put up information boards outside various departments are operational in Madhya Pradesh and now also in the new State of Jharkhand. Monitored by the Department of Administrative Reforms, these orders have not been widely used by the public. However, they do have the potential to create a culture of information-sharing if enforced properly. The orders have a provision for charging a nominal fee for inspection of records as well as for obtaining copies of records. Time limits are specified and internal appeals are provided for. Disciplinary action can be taken under these orders against erring officials.

This state introduced the Right to Information Bill in 1998. The Bill aimed at providing transparency in the administration. It was passed by the Madhya Pradesh Assembly on April 30, the same year. The publicity department of the State Government compiled and published Orders of all departments in the form of a book titled ‘Jan ne ka haq’ (the right to know). The Government orders gave a list of issues on which the departments would be obliged to share information with citizens. The State Government has taken several initiatives to operationalize people’s right to information in this Act.

In 2002 Madhya Pradesh Jankari Ki swatantrata Adhiniyam, 2002 Act no 3 of 2003 was passed. It contains a total of 14 sections. Public authorities are under an obligation to maintain proper records, to make it available to the citizens on their application given in writing to the designated officer and also on payment of the prescribed fees for the

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67 Section 3 of Madhya Pradesh Act of 2003
same. In case of refusal to provide information the designated officer is required to tell the specific grounds for that. Specific provisions for appeal and penalties are there in case of failure to receive the information. The Madhya Pradesh Right to Information Bill of 2003 also received the assent of the Governor on 24 January, 2003.

6. Karnataka

The Right to Information legislation received the assent of Governor on 10th December 2000. The Act contains standard exception clauses covering 12 categories of information. The essential features of the legislation were (i) immunity to a journalist from disclosure of the source of information (ii) right to access to public documents and (iii) penalty for causing hurt to a journalist on duty. It had limited provisions for pro-active disclosure, it contains a penalty clause and provides for and appeals to an independent tribunal. Further, there were no provisions to penalize officials who did not comply with the law. The provisions of the Act require public authorities to publish all facts regarding their decisions and policies, before initiation of any project or scheme, but this was not brought into force. In spite of lacunae in the law, reports of increasing usage of the Right to Information system emerged from many districts in Karnataka.

Initially the awareness about this Act in the state was low but it is slowly changing due to the initiatives taken by organizations like the Public Affairs Centre (PAC), the Consumer Research Education and Awareness Trust (CREAT) and the Commonwealth Human Rights

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68 Section 5 of Madhya Pradesh Act of 2003
69 Section 6 of Madhya Pradesh Act of 2003
70 Section 7 of Madhya Pradesh Act of 2003
71 Section 8 of Madhya Pradesh Act of 2003
72 Published in Gazette of Karnataka on 13th December 2000
73 Section 3(c) and 3(d)
Initiative (CHRI) It was the innovative intervention of Public Affairs Centre (PAC) and (CHRI) in conducting an implementation audit that brought out the disinterest in implementing this law.\textsuperscript{74}

Under the Act every public authority is under an obligation to maintain all records published at such intervals as may be prescribed.\textsuperscript{75} Every citizen shall have the right to information\textsuperscript{76}, but information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the State, strategic scientific or economic interest of India or conduct of International relations, the disclosure of which would prejudicially affect public safety and order or which may lead to an incitement to commit an offence or prejudicially affect fair trial or adjudication of a pending case and information relating to Cabinet papers including records of the deliberations of the Council of Ministers, Secretaries and other Officers is exempted.\textsuperscript{77}

A person desirous to obtain information shall make an application to the competent authority in the prescribed manner, along with such fee, in such form and with such particulars, as may be prescribed, but the fee payable shall not exceed the actual cost of supplying information. On the receipt of an application requesting for information, the competent authority shall consider it and pass orders either granting or refusing it. Where the competent authority does not have the information, he shall within fifteen days from the date of receipt of application transfer the application to the officer or person with whom such information is available and inform the applicant accordingly.\textsuperscript{78} The Grounds for refusal

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{75} Section 3 of the Act of Karnataka.
\item \textsuperscript{76} Section 4 of the Act of Karnataka
\item \textsuperscript{77} Section (1) of the Act of Karnataka
\item \textsuperscript{78} Section 5 of the Act of Karnataka
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to supply information in certain cases has to be provided to the applicant. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by an order make such provisions not inconsistent with the provisions of this Act.

A Penalty may be imposed, where any competent authority, without any reasonable cause fails to supply information sought for within the period specified under the Act. No Court shall entertain any suit, application or any other proceeding in respect of any order made under this Act otherwise than by way of an appeal under this Act.

7. Maharashtra

The Government pressurized by a sustained advocacy campaign by social activist Anna Hazare passed the Maharashtra Right to Information Act, 2000. However, it was criticized for being a weak law. After sustained and persistent efforts, the President gave his assent to the Maharashtra Right to Information Act 2002 on 10th August 2003 and it was notified the next day. This legislation was a class apart from most others. The Act brings not only Government and semi-Government bodies within its purview but also State public sector units, co-operatives, registered societies (including educational institutions) and public trusts. It provided that the (PIO) Public Information Officer must be appointed in all State government organizations and must give the citizen the information within 15 working days on application in writing. The Information covered under exemption clause relating to defence, security or other

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79 Section 6 of the Act of Karnataka
80 Section 8 of the Act of Karnataka
81 Section 9 of the Act of Karnataka
82 Section 10 of the Act of Karnataka
83 Section 2 of Act of Maharashtra
84 Section 5 of Act of Maharashtra
85 Section 6 of Act of Maharashtra
confidential matters shall not be provided. Where an information officer willfully provided incorrect and misleading information or information that is incomplete, he could be penalized with a fine of up to Rs. 2000 and may be subjected to internal disciplinary action. The Act provides that the penalty imposed “shall be recoverable” from his salary, “or if no salary is drawn, as arrears of land revenue”. The Act also provides provisions relating to appeals, severerability of information, etc.

8. Assam

The Assam Right to information Act 2002 was brought in quietly and there was hardly any discussion on its content. It did not follow a participatory approach in law-making. However, the Assam Right to information Act is the only law that provides for mandatory publicity which was not recognized by other State laws.

Every office of the State Government or Public Authority shall maintain the records in such manner as may be prescribed in this behalf by the State Government or the Public Authority, from time to time. The Right to Information is subject to the provisions of this Act, any person desirous of obtaining information shall make an application to the incharge of the office in prescribed manner, along with such fee, in such form and with such particulars as may be prescribed.

On receipt of an application, the incharge of the office shall consider it and if the information is such which can be provided and does

86 Section 7 of Act of Maharashtra
87 Section 12 of Act of Maharashtra
88 Section 11 of Act of Maharashtra
89 Section 10 of Act of Maharashtra
90 Section 3 of Right to Information Act of Assam
91 Section 4 of Right to Information Act of Assam
92 Section 5 of Right to Information Act of Assam
93 Section 5 (1) of Right to Information Act of Assam
not fall within the category specified94 the incharge of the office shall provide the information within thirty days of the receipt of the application. No legal proceedings can be brought against any member of the armed forces acting under the Armed Forces Special Power Act (AFSPA).

9. **Uttar Pradesh**

Uttar Pradesh did not enact a comprehensive access to information law. However, on 3rd April 2000, the Uttar Pradesh Government issued Executive Orders establishing a Code of Practice on Access to Information95 which it has applied to three areas on priority basis, namely the Agricultural production commissioner, the Public Works Department and the Tax and Consolidations Department. These departments have been asked to supply information forthwith in accordance with the code and to report back to the department of administrative reforms annually. Its purpose was to provide some level of access to information to citizens. The Code was issued as an interim measure to ensure access to information. It was intended to apply to Government offices, Corporations, Councils, Public sector undertakings, Directorates, Board and local bodies within its scope, as well as contractors or agencies, which carried out functions on behalf of a public body.96

Every department of the Government of Uttar Pradesh, Organizations and Offices97 shall nominate an officer as 'Public Information Officer' for information relating to the department/ organization/ office and it will be the responsibility of the Public

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94 Section5 (2) of Right to Information Act of Assam
95 Prepared by the Department of Administrative Reforms, State Secretariat (Sachivalaya Bhawan), Government of U.P. Lucknow, India.
96 Ibid.
97 Such as Public Sector Undertakings, Local Bodies, developmental Authorities, Corporations, Directorates, Boards, Offices of Divisional Commissioners, Trade Tax Commissioner, Entertainment Tax Commissioner etc,
Information Officer, to deal with requests for access to information, and to render reasonable assistance to requesters seeking access to information\textsuperscript{98}.

A request under this Code shall be made to the appropriate Public Information Officer in writing and will specify, as clearly as possible, the particulars of the information, document or records to which access is being sought.\textsuperscript{99}

If the applicant remains dissatisfied, complaints may be made to the departments Secretary, whose decision will be final.\textsuperscript{100} All Departments, Public Sector Undertakings, Local Bodies, Developmental Authorities, Boards, Directorates, Corporations and other organizations under the Government of Uttar Pradesh will keep month wise account of the number, nature of the applications received, accepted and rejected and shall make available this information to the Department of Administrative Reforms within 5 days of the close of the financial year for publication in the form of an Annual report on the working of the Code of Practice.\textsuperscript{101}

In case of exemption to provide information it should be considered whether any harm or prejudice arising from disclosure is outweighed by the public interest in making information available. Otherwise the exempted information includes, information, opinions and assessments given in confidence, in relation to public employment and public appointments, information opinions and assessments given in relation to recommendations for honors, Voluminous or vexatious requests, Publication and prematurity in relation to publication, information relating to incomplete analyses, research or statistics. Third party's commercial

\textsuperscript{98} Section 11 Code of Practice on Access to Information Uttar pradesh
\textsuperscript{99} Section 11(3) Code of Practice on Access to Information Uttar pradesh
\textsuperscript{100} Section 12. Code of Practice on Access to Information Uttar pradesh
\textsuperscript{101} Section 13. Code of Practice on Access to Information Uttar pradesh
confidence, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party.\footnote{102}

Overall, it may be said that there was a lack of uniformity in the state laws on the Right to information the quality and content of the law also varies drastically across States. Further, implementation of the law was one of the major lacunae that appeared as an obstacle even in the so called progressive states like Delhi, Mahathrastra or Karnataka.

**Shaping the National Legislation**

The first major draft legislation on the right to information in the country, that was widely debated, and generally welcomed, was circulated by the Press Council of India in 1996. Interestingly, it is derived significantly from a draft prepared earlier by a meeting of social activists, civil servants and lawyers at the Lal Bahadur Shastri National Academy of Administration, Mussoorie in October, 1995\footnote{103} in which some serving officials of the institute took the initiative to introduce freedom of information legislation.

**The Draft by the Shourie Committee**

The Government of India constituted a working group chaired by consumer activist H.D. Shourie to draft a legislation for consideration of Government.\footnote{104} The working Group appointed by the Government in 1997 was known as the “Shourie Committee” since it was headed by former bureaucrat and consumer rights activist H.D. Shourie. This committee, which submitted its report in May 1997, advanced on the Press Council Legislation Draft by explicitly bringing the Judiciary and Legislature under

\footnotesize{\textsuperscript{102} Part-II Sec.4 Code of Practice on Access to Information Uttar pradesh}  
\footnotesize{\textsuperscript{103} This is the institute for training all recruits to the elite higher civil services}  
\footnotesize{\textsuperscript{104} Dogra Bharat ‘Right to Information: Hope and Despair’ Economic and Political Weekly, 1997, 19\textsuperscript{th} July, p.16.}
the purview of the proposed legislation. Many of the positive aspects of the Press Council legislation were excluded or diluted in the Shourie draft. Most importantly, it widened the scope of exclusions to enable public authorities to withhold information the disclosure of which would not sub serve any public interest. This single clause broke the back of the entire legislation, because in effect public authorities would then be empowered to withhold disclosure of incriminating information in the name of public interest. The powerful clause referred to earlier, which provided that only such information that can be denied to parliament or the legislature can be withheld from the citizen, was not included.

The Shourie draft also made no provisions for penalties in the event of default, rendering the right to information toothless. Appeals were allowed to consumer courts. The Act defined public authorities more narrowly to exclude the private sector and all Non Governmental Organizations (NGO) which are not substantially funded or controlled by Government. However, with the demise in quick succession of two left-leaning United Front governments, this draft also went into cold storage. The right-wing Bhartiya Janata party (BJP) led alliance also promised legislation for right to information in its national agenda, but there has been little open debate about the contents of the proposed legislation.

105 Government of India’s Working Group on Right to Information and promotion of Open and Transparent Government, which gave its report in 1997.
106 The term ‘public body’ included not only the state as defined in Article 12 of the Constitution of India for the purposes of enforcing Fundamental Rights. It also incorporated all undertakings and non-statutory authorities, and most significantly a Company, Corporation, Society, Trust, firm or a Co-operative society, owned or controlled by private individuals and institutions whose activities affect the public interest. In effect, both the corporate sector and NGOs were sought to be brought under the purview of this proposed legislation.
The first indications of what is possibly contained in the draft legislation being considered by the union Government are reports in the media, which is completely in contradiction to the basic principle of transparent and accountable governance, that the enforceable right of the citizen to Government held information must be the rule, with only a few exceptions for genuine considerations of national security and individual privacy. No legislation for the right to information should be allowed to make this principle stand on its head, making disclosure the exception rather than the rule.

The Freedom of Information Bill, 2000

The Shourie draft was revived with some changes, in July 2000, and it was introduced as the Freedom of Information Bill, 2000. Prior to the Bill being introduced in parliament, there was no official effort to publicize the draft or engage in a debate over its provisions. There was debate on the draft law in certain media, academic media, Non-Governmental Organizations and other interested circles, but it was based primarily on debates regarding the contents of the Bill. On the basis of a review of the objections raised by academics and activists, as well as several interactions with varied groups around the country, Commonwealth Human Rights Initiative (CHRJ) produced two publications containing the chief objections to the Freedom of information Bill for, respectively, civil society and legislators. Overall, the Commonwealth Human Rights Initiative (CHRJ) felt that the Bill fails in important ways to conform to international standards and the best comparative practices on access to

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108 According to these reports, the government is now contemplating only to amend a few sections of the Official Secrets Act, and to list a dozen items on which it would become mandatory for government to give information on demand. Items not covered by this list would continue to be covered by the Official Secrets Act.

109 The Shourie draft was never introduced into Parliament.
information. It does not reflect a serious attempt to address information issues in the Indian context. Overall, the weakness of the Bill reflects the lack of political will to implement a good information disclosure system. Indeed, the Bill is so weak that civil society has debated whether this Bill should be resisted outright, at the risk of losing the opportunity to have legislation on the right to know, until at least the non-negotiable standards are included.\textsuperscript{110}

The most serious problem with the Bill is that it fails to provide for an independent review of refusals to disclose information, either by an independent administrative body or by the courts. This means that decisions on whether or not to release information rest entirely within the purview of the Government. A blanket exclusion of key intelligence and security organizations and an excessively broad regime of exemptions significantly undermine the potential for the Bill to promote the public’s right to know. However the freedom of Information law was passed in 2002.\textsuperscript{111}

The Right to Information Act, 2002

This Act provides freedom to every citizen to secure access to information which is under the control of the public authorities.\textsuperscript{112} The Act deals with the protection of freedom of information. It provides protection of freedom of information to all citizens of the country subject only to the other provisions of the Act. Under this Act the ‘freedom of information’ has been defined as ‘the right to obtain information from any public

\textsuperscript{110} Dr. Sheila Rai, (Assistant Professor, Department of Political Science University of Rajasthan, Jaipur) ‘Transparency and Accountability in Governance and Right to Information in India’ http://www.napsipag.org/pdf/SHEILA_RAI.pdf p 7.

\textsuperscript{111} Nigam Shalu ‘Right to Information :An Effective Tool for Empowerment’ Legal News and Views.Vol.20 No.1, 2006, p 34.

\textsuperscript{112} Authority or the Power in the hands of masses.
authority by means of inspection, taking of extracts and notes, by certified copies of the records of the public authority'. It can be taken by way of floppies and diskettes in cases where this information is kept in computer and in any other electronic media\textsuperscript{113}. The term ‘information’ has also been defined as any material in any form relating to the administration, operation and the decisions of the public authority\textsuperscript{114}.

The obligations of the authorities in respect of the protection of this right are mentioned in Section 4 of the Act. The Act imposed an obligation on the public authorities to maintain the records which is consistent with the operational requirements of such authorities. The public authorities were required to give reasons for any decisions taken by them, whether it is administrative or quasi judicial to those persons who were affected by such decisions.\textsuperscript{115} The public information officer is required to dispose of the application as expeditiously as possible.\textsuperscript{116} In any case this period shall not exceed more than 30 days. Within this period if he does not provide information or reject the application or request, he should specify reason for such rejection.

The Act also provides for the protection of certain information, which the State can do under the heads of privileges\textsuperscript{117}. The public information officer can refuse access to information, if the information sought for is too general, if it involves the disproportionate diversions of the resources of a public authority or if it is interfering with the functions of such authority.\textsuperscript{118} If on a request made by a party, the authority intends to give information which is relating to or has been supplied by a third

\begin{footnotes}
\item[113] Freedom of Information Act, 2000, S. 2(c).
\item[114] Ibid, Section . 2(d)
\item[115] Ibid.
\item[116] Sec 7 Right to Information Act of 2002
\item[117] Sect 8 Right to Information Act of 2002
\item[118] Sec 9(a) Right to Information Act of 2002
\end{footnotes}
party, a public information officer is required to give notice to the party concerned. He should also invite representation from him against such disclosure. But in such cases if the information is not concerned with the trade or commercial secret protected by law the disclosure may be allowed. Here the public interest involved in such disclosure should over-weigh the possible harm or injury to the interest of the third party\(^{119}\). The Act also bars the jurisdiction of courts. This is an express prohibition on the courts not to entertain any suit, applications or other proceedings in respect of any order made under this Act\(^{120}\).

In order to carry out the provisions of this Act, power has been given to the Central Government, the State Government and also to the competent authority to make rules. This may be relating to: (a) the fee payable under the provisions of the Act for the purpose of obtaining information from the public authority, (b) the authority before whom the appeal shall be preferred by the persons aggrieved by the decisions of the authority, (c) any other matters which are required or prescribed by the authority to be necessary for carrying out the provisions of the Act\(^{121}\).

At the same time every such rule made by the Central Government is required to be laid before each house of Parliament, while it is in session for a period of 30 days, and before the expiry of such period if both the houses agree that there should be some modifications to that rule or agree that there is no need to have such rules then such rules will have the effect of such modification or annulment. The validity of any act done previously

\(^{119}\) Sec. 11 Right to Information Act of 2002.
\(^{120}\) Sec. 15 Right to Information Act of 2002.
\(^{121}\) Sections. 17,18 & 19 Right to Information Act of 2002.
under that rule will not be adversely affected by such modification or annulment\textsuperscript{122}.

The same is applicable to the rules made by the State Government which are required to be laid before the State Legislature and if there is any difficulty, it can be removed by an executive order which is considered to be necessary and expedient\textsuperscript{123}. Any such order made by the Government is required to be laid before each house of Parliament.

**Criticism of the Right to Information Act (2002)**

Even though the Act is intended to promote openness, transparency and accountability in the administration and in the matters connected therewith, it is inadequate to achieve this objective. A wholesome protection has been given to the persons acting under the Act\textsuperscript{124}. No suit, prosecution or legal proceedings are possible against such person for anything done by him in good faith.

In most of these exempted categories, the final decision making authority is the executive. So it is at the discretion of the executive to include any matters as something relating to economic or commercial interest of the country or to decide as to whether it is affecting safety and order etc.\textsuperscript{125} Under Section 8(2) of this Act if the information is relating to any event or occurrence or matter which has taken place or occurred or happened 25 years before the date of request the information shall be provided by the authority. But in deciding the question as to from which date these 25 years shall be counted, the decision of the Central

\textsuperscript{122} Sec 20(1). Right to Information Act of 2002
\textsuperscript{123} Ibid, Sec 21(1).
\textsuperscript{124} Section 13 Right to Information Act of 2002
Government is final. If the Central Government wants, it can very well include or exclude any categories of information within this time period.

Under Section 9, the public information officer can reject a request if he is satisfied that the request is ‘too general’ in nature. Any questions raised in respect of any order made under this Act are required to be called in question only by way of an appeal and it provides an express bar to the jurisdiction of the courts. There may be situations where people’s right to know will be suppressed by arbitrary actions of the government. The relief, in this context, can be given to the aggrieved persons only by an independent and impartial authority like courts which is not provided by the Act\textsuperscript{126}.

The operation of the Act is limited only to the public authorities. So a citizen can seek access to information held only by the public authorities. But in the changing era of privatization one can see that most of the activities formerly undertaken by the Government are now being done by the private agencies.

In spite of various criticisms, the Act is found to be a welcome step towards ensuring transparency and openness. This is the only way in which the corruption and other illegalities prevailing in the current politics can be removed. If official secrecy is limited and transparency is assured there will be a strong bond between the ‘governors’ and the ‘governed’. That will also strengthen the democratic set up.\textsuperscript{127}

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{126} Mark Wallace, ‘Discovery of Government Documents and the Official Information Privilege’, 76 Colum. L. Rev , 1976 , p. 142
\item\textsuperscript{127} The Indian Express ‘Plea to Enact Right to Information Law’, October 22\textsuperscript{nd} 2001, p.3.
\end{itemize}
\end{footnotesize}
The Passage of Right to Information Act, 2005

The Coalition Government at the Centre led by United Progressive Alliance formulated an agenda called, ‘Common Minimum Programme’. The Common Minimum Programme (CMP) stated clearly, “the Right to Information Act will be made more progressive, participatory and meaningful. In order to look after the implementation of the Common Minimum Programme the United Progressive Alliance (UPA) constituted National Advisory Council. In the National Advisory Council some of the activists like Aruna Roy, Jean Drez who are associated with the National Campaign for Peoples’ Right to Information Act consistently put pressure on the United Progressive Alliance (UPA) Government to pass the bill and to enact a law. In response to these efforts the Parliament passed the Bill and the President of India consented to the Act, on 15th June 2005. On 15 June 2005, the President gave his assent to the National Right to Information Act, 2005. The presidential office cautioned to ensure Presidential immunity and stipulated that documents emanating from the President’s Secretariat should not be brought under the purview of the Act. The Central Law came into force since it has been published in the Gazette on June 21, 2005 as the Right to Information Act 2005. The Right to Information Act, 2005 is a milestone in India’s progress as the biggest democracy in the world.

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128 Consensus programme of the constituents of the UPA government at the centre.
129 Resigned IAS officer, MKSS activist and winner of the Ramanmagsays award.
130 Prominent pro-working class economist
131 Arora Bhavana Vij, ‘Government considering Kalam’s points on Right to Information Law’ The Indian Express, 24th June 2005.
132 Dr. Shalu Nigam, ‘About Your Right to Information’; published by We the people trust, New Delhi, 2008, p.52.
The Object of the Act of 2005

The Right to Information Act which came into effect in October 2005 cover Governments on all levels, Central, State or local along with all bodies owned, controlled or substantially financed, including Non-Governmental Organizations (NGO) directly or indirectly financed by Appropriate Governments. This revolutionary enactment aims to ensure transparency and accountability in the working of every public authority, the right of any citizen of India to request access to information and the corresponding duty of the Government to meet the request, the duty of the Government to pro-actively make available key information to all, citizens, Non-Governmental Organizations (NGO) and media. Though, there are certain items that would be exempt from disclosure, e.g. sensitive information, access to which could prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State relation with foreign States or lead to incitement of an offence, etc.

The Meaning of ‘Information’ under the Right to information Act of 2005

The Act defines the term ‘information’ as any material in any form, including records, documents, memos, e-mails, opinions, advices, press release, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body that can be accessed by a public authority under any other law for time being in force.133

133 Section 2of the Act
Who can obtain information under the Right to Information Act of 2005 Act?

All citizens have the Right to Information subject to the provision of this Act. This provision has been interpreted by the central Information Commission to include organizations within the meaning of the citizen for seeking information. In *Mr. Keval Prasad vs Allahabad Bank*, the Central Information Commission, held that the technical interpretation of the provision should not be adopted by the Public information Officers and the Public Authorities while dealing with applications filed by either the President or the members of any organization under the Right to information Act. The Commission has taken the stand of accepting all applications received from bodies like Unions, Associations, Welfare Bodies, companies etc. because the Commission felt that these bodies should also be entitled to benefit from the provisions of the Right to Information Act which should not be lost sight of in the narrow interpretation of the Act. The Commission had therefore directed the Central Public information Officers, in all such cases, to entertain and process all such applications as per the provisions of the Act. In *ST-CMS Electric Company Pvt. Ltd vs Railway Board, New Delhi* the Commission observed that Right to Information application had been made on behalf of a company and therefore was not covered under Section 3 of the Right to Information Act.

What Kind of information one can ask for?

A person can ask for any information related to the Government functioning like copies of contracts of various Government works, copies

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134 Section 3 of the Act.
135 Appeal no. 2907 / ICPB / 2008
136 CIC/OK/A/2007/00173
of bills and vouchers, status of any application filed with the Government, status of various grievances or corruption cases pending, attendance registers of gardeners or sweepers in an area, log book of vehicles used by various Government functionaries, list of works carried out by Members of legislative assembly and Members of Parliament, obtain sample of material of any Government work, documents related to various policies and budgets of the Governments etc.

a. Records under a Parliamentary Panel

The central Chief Information Commissioner on 1st January, 2010 in Patanjali Sharma vs. Central Public Information Officer of the Rajya Sabha Secretariat,\(^{137}\) has ruled that the records with a parliamentary committee can be provided under the Right to Information Act, once the report has been tabled on the floor of the House.

b. Cut-Off Marks for Optional Subjects

In Union Public Service Commission vs. Central Information Commission\(^{138}\), it was plea of the Union Public Service Commission (UPSC) that if cut-off marks are revealed, then the scaling methodology would become known to public at large and that would undermine the entire examination system. The court held that as per the sealed cover containing the scheme for examination and scaling methodology, the scaling methodology indicated this is already known to public (because of the disclosure of the UPSC itself) in the counter affidavit filed before the Supreme Court. It was further held that there is nothing new that is mentioned in the contents of the sealed cover with regard to the methodology which is not mentioned in the said counter affidavit filed before the Supreme Court. The information that is sought by respondents

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\(^{138}\) 2007 (139) DLT 608 – 2008 (1) RTI 164 (Del) 2007 (5) AD (Del) 745.
does not fall within the expression of ‘Intellectual Property’ and is not exempted. The data collected by the Union Public Service Commission (UPSC) is of an event which has already taken place and its disclosure would have no bearing whatsoever on the next year’s examination. Therefore, even if it is assumed that it is information within the meaning of Section 8(1)(d) of the Right to Information Act, its disclosure would not harm the competitive position of any third party.

In any event the Union Public Service Commission (UPSC) being a public body is required to act and conduct itself in a fair and transparent manner in any event. It would also be in public interest that this fairness and transparency is displayed by the revealing of the information sought. The disclosure of information as directed by the Central Information Commission does not, in any way, in court view, harm the protected interests of UPSC or any third party.

c. Disciplinary probe can be Disclose

In A.K Gupta vs Chief Public Information Officer the Central Information Commission held that the details of disciplinary proceedings against an employee cannot be withheld from disclosure by invoking section 8(1)(h), which bars the disclosure of information which could impede the process of information. The decision of the Central Information Commission panel was on the plea of an applicant, who demanded records relating to an inquiry into the alleged misconduct by an officer of State Bank of Mysore. The bank refused to disclose any information by invoking section 8(1)(h) saying the Central Bureau of Investigation (CBI) had been investigating this matter.

139 Under Section 8 (1) (d)
140 2007 (139) DLT 608 – 2008 (1) RTI 164 (Del) 2007 (5) AD (Del) 745.
141 CIC/AA/A/2011/241 dated 25/05/2011
All Disciplinary proceedings regarding the public conduct or misconduct of an employee of public authority, all the records and files in this regard are public records and have to be disclosed subject to other exemptions of the Act. There is nothing in the Act which exempts the disclosure of any information merely because of a related matter is pending in a court of law.

d. **Information on Phone Tapping can't be withheld**

The Himachal Pradesh State Information Commission on March 25, 2010 ruled that the record pertaining to tapping of phones by Government agencies cannot be withheld.

The State Information Commission rejected the plea of the Public Information Officer that such information was exempted under Section 8 (1) (h). The commission observed that the Public Information officer (PIO) had miserably failed to provide even an iota of justification or reasons to substantiate his findings that it would "impede the investigation of criminal case lodged against the complainant." The procedure under Section 5 (2) of the Indian Telegraph Act was a result of the directions of the Apex Court in the interest of transparency and accountability, and as such denial of information by the Public Information officer (PIO) may tantamount to flouting of the mandatory directions of the court. Disclosure under the Right to Information Act is the rule and denial the exception.142

e. **Bio-data Documents**

When a candidate submits his application for appointment to a post under a public authority the same becomes a public document and he cannot object to the disclosure on the ground of invasion of privacy.

142 Ibid.
f. Information Pertaining to Transfer of Employee

In *Canara Bank Vs. The Central Information Commission, Delhi & Anr.*\(^{143}\) the Kerala High Court held that the disclosure of employees of bank would not cause unwarranted invasion of privacy of other employees in any manner in so far as that information is not one which those employees can keep to themselves. Without the information as requested by the employee, he would not be in a position to effectively pursue his claim for transfer in preference to others. If the employee seeking information feels that the transfer made is in violation of his rights for preferential transfer, he necessarily should have the information which cannot be withheld from him by resort to section 8(1)(j).

The Court further held that the proviso to the section qualifies the section by stating that information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. By no stretch of imagination can it be held that the information requested for by relating to transfer of employees of bank is information which can be denied to the Parliament and a State Legislature. In fact that proviso effectively nullifies the impact of the main provision to a great extent.

g. Evaluated Answer Scripts

The Evaluated answer script (sheet) is information within the meaning of the Right to Information Act and its disclosure is not prohibited under the transparency law. In *State of Jharkhand Vs. Navin Kumar Sinha*\(^{144}\) the Jharkhand High Court held that access to answer scripts cannot be denied to examine. The examiner discharging public function must be accountable to people.

\(^{143}\) AIR 2007 Bom. 121.
\(^{144}\) AIR 2008 Jharkhand. 19.
In *University of Calcutta Vs. Pritam Raj* \(^{145}\) the Calcutta High Court ruled that a look at the evaluated answer script could serve the noble purpose of being acquainted with the mistake committed or getting a clarification of the doubts one have on getting to know that he has not been awarded marks true to his expectation. However, the public authorities are not obliged to retain answer scripts for any day in excess of period mentioned in relevant regulation for preservation thereof.

h. **Commercial Confidentiality can be withheld**

In *Subhash Chandra Agrawal vs M/s Petroleum & Natural Gas, HPCL and BPCL* \(^{146}\) The oil companies are commercial and service organizations. They are therefore, free to conduct businesses in a manner that assure their competitiveness in the free market economy. The oil companies are free to determine the extent of incentives/concessions that may be given to the consumers in the interest of promotion of business and profit motives. There is, therefore, no justification for disclosing the details of basis for providing incentives to the consumers that are critical for promotion of business. The respondents should, however, provide the information relating to the identified banks with which they have arrangements for selling petrol through the credit cards.

**Who is liable to give information?**

It is the obligation of Public Authorities to provide information. All Public Authorities are required to maintain a properly catalogued and indexed record of its activities and to publish and update, at least once every year, certain basic information about the functioning and duties of the Public Authorities. \(^{147}\) It is mandatory for all Public Authorities to

\(^{145}\) AIR 2009 Cal. 97.
\(^{146}\) CIC/MA/C/2008/00068 dt. 09-04-2008
\(^{147}\) Section 4 (1) (b) of Right to Information Act, 2005.
publish relevant facts, while formulating important policies or announcing decisions which affect the public. Each Public Authority must ensure that there is a healthy participation of people in the decision-making process. The obligations also require all public Authorities to be more accountable to those whom their decisions affect and therefore to provide them with the reasons for which certain decisions were taken—be they administrative or quasi-judicial in nature. This provision ensures that the principles of natural justice are guaranteed to each person affected by the decision of a Public Authority.

a. Exclusion of certain organizations

Under the Act Central Intelligence agencies and security agencies like the IB, RAW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Enforcement Directorate, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, CID Special Branch of Andaman and Nicobar Island, CID Crime Branch of Dadra Nagar Haveli and Special Branch, Lakshadweep Police. Similar agencies established by the State Governments will also be excluded. The information relating to corruption and human rights must be given but only with the approval of the Central or State Information Commission as the case may be.

In *Pratap J Shah vs Directorate of Enforcement*, the central Information Commission held that, Information relating to show cause notices issued by Directorate to a particular company, order issued against such notices, details of levy of penalty and name of Special Director who adjudicated the matter is exempted under section 24 of the Right to

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148 Section 4 (1) (c) of Right to Information Act, 2005.
149 Section 24 of Right to Information Act 2005
150 Appeal no. 16/IC(A)/2006 dt. 28-03-2006

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Information Act and the complaint does not relate to allegation of corruption or human rights violation, hence appeal is not maintainable.

In the case of Sanjiv Kumar Jain Vs S.K. Bansal, Dy. Director, IB, Ministry of Home Affairs, New Delhi and others\textsuperscript{151}, the Public Information Officer and Appellate Authority turned down appellant’s request for information on the ground that the information sought pertained to the Intelligence Bureau (IB), which is an organization listed in the Second Schedule of the Right to Information Act. The Appellate Authority had further stated that the information sought did not pertain to any allegation relating to charges of corruption or human right violation and, therefore, did not qualify for the exception under proviso to Section 24(1) The Commission held that the exemption provided to the organizations listed in Second Schedule of the Right to Information Act is absolute in nature.

b. Exemption is not absolute

However, these agencies do not enjoy absolute immunity. These agencies have to provide information regarding any allegation of corruption or act of human right violation sought by citizens. It states that the information pertaining to the allegations of corruption and human rights violation shall however not be excluded. The information sought for in respect of allegations of violation of human rights the information shall only be provided after the approval of the Central or the State Information Commission. In such cases information shall be provided within forty-five days from the date of the receipt of request. Allegation of corruption and human rights violation in the context of this section should be construed to mean 'Verifiable allegations'. In S.P. Goyal vs. Directorate of Revenue\textsuperscript{212}

\textsuperscript{151} CIC/AT/C/2006/00030, dt. April 27, 2006.
Intelligence (DRI), I.P. Estate, New Delhi\(^{152}\) it is observed that in the context of section 24, the term "allegations" should mean charges of corruption, which on the basis of available evidence, tend towards presence of corrupt motives and action by given public officials, a complaint to the Central Vigilance Commission is indeed an allegation of corruption. Thus the information pertaining to corruption in such exempted organizations and the human rights violations by these intelligence and security organizations shall not be withheld.

**Public Information Officers**

The Public Information Officers are the link between the information seeker and the Public Authority. He is responsible for receiving applications and then give an appropriate reply to the applicants as per the provisions of the Right to Information Act. Within one hundred days from the enactment of the Act, every public Authority shall have to designate “as many officers’ as the Central Public Information Officers or State Public Information Officers (as well as Central/State Assistant Public Information Officers), in all administrative units or offices under it, as may be necessary for the purpose of providing information to those seeking it.\(^{153}\)

**Duty of Public information officer**

The Public Information Officer has to provide all assistance to the information seeker while filing the application. In *Suresh Chand Gupta vs Deputy Commissioner of Police*\(^{154}\), the Delhi High Court ruled that it was the duty of the Public Information Officer to provide all manner of assistance to an applicant who is unable to file an application under the

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\(^{152}\) 22.10.2007, CICI Digest (Vol. II) 1871) (803).

\(^{153}\) Section 5 of the RTI Act 2005.

\(^{154}\) [MANU/ DE 3213/ 2007].
“If a person requesting information under the provisions of Right to Information Act felt inhibited due to his not being fluent in English, denial of appropriate assistance to that person would in fact amount to withholding access to information.”

**Procedure for Obtaining Information**

A person desiring to obtain information shall either write or put into electronic format his request to the Central or State Public Information Officer. The application can be worded in English, or Hindi or the regional language of the state the person comes from. An oral request can also be made to the Central or State or Assistant Public Information Officer, who will then produce it in writing. With the application the appellant must provide the nominal application fee, as prescribed by the appropriate authority. Further, the applicant does not have to provide any reason for requesting the information or personal details of any kind. The person is required to provide only those contact details without which it would not be possible to reach that person.155

On the issue of the motive of the information seeker in obtaining information, the Madras High Court, for the first time in *V. V. Minerals vs Department of Mining and Geology and others*156, has held that the motive of the information seeker cannot be questioned, unless the information sought comes under the exemption clauses of the Right to Information Act, it simply has to be provided to an applicant. Any allegation of an “ulterior motive” holds no ground whatsoever.

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155 Section 6 of Right to Information Act, 2005.
156 2007 (4) MLJ, 394,
**Time limit & Fees**

The Central or State Public Information Officer has to process the application within a maximum period of thirty days or reject the request. The thirty-day time limit is the maximum time permitted by the Act. If the information concerns the life or liberty of a person the Public Information Officer shall provide the information requested within forty-eight hours of receiving the request. The various conditions for time limit and fees are as under:

- If the request has been made to the Public Information Officer, the reply is to be given within 30 days of receipt.

- If the request has been made to an Assistant Public Information Officer, the reply is to be given within 35 days of receipt.

- If the Public Information Officer transfers the request to another public authority, the time allowed to reply is 30 days but computed from the day after it is received by the Public Information Officer of the transferee authority.

- Information concerning Corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within 45 days but with the prior approval of the Central Information Commission.

- However, if life or liberty of any person is involved, the Public Information Officer is expected to reply within 48 hours.

Since the information is to be paid for, the reply of the Public Information Officer is necessarily limited to either denying the request (in

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157 [(2008) 2MLJ 733:AIR 2008 Mad 224]

158 Section 6 of RTI Act Of 2005.
whole or part) and/or providing a computation of further fees. The time between the reply of the Public Information Officer (PIO) and the time taken to deposit the further fees for information is excluded from the time allowed.

If information is not provided within this period, it is deemed as refusal. Refusal with or without reasons may be a ground for appeal or complaint. Further any information not provided in the time prescribed is to be provided free of charge.

From the year 2006, in case of Central Departments there is a fee of Rs. 10 for filing the request, Rs. 2 per page of information and Rs. 5 for each hour of inspection after the first hour. If the applicant is a Below Poverty Card holder, then there is no fee. Such Below Poverty Line (BPL) Card holders have to provide a copy of their Below Poverty Line (BPL) card along with their application to the Public Authority.

In Dr. Reeta Jayasankar vs Deputy Secretary (P) & PIO, Indian Council of Agricultural Research, Krishi Bhawan, Delhi\(^\text{159}\), Central Information Commission held that, the Public Information Officer was not right in concluding that the appellant's application for information could be returned at the admission stage itself for her failure to enclose the exact fee.

### Exemptions from Disclosure of Information

Section 8 of the Act, provides for the following ten types of exemptions from disclosure:

a. **Information affecting National Security**

The public authorities can withhold information, the disclosure of which may prejudicially affect sovereignty and integrity of India, the

\(^{159}\) CIC/AT/C/2006/00052.
security, strategic, scientific or economic interests of the State, and relations with a foreign state or lead to incitement of an offence. In such cases the public Information Officers enjoys no discretion. Thus a reasonable restriction on the exercise of the right is permissible in the interest of the security of the State. In Vibha Jain vs. Dir. National Board of Examination, it is held that Authorities are by virtue of Section 8, exempted from disclosing such information where sovereignty and integrity of India may be prejudicially affected by such disclosure or where public safety and order would be affected by said disclosure. It is certainly within the domain of the concerned Public Authority to decide and determine as to whether disclosure would adversely affect the economic interest or not.

In Ritesh Parmar vs. Commissioner of Customs, it is held that, the cases under the conservation of Foreign Exchange and Prevention of Smuggling Activities Act are exempted from disclosure under Section 8 (1) (a) of the Act. The Reserve Bank of India is also entitled to claim exemption under this section.

In Kamal Anand Vs Central Board of Direct Taxes (CBDT), it has been held that Supply of instructions, directions, clarifications relating to Scrutiny Policy for non-corporate sector could be prejudicial to economic interest of the State and hence could be denied under 8(1)(a) of the Right to Information Act, particularly when broad parameters of the scrutiny guidelines have already been provided to the appellant.

160 Section 8(1) (a)
161 2007 (7) AD (Del) 210.
163 CIC/AT/A/2007/00617, dt. 11.2.2008
b. Information Forbidden by a Court's Order

The information can be withheld by the public authorities, the publication of which has been expressly forbidden by any court of law or tribunal or the disclosure of which may constitute contempt of court. Nobody can exercise his right to know, where the court of law or tribunal prohibits the publication of the same. The information of the matter in which, the court proceeds in camera, the public authorities are exempted from obligation to disclose the same. Section 237(2) of the Code of Criminal Procedure, 1973 provides that every trial under this section shall be held in camera if either party thereto so desires or if the court thinks fit so to do. In the trial of offences, the court can also proceed in camera and prohibit the publication of the same.

In N.B.S. Manian, Tiruvallur vs Department of Post, it is held that Sec 8(1) b applies to cases wherein there is a specific order from a court that the information should not be disclosed. A matter being subjudice cannot be a ground for denying the information. It further provides that there shall be no obligation to give any citizen any information, the disclosure of which may constitute contempt of court. The right to know does not entitle a person to commit contempt of court. The law relating to the contempt of court imposes reasonable restriction on the right to access information.

c. Trade Secrets, Intellectual Property Rights etc.

There is no obligation on public authority to provide access to information relating to commercial confidence, trade secrets or intellectual

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164 Sec 8(1) b
165 Under Section 376 of Indian Penal Code.
166 CIC Digest (Vol. I) 788, dt. 10.01.2007.
property, the disclosure of which would harm the competitive position of a third party.  

However, if the competent authority is satisfied that larger public interest requires the disclosure of such information, then the same can be provided to the applicant. Intellectual property includes patent, design, trade mark, copy rights and geographical indications of goods as defined under the respective laws. Quotations, bid, tender, prior to conclusion of a contract can be categorized as trade secret, but once concluded, the confidentiality of such transactions cannot be claimed. Any public authority claiming exemption must be put to strictest proof that exemption is justifiably claimed.

In State of Jharkhand vs. Navin Kumar Sinha, it is observed by the Supreme Court that “People have a right to know the basis on which the decision has been taken. If tenders are invited by the public authority and on the basis of tender documents, the ability of a tenderer or a bidder is decided, then those tender documents cannot be kept secret, that too, after the tender is decided and the work order is issued on the ground that it will amount to disclosure of trade secret or commercial confidence. If the authorities of Government refuse to disclose the document, the very purpose of the Act will be frustrated. Moreover, the disclosure of information sought for by the petitioner, cannot and shall not be a trade secret or commercial confidence rather disclosure of such information shall be in public interest, in as much as it will show the transparency in the activities of the Government.

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167 Section 8(1)(d)
169 AIR 2008 Jhar 19, 2007 (3) JCR 668 Jhr
d. Information obtained under Fiduciary Relationship

There is no obligation to give any citizen, information available to a person in his fiduciary relationship. However, if the competent authority is satisfied that the larger public interest warrants the disclosure of such information, then same can be provided to the applicant. Fiduciary relationship is one of trust and confidence, for example, the relationship of solicitor and client, spiritual adviser and his devotee, doctor and patient, creditor and debtor, etc. Under such relationship, the person in fiduciary relation is in a position to exploit the confidence deposed in him by the other person.

In Canara Bank Vs. The Central Information Commission & Anr, it is held that the information requested for by the employee of Nationalised Bank relates to transfer and promotion of employees of the bank. Such information does not pertain to any fiduciary relationship of the petitioner bank with anybody coming within purview of Section 8(1)(e).

1. Evaluated Answer Sheets in Exams

In, Mukesh Chaturvedi vs N.W. Railway, Jaipur, the Information/documents regarding the question-wise and subquestion-wise marks secured by the candidate for the examination held for the post of Assistant Personnel Officers in 2007 along with answer-sheets of the other candidates who had qualified in the examination was sought for. The Commission directed the Respondents to provide the question-wise and sub-question wise marks to the Appellant of his answer sheet for the examination of the Assistant Personnel Officers held in 2007; (ii) the Appellant may be shown the answer-sheets of the candidates he wants but

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170 Section 8(1)e) of RTI Act, 2005.
171 AIR 2007 Ker. 225 ,2008 (1) RTI 564 (Ker).
172 No. CIC/OK/A/2007/01484 dt.11-04-2008
without providing him with a copy of the same. In case he wants a copy of his own answer-sheets, this may be provided to him.

In 2008, the Central board of secondary education (CBSE) rejected an application filed by a candidate under the Right to Information Act for the inspection and re-evaluation of his secondary school examination answer books. The reason cited was that the Central board of secondary education (CBSE) shared a fiduciary relationship with its evaluators and maintained confidentiality of the manner and method of evaluation. Section 8 (1) (e) of the Right to Information Act exempts a public authority from disclosing information if it is held in a fiduciary relationship unless the authority is satisfied that the larger public interest warrants such disclosure. Further the Central Board of Secondary Examination (CBSE) claimed that its examination bye-laws barred re-evaluation, disclosure or inspection of answer books, and what was permissible was only a verification of marks. The Central board of secondary education (CBSE) submitted that the procedure evolved and adopted by it in the evaluation of answer books ensured fairness and accuracy and made the entire process as foolproof as possible. If candidates were to be permitted to seek the re-evaluation of answer books, it would create confusion and chaos, subjecting its elaborate system of examinations to delay and disarray apart from necessitating huge additional staff and infrastructure.

2. Information related to Judges Assets not a Information in a Fiduciary Capacity

In Secretary General, Supreme Court vs Subhash Chandra Agarwal, the Delhi High Court's single judge bench on September 2, 2009 held that the Chief Justice is a public authority under the Right to

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174 AIR 2010 Delhi 159.
Information Act and he holds information pertaining to asset declarations in his official capacity as the Chief Justice. That office is a public authority under the Act and is covered by its provisions. Such information given to the Chief Justice of India is information and subject to the provisions of the Right to Information Act, and the same does not hold by the Chief Justice of India in a fiduciary capacity as per section 8(1)(e) of the Act. The view taken by single bench was upheld by the division bench of the Delhi High Court on January 12, 2010.\textsuperscript{175}

3. Details & File Noting related to Supreme Court's Collegium's Recommendation

The details and file notings related to Supreme Court's Collegiums' recommendation for elevation of a judge is information in a fiduciary capacity. The Supreme Court on March 2, 2010 rejected a plea, made under the Right to Information Act, for details and file noting relating to its collegiums' recommendations for elevation of Karnataka High Court Chief Justice P. D. Dinakaran to the Apex Court. The Supreme Court held that the information sought by the applicant is confidential and is exempted under section 8(1)(e) of the Right to Information Act, being a information held in fiduciary capacity, and the applicant have no right to access the said information under section 2(f) of the Act.\textsuperscript{176}

4. The Chief Justice of India's advice on transfer of a Judge is Confidential

The Law Ministry, on March 28, 2010 observed that it cannot make public the advice tendered by the Chief Justice of India (CJI) over the transfer of Punjab & Haryana High Court Judge Nirmal Yadav to The

\textsuperscript{175} Ibid.
\textsuperscript{176} The Tribune, dt. 03.03.2010, p.3.
Uttarakhand High Court. The ministry said that the recommendation of Chief Justice of India K.G. Balakrishnan to the Law Minister on the issue is in the nature of advice tendered by the Cabinet which is exempted from disclosure under Section 8(1)(i) of the Right to Information Act.\textsuperscript{177}

However, as per Section 8(3) any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section.

e. **Confidential Information from a Foreign Government**

The Information received in confidence from foreign Government is exempted from disclosure under the Act.\textsuperscript{178}

In *Nusli Wadia v. Ministry of External Affairs*, it is held that, it is for the concerned Public Authority to determine as to which part is sensitive and cannot be disclosed and which part even though sensitive can still be disclosed without prejudicially affecting relations with a foreign State. Information regarding the issue of voting for membership of Human Rights Council is likely to effect the Country's relationship with foreign countries.

f. **Information Endangering the Life or Safety of a Person**

In *Anil Kumar Sharma vs. Commission of Income Tax II, Jabalpur, Madhya Pradesh Information*, it is held that the disclosure of information which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for

\textsuperscript{177} Id. dt. 28.03.2010, p.4.
\textsuperscript{178} Section 8 (1)(f)
\textsuperscript{180} CI Digest (Vol. II) 1368 dt. 04.04.2007.
the enforcement or security purposes, is exempted from disclosure by virtue of Section 8 (1) (g) of the Act.

The commission has steadfastly declined to disclose information of depositions, sources of information received by the public authority, statement by witnesses, etc. mainly on the ground that disclosure of this information offends section 8 (1) (g) of the Act.

In the case of Prem Peyara vs. Delhi Police\textsuperscript{181}, it is held that The Daily Diary which contains names and addresses of informants, witnesses and other contacts of the police authorities, could not be disclosed.

\textbf{g. Information affecting any Investigation or Prosecution Proceedings}

The disclosure of the information which would impede the process of investigation or apprehension or prosecution of offenders, is exempted under Right to Information Act\textsuperscript{182}. The public authority can withhold such information. In Ravinder Kumar vs. B.S. Bassi, Joint Commissioner of Police\textsuperscript{183} the applicant had sought details regarding the progress of investigation of a case by the police. The Central Information Commission dismissed the appeal relating to the disclosure of information.

\textbf{h. Cabinet Papers}

There is no obligation to give any citizen, information of cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers and it can be withheld, but the decisions of council of Ministers, the reasons thereof, and material on the basis of

\textsuperscript{181} CIC (Digest, Vol. I), 758 dt. 01.11.2006,
\textsuperscript{182} Section 8 (1) (h)
\textsuperscript{183} CIC/AT/A/2006/00004, dt 30.06.2006.
which the decisions were taken shall be made public after the decision has been taken, and the matter is complete or over\textsuperscript{184}.

Cabinet papers have not been defined per-se in the Right to Information Act. A description about the cabinet papers is available in \textit{Doypack Systems Pvt Ltd Vs. Union of India & others}\textsuperscript{185} according to which cabinet papers include papers brought into existence for the purpose of preparing submissions to the Cabinet. It has been observed by the Supreme Court in this case that Cabinet papers are protected from disclosure not by reason of their contents but because of the class to which they belong. Every decision of the council of ministers is a decision of the cabinet and, as such, all records concerning such decision or related thereto shall fall within the category of "cabinet papers". However, under the Right to Information Act, all cabinet decisions must be made public along with reasons and the materials that formed their basis, after the matter is complete or over. But there is latest move of the Union Government to amend the Right to Information Act to make cabinet papers more inaccessible. The provision deal only with the decisions of the Council of Ministers, Cabinet papers and all official deliberations connected with the decisions of the Council of Ministers. Therefore, this sub-section cannot be invoked for exemption of official deliberations unconnected with Cabinet papers or the decisions of the Council of Ministers.

i. Information invading the Privacy of an Individual

There shall be no obligation to disclose the information which relates to personal information, the disclosure of which has no relationship

\begin{footnotesize}
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\item[184] Sec 8(1)
\item[185] AIR 1988 SC 782.
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to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual\textsuperscript{186}.

However, if the Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information, then the same can be provided to the applicant and the information, which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person under the Act.

The information mentioned in Section 8(1)(J) is personal information which is so intimately private in nature that the disclosure of the same would not benefit any other person, but would result in the invasion of the privacy of that person. A citizen or a person, a legal person, or any institution has several interfaces with the State Government such as tax-payer, licensee, consumer, and so on. In each such role, he parts with a certain measure of personal information to an authorized public body, which it, he would never have parted but for the compulsion of law. But this fact alone is not sufficient to alter the character of the information parted, i.e. not sufficient to transform an acknowledged personal information to public. It simply means that the individual, bowing to the Sovereign State, complies with its law, by allowing it limited ingress into the individual’s private domain. The State Government, on the other hand, impliedly promises to the individual the confidentiality of the information to keep it away from the reach of third parties.\textsuperscript{187} Personal or private information must be saved from being made public by the public authority which happens to receive such information. That personal information does not cease to be personal just because it is delivered into the care of the

\textsuperscript{186} See 8(i)j of Right to information Act, 2005
public authority by the individual who owns such information has to be remembered.188

a. Prime Minister Health Information is personal

The Central Information Commission on September 25, 2009 has ruled that the information about ailments of the Prime Minister cannot be given under the Right to Information Act as it is personal in nature and disclosure will be an invasion of privacy and disclosure would indeed be in violation of sub-section (J) of section 8(1). 189 However, it ruled, the expenses incurred on the treatment should be disclosed since these were made from the exchequer.

b. Annual Confidential Reports

In Anil Misra v. Central Board of Excise and Customs190 it is held that Annual Confidential Reports cannot be disclosed since it is a confidential document. These reports should not be disclosed principally because this would result in breaching the implied contract of confidentiality between the officers writing the Annual Confidential Reports.

c. Leave Records

Leave record is purely a personal matter with no public interest involved and confidential Under Section 8 (1) (j). Hence, the information (leave record) need not be disclosed.

d. Medical Records

As far as medical reports are concerned, they are purely personal to the individuals and furnishing of the copies of medical reports would

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188 Ibid.
189 The Tribune, dt. 25.09.2009.
190 CIC Digest (Vol. II), 2348 (1469), dt. 23.7.2008.
amount to invasion of privacy of the individuals and need not be furnished. However in larger public interest the medical record can be disclosed.

In *Sarup Singh Hrya Naik Vs. State of Maharashtra's case*\(^{191}\), the issue was related to the medical record of a person convicted for contempt of court. The contention of private citizen seeking information is that the larger public interest requires that this information be disclosed, as person in high office or high positions or the like, in order to avoid serving their term in jail/prison or remand to police custody with the connivance of officials get themselves admitted into hospitals. It is submitted that, therefore, the public has a right to know, as to whether such a person was genuinely admitted or admitted to avoid punishment and thus defeat the Judicial order.

The court held that the public's right in such a case, must prevail over the private interest of such person. The Court must bear in mind the object of Right to Information Act, which is to make the public authorities accountable and their action open. Regulations framed under the Medical Council of India Act\(^ {228}\), which provides for the non-disclosure of secrets of the patient that has been learnt in the exercise of his profession, is subordinate legislation. The Right to Information Act is an enactment by Parliament and the provisions contained in the enactment must, therefore, prevail over an exercise in subordinate legislation, if there be a conflict between the two. Moreover, the public interest outweighs the protected personal interest, in this case, hence the medical record demanded should be provided to the applicant.

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\(^{191}\) *AIR 2007 Bom 121.*

\(^{228}\) 2.2 and 7.14 of Medical Council of India Act
Larger Public Interest has overriding effect

A public authority may allow access to information if public interest in disclosure outweigh the harm to protected interest.\(^\text{193}\) The information the disclosure of which is barred by Official Secrets Act, 1923 or exempted under any of the clause of section 8(1) can be disclosed if the Central or State Public Information Officer or Appellate Authority is satisfied that the public interest requires the disclosure. In such case harm to the protected interests is immaterial. If larger public interest justifies the disclosure then the information cannot be withheld under the pretext of Official Secrets Act, 1923 or exemptions under Sub-Section (1) of Section 8.\(^\text{194}\)

In, *Subhodh Jain vs. Transport Departments*\(^\text{195}\), Government of National Capital Territory (NCT) Delhi, it is held that the question of determination of public interest warranting the disclosure of information is to be decided by the competent authority. It is for the competent authority to satisfy itself as to what the larger public interest warrants. Public authorities are allowed to exercise their discretionary powers shielded by secrecy and outside the pale of public scrutiny.

a. Disclosure of Deposits

In *H.V. Jayaram vs. Department of Posts*\(^\text{196}\) it is held that the denial of information under Section 8(l)(j) of the Act is justified as no public interest would be served by disclosure of information asked for by the appellant. The appellant is neither a legal heir nor a nominee of the deposits made by his deceased brother. He is seemingly asking for the

\(^{193}\) The Right to Information Act, 2005, Section 8 (2).
\(^{194}\) Ibid.
\(^{195}\) CIC Digest (Vol. II) 1862 (789) dt. 15.10.2007.
\(^{196}\) CIC Digest (Vol. II) 2221 (1255), dt. 22.05.2008,
information for promotion of his personal interest, rather than public interest.

b. Financial details mainly provident fund Contributions by a person’s ex-wife

In Ashish Kumar Tiwari vs. Employees Provident Fund Organization197, it is held that the disclosure of financial details, mainly Provident Fund contributions by a person’s ex-wife would surely help the affected parties in arriving at the reasonable amount of maintenance to be paid to his divorced wife. The disclosure of information sought is, therefore, in larger public interest.

c. Disclosure of Information of cut-off marks for optional subject

In Union Public Service Commission vs Central Information Commission198, there was plea of the UPSC that if the cut off marks are revealed, then the scaling methodology would become known to public at large and that would undermine the entire examination system.

The Delhi High Court held that the information that is sought by the respondents does not fall within the expression of "intellectual property" and the disclosure of information, as directed by the Central Information Commission, does not, in any way, in court view, harm the protected interests of UPSC or any third party. In any event, the public interest in disclosure is overwhelming and court is of the view that the Central Information Commission has approached the matter in the correct prospective and has issued the directions for disclosure of information. Thus if the public interest justifies the disclosure of any private

information, then the harm to the protected interests is immaterial and the required information can be supplied in spite of the provisions of the Official Secrets Act, 1923 and exemptions permissible under Sub-Section (1) of the Section 8 of the Act.

d. Infringement of Copyright

A Public Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

Without prejudice to the provisions of Section 8, a Central Public Information Officer or State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.199

Section 9 of the Act provides another ground on which the information can be withheld by a public authority. This ground of rejection to access information is in addition to the grounds covered under Section 8 of the Act.

The copyright Act, 1957 defines a 'copyright' as a negative right which prevents the appropriation of the fruits of a man's work, labour or skill by another person. This protection is given by making any infringement of copyright as unlawful; thus, copyright prohibits any person from reproducing or copying any "literary, dramatic, musical or artistic work", without the consent of the owner of the copyright in that work.200

199 The Right to Information Act, 2005, Section 9.
Partial Disclosure

In some cases, requested information can well be divided into two parts. The first can easily be disclosed without inviting any exemption; and the second concerns the applicability of any of the exemptions laid down in the Right to Information Act. The Public information officer is required to disclose the first part of information and may claim exemption on the other part. In such a situation, the Public information officer cannot claim exemption from disclosure of the entire information on the ground that one part of the information is exempted. Such severance of the information is to be done considering that such severance should not destroy the information of record.201

Third Party Information

In case the information sought pertains to a third party and the public Information Officer intends to disclose such information or part thereof under this Act, he is required to give a notice to such third party within five days of the receipt of the request. By way of such notice, comments and possible objections from the concerned third party is invited. Concerned third party gets 10 days time to file objections or comments to the concerned Public Information Officer. But in no case concerned third party can veto the disclosure.202 It is the Public Information Officer, who, after considering the submission of the third party, has to take an independent decision on disclosure of information. The decision of the Public Information Officer is also affected by the public interest involved in the information. After considering the deliberation of the third party, if the public Information Officer decides to disclose information, with respect to a third party, he is required to give a notice of his decision

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201 Section 10 of the Act.
202 Section 11, of the Act.
and the details of the Appellate Authority under the Act prior to the actual disclosure of information. This is to enable the third party, to file an appeal against his decision. The Right to Information Act also provides that the third party has a right to appeal against the decision. Under section 19(3) of the Right to Information Act, with the appropriate Appellate Authority within 30 days of receipt of the decision of the Public Information Officer.

The decision of the public Information Officer, about whether or not to divulge information related to a third party to the information seeker, is to be communicated to all concerned parties within a period of maximum of 40 days from the date of making of the request for information.

In the case of A.P. Singh vs. Punjab National Bank the appellant had sought information regarding the bank account of another person with whom the applicant had no professional or business relationship. This information was refused to the applicant by the public authority. The Central Information Commission held that a bank is under duty to maintain the secrecy of accounts of its customers, who are also third party. The Central Information Commission (CIC) further held in this case that since the applicant had not established any bona fide public interest in having access to the information sought nor did he have any association or business relationship with the company (bank), his appeal cannot be accepted in terms of the law as provided in Section 8 (1)(j) of the Right to Information Act.

In Reliance Industries Limited Vs. Gujarat State Information Commission & Anr, the court held that Section 11 (1) of the Act 2005, gives mandate to Public Information Officer to give written notice to third party if he intends to disclose information relating to third party. There is

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203 Appeal No. 12/IC(A)/2006, dated 14.3.2006
204 AIR 2007, Guj 203-2008 (1) RTI 461 (Guj).
no express exclusion of hearing process. Submission can be made even orally by the third party. Public Information Officer has to consider these submission or representation. The court further opined that the Public Information Officer should be given an opportunity of personal hearing to third party before imparting information. In the facts of the present case, no such hearing was ever afforded before imparting the information relating to the petitioner and, therefore, the orders passed by the respondents deserve to be quashed and set aside.

Thus, whenever anybody apply for getting information about third party, such information shall be given by Public Information Officer (PIO) under section 7, only after following the procedure prescribed under Section 11(1) of the Act.

**The Central Information Commission**

**Constitution and appointment**

The Central Government constitutes the Central information Commission by publishing a notification to the effect in an official gazette. It is headed by the Chief Information Commissioner who is assisted by another central Information Commissioners. The members of the Central Information commission are appointed by the President of India on the recommendation of a committee comprised of the Prime minister; the Leader of the Opposition in the Lok Sabha; and Union Cabinet Minister, nominated by the Prime Minister.\(^{205}\)

The Right to Information Act seeks to ensure greater transparency in the functioning of the Government. However, this clearly does not hold true in the matter of appointing the functionaries of the Central Information

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\(^{205}\) Section 12 of the Act.
Commission; the process allows no scope for public involvement or participation.

**Eligibility and other terms & conditions**

The Right to Information Act specifies the eligibility requirements of a member of the Central Information Commission. The person should be a person of eminence, well-versed in one or more of the following disciplines like law, science and technology, social service, management, journalism, mass media, administration and governance. The Chief Information Commissioner holds office for a term of five years from the date on which he joins office or till he reaches age of 65, whichever is earlier. The Chief Information Commissioner can vacate his office, even prior to his retirement, by tendering his resignation to the President of India. Likewise, an Information Commissioner can hold office for a term of five years from the date of joining or till he turns 65. An Information Commissioner, or the Chief Information Commissioner, can also be removed from office by the procedure laid down in Section 14 of the Act. The salaries and allowances of the Chief Information Commissioner are at par with those of the Chief Election Commissioner.

The Central Government is also responsible for providing the Chief Information Commissioner and the Information Commissioners with as many officers and employees as necessary for the efficient performance of their functions under this Act. The salaries and allowances of the Commission are taken care of by the Central Government.

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206 Section 12 of the Act.
207 Section 13 (5) of the Act.
208 Section 13 (6) of the Act.
The Powers and Functions of the Information Commissions

The Information Commissions enjoys many powers while dealing with complaints filed before it under the Act, the complaints and grievances can be described as under:

1. When the applicant has made an attempt to file an application, under the Right to Information Act, seeking information from a Public Authority and he fails to obtain the information he is looking for either because the public Information Officer is yet to be appointed or because the concerned public Information Officer, or Assistant Public Information Officer, has refused to accept his application.

2. If he has been refused access to the information that he has requested.

3. When there is a deemed refusal to access to information or the Public Information Officer has not given a response to a request for information or access to information within the time limit specified under this Act, the information seeker can file a complaint before the Information Commission and appropriate action can be taken by the Commission against such official.

4. If the information seeker has reasons to believe that the information supplied to him is incomplete or misleading or false, he can directly approach the Information Commission and file a complaint in this regard.

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209 Section 18 of the Act.
210 Section 18(1) of the Act.
211 Section 18(1)(b) of the Act.
212 Section 18(1)(c) of the Act.
213 Section 18(1)(d) of the Act.
214 Section 18(1)(e) of the Act.
5. The Commission has been empowered to enquire into the complaint of the information seeker and take appropriate action on such complaint.215

The Information Commission is the apex body to ensure implementation of the Right to Information Act. In its endeavour, the commission may initiate enquiry proceedings in any matter for ensuring implementation of the Act.216

While enquiring into a matter, under section 18 of the Right to Information Act, the Commission has been given certain powers of a Civil Court under the Code of Civil Procedure, 1908.217

Further, the Information Commission, under section 18 of the Right to Information Act, has also been empowered to examine any record to which this Act applies and which is under the control of a Public Authority.218

In the case of *Ahmadabad Education Society & Another vs Union of India & Others*219, the Gujarat high Court held that: “While holding inquiry, as per Section 18(3) of the Act, 2005, State Chief Information Commissioner has been clothed with powers of the Civil Court under the Code of Civil Procedure, 1908, in respect of summoning and enforcing the attendance of persons and compelling them to give oral and written evidence on oath; requiring the discovery and inspection of documents; receiving evidence on affidavit; requisitioning any public record or copies thereof from any court or office. But so far as refund of fees is concerned, it is a matter to be decided by the Civil Court of competent jurisdiction under Code of Civil Procedure, 1908. State Chief Information

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215 Section 18(1)(f) of the Act
216 Section 18(2) of the Act
217 Section 18(3) of the Act
218 Section 18(4) of the Act
219 AIR 2008 Guj 42
Commissioner has no power, jurisdiction and authority under the Act, 2005 to pass an order of refund of the fees."

**Removal of the Chief Information Commissioner or Information Commissioner**

The Chief Information Commissioner, or an Information Commissioner, can be removed from his office by the order of the President of India, if there is any complaint on grounds of misconduct against the Chief Information Commissioner, or any Information Commissioner, the President can refer the matter to the Supreme Court, which will then conduct an enquiry into the complaint. The President can also either suspend such a Commissioner or debar him from attending office till the enquiry is completed. For the purpose of this provision, misbehaviour would mean that a Commissioner has obtained an emolument or benefits of any kind, either by contract or an agreement made by or on behalf of the Government of India.

If the Chief Information Commissioner, or the Information Commissioner, is adjudged an insolvent or has been convicted of an offence which, in the opinion of the President, involves moral turpitude, it may warrant a dismissal by the President.

The President can also order the removal of the Commissioner if he is engaged in any paid employment outside the duties of his office during his term or he has acquired any financial or other interest which is likely to prejudicially affect his functions as the Chief Information Commissioner or Information Commissioner.

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220 Section 14 (1) of the Act.  
221 Section 14 (3) of the Act.  
222 Section 14 (4) of the Act.
The State Information Commission

The State Government, by notification in the Official Gazette, constitutes the State Information Commission\(^\text{223}\), which would then be named after the state it is constituted in and which would supervise the implementation of the Right to Information Act.\(^\text{224}\) The State Information Commission deals with all matters concerning the offices and functionaries of that state. Each information Commission has one Chief information Commissioner and not more than 10 State information Commissioners. The Chief Information Commissioner and other State Information Commissions are appointed on the recommendation of a three member committee comprised of the Chief Minister, the Leader of the Opposition in the Legislative Assembly of the State and one Minister of Cabinet rank nominated by the Chief Minister.\(^\text{225}\)

A person appointed as State Chief Information Commissioner, or State Information Commissioner, should not be a Member of Parliament or member of the Legislature of any State or Union Territory, as the case may be, or hold any other office of profit or be connected with any political party or be involved with a business concern or alternative profession.\(^\text{226}\) The Chief Information Commissioner and all other Information Commissioners enjoy equal powers. The Chief Information Commissioner is first amongst equals and enjoys the additional power of superintending, supervising, directing and managing the functioning of the Commission.

\(^{223}\) Section 15 of the Act.
\(^{224}\) To take an example, the Information Commission in Bihar is known as the Bihar Information Commission. The State Information Commission is a parallel body and it enjoys the same powers that the Central Information Commission does.
\(^{225}\) Section 15 (2) of the Act.
\(^{226}\) Section 15 (5) of the Act.
The State Information Commissioners assist the State Chief Information Commissioner in the functioning of the Commission.227

The Uttaranchal High Court, while deciding the Public interest Litigation on the appointment of the State Chief information Commissioner in the Matter of Rural Litigation and Entitlement Kendra versus State of Uttaranchal and others228, held that it was not invalid to appoint a civil servant to the post of Chief Information commissioner on the ground that he had just resigned from a post of profit before joining the Information Commission.

**Term and Conditions of Service**

The State Information Commissioner can hold office for a term of five years from the date on which he enters office or till he attains the age of 65, whichever is earlier229. The State Chief Information Commissioner cannot be reappointed once his tenure has been completed. However, a State Information Commissioner can be appointed as Chief Information Commissioner in the same state, but in such an event, his total tenure, as information Commissioner and Chief Information Commissioner, cannot exceed five years.230

The Commissioner can also vacate the office of the State Information Commission at his will. The State Chief information Commissioner, or a State Information Commissioner, can address his resignation to the Governor of the State.231 Salary and allowances of the Chief Information Commissioner are the same as those of the State Election commissioner. The State Election Commissioner is an officer who

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227 Section 15 (4) of the Act.
228 AIR 2006 UTR 39
229 Section 16 of the Act.
230 Section 16 (1) and 16(2) of the Act.
231 Section 16(4) of the Act.
has been given the rank of an officer senior to or equivalent to the Chief Secretary of the State. Therefore the rank of the State Chief Information commissioner is also the same as that of the Chief Secretary or above.232

Removal of State Chief Information Commissioner or State Information Commissioners233

The State Chief Information Commissioner, or an Information Commissioner, can be removed from his office by the order of the Governor of the State. If there is any complaint on grounds of misconduct or ineptitude against the State Chief Information Commissioner, or any Information Commissioner, the Governor can refer the matter to the Supreme Court, which will, then, conduct an enquiry into the complaint. On the basis of report of inquiry he can be removed. The Governor can also either suspend such a commissioner or debar him from attending office till the enquiry is completed.234

If the State Chief Information Commissioner, or an Information Commissioner, is adjudged an insolvent or has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude, it may warrant a dismissal by the Governor of the State.235

If the Governor is of the opinion that the person holding the office of the State Chief Information Commissioner, or Information Commissioner, is unfit to work on account of infirmity of mind or body, he can be removed from office.236

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232 Section 16(5) (a) & (b) of the Act.
233 Section 17 of the Act.
234 Section 17(1) & 17 (2) of the Act.
235 Section 17(3) of the Act.
236 Section 17(3) (d) of the Act.
Mechanism for redressing complaints

The Act establishes high level offices of Information Commissions at the Central\(^ {237} \) and State\(^ {238} \) levels to redress complaints and dispose of appeals. The CIC\(^ {239} \) or SIC\(^ {240} \) as the case may be shall receive and inquire into a complaint from aggrieved the person.\(^ {241} \)

The Commissioners, on being satisfied on the reasonableness of grounds to inquire into the matter, may initiate an inquiry into the complaints received by them.\(^ {242} \) While carrying out such inquiries, they shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908\(^ {243} \).

Any person, who does not receive a decision on his request for information within the specified time limit or is aggrieved by a decision of the Central / State Public Information Officer may prefer an appeal to an officer senior to Central/State Public Information Officer (PIO) within that concerned public authority\(^ {244} \) and a second appeal before the Central or the State Information Commission.\(^ {245} \) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the officer who denied the request.\(^ {246} \) In Mrs. Guninder Kaur Gill & another Vs Shri Prabhakar, DCP EOW & others\(^ {247} \) It is held that Public Authority has a right of preferring an appeal before the First Appellate Authority against the decision of Centre Public Information Officer Thus, if the Centre

\(^ {237} \) Section 12 (1)
\(^ {238} \) Section 15 (1)
\(^ {239} \) Central Information Commission
\(^ {240} \) State Information Commission
\(^ {241} \) Section 18 (1)
\(^ {242} \) Section 18 (2)
\(^ {243} \) Section 18 (3)
\(^ {244} \) Section 19 (1)
\(^ {245} \) Section 19 (3)
\(^ {246} \) Section 19 (5)
\(^ {247} \) Appeal No.CIC/AT/A/2006/00074 dated 21.4.06
Public Information Officer (CPIO) decides to disclose information that relates to a Public Authority and if the Public Authority has treated the information as confidential, it can submit an appeal before the First Appellate Authority under Section 19(2) of the Right to Information Act.

The Central/State Information Commission has the power, inter alia, to require the public authority to compensate the complainant for any loss or other determinant suffered and impose any of the penalties provided under this act. The Commission is required to improve penalty on the Central/State PIO, if it discovers the concerned officer has not discharged his/her duties properly while disposing of an application for information. In certain cases the Commission is empowered to recommend disciplinary action against the erring information officers. Thus, with sufficient power vested with the Commissions, the Act can instill confidence in the complainant.

In addition to these favorable provisions to encourage people to participate in the effective implementation of the right to information, the Act also authorizes the Government to “develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act.” Although this provision does not create an obligation for the government, it is an important provision because it recognizes the need for preparing citizens to participate in the implementation of the Act and supports a government with a will to take such initiatives. These provisions

248 Section 19(8)
249 Section 20 (1)
250 Section 20 (2)
252 Section 26 (1) a
show that the act is meant to invite and encourage citizens’ participation in accessing information.\textsuperscript{253}

**Penalties\textsuperscript{254}**

This is one of the most important provisions of the Right to Information Act. Ever since independence, the Right to Information Act is the only law passed by the Indian Parliament that attempts to fix responsibility and invoke punitive measures for official who do not perform their duties while implementing the provisions of the Right to Information Act. No authority other than that of the Information Commission has the power to levy a penalty upon Public Information Officer. The Appellate Authority has no power to do as much.\textsuperscript{255} Punitive measures can either be monetary or can take the form of disciplinary proceedings against the official.\textsuperscript{256}

**Conclusion**

This statutory right to information is in many ways a significant reform in public administration in India. It seeks to secure for every citizen the enforceable right to question, examine, audit, review and assess government acts and decisions and ensures that these are consistent with the principles of public interest, probity and justice. It promotes openness, transparency and accountability in administration, by making government more open to continuing public scrutiny. Right to Information Act is an important aid in ensuring transparent administration of public affairs and will help expose corruption and nepotism to ensure a clean

\textsuperscript{253} Ibid.
\textsuperscript{254} Section 20 of the Act.
\textsuperscript{255} Section 20 (2) of the Act.
\textsuperscript{256} Ibid.
administration. It covers a wide spectrum of bodies and officials from the Central government, the State Governments, Panchayati Raj institutions, local bodies, significantly, all bodies, including Non-Governmental Organizations (NGO), that are established, constituted, owned, controlled or substantially financed by the government. By bringing private bodies within the purview of the law, it ensures that the government collects information from them.

The National Sub Committee on Right to Information in its report noted a number of certain significant positive outputs since the Act came into being in October 2005.

According to the report of the committee, there is a growing realization within the bureaucracy that it can no longer be opaque in its functioning. The tendency to hide information and take refuge under the Official Secrets Act 1923 is being slowly eroded. For the first time, officials are being forced to be accountable to the citizens. Even though the nature of implementation of the Act varies widely across states, most states have largely complied with the provisions of the Act. Although many of the Information Commissions have lacked much needed resources, by and large they are functional authorities and increasingly playing the role envisaged for them. There is evidently a slow but steady increase in the awareness of people of Right to information. While there may have been limited state level initiatives, many proactive district administrations have undertaken public awareness drives to spread the message of Right to information. The civil society has played an important role in ensuring the implementation of the Act. There have been pressure groups which have constantly advocated better implementation. At the local level, many Non

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257 Prasar, Anuradha, 'If Knowledge is Power, Demand it', Combat Law, June-July, 2006, 18-22.
258 Nigam Shalu, 'About your Right to Information', New Delhi, We the people Trust, 2006.
Governmental Organizations have done great work to build awareness and capacity among people. NGOs have also led by example by filing Right to information applications in important areas.

Simultaneously, the media has complemented the efforts of NGOs by devoting much reporting space to Right to information. While the usage profile is skewed towards the urban middle class segments, there are a increasing number of reports of Right to information being used in the rural context by the poor and the vulnerable segments to demand information, with a view to realize their entitlements for jobs, education, health care, pensions etc.

Lastly, institutional mechanisms and capacities have been developed at national, state and local levels which continue to aid and assist the implementing agencies and demand side institutions in the implementation of the Right to information Act.

**Other Legislative provisions on the right to Information**

**a. The Water (Prevention and control of Pollution) Act, 1974**

Water (Prevention and control of Pollution) Act, 1974 provides that State Boards have to maintain a register of information on water pollution, and the information relating 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. Information disclosure provisions are also made about air pollution. The Act obliges Pollution Control Board to disclose relevant interval reports to a citizen prosecuting the polluter. However, information may be withheld in the

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259 Water (Prevention and Control of Pollution) Act, 1974 Sec. 25(6)
260 Air (Prevention and Control of Pollution) Act, 1981, Sec 25
public interest. This qualification to the right of information seems unnecessary. It is difficult to envision a situation where the disclosure of reports on pollution could harm public.

b. The Environment Protection Act, 1986

The Environment (Protection), Rules, 1986 and the Environment Impact Assessment (EIA) provides for public consultations and disclosures under various circumstances. Procedure prescribed for public hearings and requirement for the publication of the executive summary of a proposal for any project affecting environment are required by law. Participation from planning process to successful execution of large projects requires that people should be able to appreciate and judge whether certain plans and schemes are useful for them or not. It is only possible when they have sufficient information about nature of the projects and programmes. Informed public debates on the pros and cons of a project to bring required changes and modifications cuts on the time-lag and thus reduces project’s costs.

c. The Consumer Protection Act, 1986

The Consumer Protection Act, 1986 guarantees the consumer the right to information. In fact U.N. General Assembly guidelines, dated 9th April, 1985 specifically provided that consumers have a right to know about the goods purchased by them and the services availed. Consumer Charters, and Packaging Order Rules oblige the manufacturer to provide important information to the consumer in respect of weight, quality, date of

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261 Dr. Jai Jai Ram Upadhyay, Env.law, Water Act, S 49 and Air Act, Sec. 43.
263 Ibid.
manufacture, date of expiry etc.\textsuperscript{264} 1986 amendments to the Consumer Protection Act, specifically provided that if scheme was notified by any seller by advertising it in a newspaper/media, the result of the scheme also must be notified in the similar manner.\textsuperscript{265} Consumer Education Research Center, Ahmadabad has led many movements in this field.

d. **The Evidence Act and the Right to Information:**

   
   Indian Evidence Act, 1872 provides for the right to access to information in specific context. The Act requires public officials to provide copies of public documents who have a right to inspect them.\textsuperscript{266} It means that he has a right to look into the order of which the copy is sought, so if a person has right to inspect the document, he will be entitled to get a copy and if he has no right, he will not get it.\textsuperscript{267} Public documents have been given a wide definition.\textsuperscript{268} Public document is prepared by public servants in discharge of public duties they are available for inspection in public office during appointed time on payment of fixed fee. The second copy of public document is to be admitted in judicial proceedings as general rule it is proved by secondary evidence. The court is bound to prove the genuineness of public document from their duly certified secondary copy.\textsuperscript{269}

e. **The Factories Act, 1948**

   
   The Factories Act provides for compulsory disclosure of information to factory workers regarding dangers to life including health

\textsuperscript{264} Consumer Protection Act, 1986, Section 2(1)(r).
\textsuperscript{265} Section 2(1)(r)(2) and (3).
\textsuperscript{266} The Evidence Act, 1872, S. 76.
\textsuperscript{267} Banarsi Devi vs. Janki Devi, AIR 1955 Patna 172
\textsuperscript{268} The Evidence Act, S. 75.
\textsuperscript{269} Batuk Lal, *The Law of Evidence*, 17\textsuperscript{th} ed., Central Law Agency, P.307
hazards and the measures to overcome such hazards, arising from their exposure to dangerous materials.  

f. Right to information in cases of venereal or infectious diseases

The welfare of society is primary duty of every civilized State. Sections 269 to 271 of the Indian penal code, an act, which is likely to spread infection, is punishable. These sections are framed in order to prevent people from doing acts, which are likely to spread infectious diseases. Thus a person suffering from an infectious disease is under an obligation to disclose to the other person and if he fails to do so he will be liable to be prosecuted under these sections. As a corollary, the other person has a right to know about such infectious diseases. In Mr X V Hospital Z. The Supreme Court held that it was open to the hospital authorities or the doctor concerned to reveal such information to the person related to the girl whom he intended to marry and she has a right to know about the HIV positive status of the appellant.

g. The Information Technology Act, 2000

Digital technology and new communication systems have made dramatic changes in our lives. Business transactions are being made with the help of computers. Information stored in electronic is amendment in the existing laws to facilitate electronic commerce and electronic governance, the Information Technology Act, 2000 was enacted by the Parliament. The aim of the e-governance is to make the interaction of the citizens with the Government offices hassle free and to share information in a free and transparent manner. It further themselves and they cannot govern themselves properly unless they are aware of social, political, economic

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and other issues confronting them. To enable them to make a proper judgment on those issues, they must have the benefit of a range of opinions on those issues. This plurality of opinions, views and ideas is indispensable for enabling them to make an informed judgment on those issues, to know what is their true interest, to make them responsible citizens, to safeguard their rights as well as the interests of society and State. All the constitutional courts of leading democracies have recognized and reiterated this aspect. In U.O.I vs Association for Democratic Reforms\textsuperscript{272} the Supreme court observed that the citizens of India have a right to know every public act, everything that is done in the public way by the public functionaries. Public education is essential for functioning of the process of popular government and to assist the discovery of truth and strengthening the capacity of an individual in participating in the decision making process. The right to get information in a democracy is recognized all throughout and it is a natural right flowing from the concept of democracy. Thus e-governance and right to information are interrelated and are two sides of the same coin. With the enactment of the information technology Act, 2000 more and more transparency is expected in the governmental functioning by the keeping people aware of the state’s plan, policies objective and achievements. Section 7 of the Act is an enabling section, which provides that if any law mandates that documents, records or information are required to be retained for any specific period, then, that requirement shall be deemed to have been, satisfied if the same is retained in e form. This section can effectively be utilized for the benefit of both government offices and citizen of India.”\textsuperscript{273}

\textsuperscript{272} (2002) SCC 294.
In Conclusion it can be said that Right to Information Act is a concrete step in right direction but much more would need to be done to make the Act meaningful and to curb corruption. The journey is not over. It has enormous task to bring success to flanking people, which will usher in a new era in the process of governance, performance and efficiency.