RIGHT TO INFORMATION IN INDIA:
A CRITIQUE OF THE RIGHT TO INFORMATION ACT

SUMMARY

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INTRODUCTION

Information is the ultimate source of power in the hands of common people in the democratic societies. Access to public records is an essential requirement for a modern government, especially in a democracy. The democracy expects openness and openness is a concomitant of free society. The openness is possible only when the ‘right to know’ is exercisable by the people. In a democratic set up the people are sovereign, they have right to know what their representatives are doing. Hence, information is indispensible for the transparency and accountable functioning of a true democratic government. It provides an important guard against abuses, mismanagement, corruption and corrupt practices. It is also beneficial to the governments as openness and transparency in the decision-making process assist in developing citizen’s trust in governmental actions and maintaining a civil and democratic society. More than 177 years ago, James Madison, the fourth President of the US said: “A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance; And a people who mean to be their own governors, must arm themselves with the power which knowledge gives.”

Martin says that one must distinguishes between four different though related notions: freedom of speech, freedom of the press, freedom of expression and freedom of information. It is essential to keep the four separate, even though they are often used interchangeably. Although they related to similar things, they are not identical.

Freedom of speech addresses the ability of individuals to communicate ideas and information without interference from the State.

Freedom of press is a related notion, but it is not identical. Freedom of the press includes the absence of prior restraint while

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freedom of speech and freedom of the press may often be synonymous, there can be instances where there is contradiction between the two.

Freedom of expression contains many of the basic elements of free speech, but it is a consciously broader and more expansive notion. It embraces the freedom to speak, write, print and publish. Freedom of expression may also protect the communication of ideas or opinions through purely physical acts.

Freedom of information is a very different notion from freedom of speech, freedom of the press or freedom of expression. Freedom of information means the ability of the individuals to gain access to information in the possession of the State.

Access to information is a short way of stating the totality of seeking and receiving information – the right of the individuals to be informed about the activities of their state, past, present and future.

The phrase freedom of information is widely used when referring to the ability of the individuals to gain access to information in the possession of the state. The phrases 'access to information' and 'freedom of information' has been used synonymously.\(^3\)

The terms ‘right to information’ and ‘freedom of information’ are often used interchangeably and have been regarded as a fundamental human right. In very first session in 1946 the UN General Assembly adopted Resolution 59 (1) stating, “Freedom of information is a fundamental human right and .....

Therefore, governments around the world are increasingly making available more information about their activities. Over fifty Countries around the World have now adopted comprehensive Freedom of Information Acts or Right to Information Acts to facilitate access to records held by governmental bodies. Various factors such as international pressure, modernization, corruption and scandals, recognition of Right to Information as a human right etc. have been responsible for this wave. Our Country too has been active in this field. It is

\(^3\) Ibid.
evident from the fact that the Government of India has enacted the Right to Information Act, 2005.

The Right to Information law is one of the most important laws which have been enacted by our Parliament. It recognizes the people’s right to information, which has been proclaimed by numerous judicial pronouncements as a fundamental right enshrined in our Constitution. The passage of the Right to Information Act, 2005 is a historic movement. It replaces the culture of secrecy and control with openness and participation. By encompassing in its scope the Central and State Governments, as also the grassroots democratic bodies and the institutions receiving government grants, the law has got a wider reach to empower citizens with information for ensuring transparency, accountability and good governance. The Act also casts an obligation on every public authority to provide information \textit{suo motu} to the public and to publish annually various particulars concerning the organization including the categories of documents available with it. Citizens are gradually becoming more aware of their right to information. The Act has been used as a tool to hold elected representatives accountable for the manner in which they spend public funds. In this way, more than the law Right to Information Act is a process, a tool, a concept and a cultural approach to life.

**CONCLUSION AND SUGGESTIONS**

The present study concludes that right to information is part and parcel of human life in the modern era of democratic governance. Right to information has got worldwide recognition in the global world and no part of world civilization has remained untouched or unaffected from the information revolution. Though, the largest democratic nation took over 55 years to enact a law on this subject but the Supreme Court of India recognized this right in its landmark pronouncements. According to some key verdicts of the Supreme Court, right to information is inherent in the fundamental rights especially defined under Article 19 (1) a) and 21 of the Constitution of India.

In the landmark case of \textit{Sheela Barse} (1987), the Supreme Court observed that it is necessary that public gaze should be permitted on the
prisoners, and the pressmen as friends of the society and public spirited citizens should have access to information about, and interviews with, the prisoners.

In *Reliance Petrochemicals Case* (1989), Justice Sabyasachi Mukarji observed that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy.

In *Cricket Association of Bengal Case* (1995), the Supreme Court expanded its views on Article 19 (1)(a) towards the right to information. In this case question was whether an organizer or producer of any event has a right to get the event telecast through an agency of his choice.

**Background of RTI Act**

Despite these pronouncements of the Supreme Court, there was still no right in an individual outside of litigation to simply ask for information from any public authority. The reluctance to enact the law was despite the fact that India had ratified the International Covenant on Civil and Political Rights (1966) in 1979. This Covenant mandates that everyone shall have the right to receive information. By becoming a party to the Covenant, India undertook to take measures to give effect to all the right including the right to information within one year i.e. by 1980. However, no law was enacted. It was left to public-spirited individuals through public interest litigation and the media to expose cases of misuse of resource and corruption by public functionaries.

But a separate statute was necessary because it would be a formal recognition of a legal right to information in India and ensure that people do not have to go to court every time they want to exercise a constitutional right and would put in place simple, clear and regular procedures which can be easily utilized by all.

At about this time, the seeds of a civil movement for establishing the right to information as an explicit and essential part of citizen hood were sown in the desert sands of Rajasthan by labourers at the famine relief sites. When they demanded to be paid minimum wages on public works, they were refused on the grounds that according to the measurement book prepared by
the Junior Engineer “they did not work”. The authorities refused to allow the labourers to see the measurement book saying that it was prohibited under the Official Secrets Act. It was at this point of time that their movement for the “right to information” began – now spearheaded by the Mazdoor Kisan Shakti Sangathan. The result of their continued campaign had been public hearings for non-payment in front of the general assembly of the villagers at which outsiders were also invited. This had resulted in timely payments of wages and action against several government officers for embezzlement. Other formidable organizations such as the National Campaign on the People’s Right to Information (NCPRI) and the Commonwealth Human Rights Initiative composed of a cross-section of society including media persons, lawyers, academics, bureaucrats and legislators also actively campaigned for enactment of the necessary law to allow access to information from the Government and its officers.

Right to information laws were first successfully enacted by the State Governments Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004). Bengal was a noteworthy exception. As far as the Union of India was concerned, in 2003 a feeble attempt was made to assuage the public demand in the form of the Freedom of Information Act, 2002. This Act was severely criticized for too many exemptions, no upper limit on the charges that could be levied and no penalties for not complying with a request for information. The act never came into effective force.

The Right to Information Act 2005: An overview

The Right to Information Act 2005 is indeed acting as a framework for effectuating the right to information recognized under Article 19 of the Constitution of India. The controversy whether the right to information is included in the fundamental right to freedom of speech contained in Article 19(1) of the Constitution of India or not has since been settled and the Supreme Court which finally held that the right to information is as much a fundamental right as the freedom of speech. This pronouncement has radically changed the very approach of understanding of the right to freedom
of information. For the proper enjoyment of the right as mentioned under Article 19(1)(a) it is imperative that there must be knowledge and information.

The Right to Information Act, 2005 has been enacted by the Parliament, while repealing the 2002 Act, for setting out the practical regime of right to information with a view to creating environment of transparency and sharing of information and provide every Indian citizen the basic constitutional and democratic right to gain access to certain information that may be held by public authorities. It primarily seeks to encourage and enhance transparency and accountability while intending to curb corruption.

The preamble of the Act itself gives us a clear-cut idea about the need and objective of the act. In this Act, like our preamble to the Constitution, the preamble has to be necessarily read as a part of the Act. The preamble gives clear guidelines on the extent of information which could be made available and the extent to which it can be withheld. It says that the Right to Information Act is an act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of the public authority, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central information Commission and State Information Commissions and for matters connected therewith or incidental thereto. It also appends the fact that in a democratic country people should be informed about the things happening around there without any failure. Transparency of information is considered as a vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.

The provisions ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, effective mechanism for access to information and disclosure by authorities. Democracy requires informed citizens and transparency of information. The Act provides for setting out Central Information Commission and State Information Commissions to promote transparency and accountability in the working of every public authority.
Drawbacks of the Right to Information Act, 2005

Theoretically, this Act is very good but it suffers from many inadequacies. This act empowers the people to gather information. But the problem is that when 35% of the population is illiterate, then how anyone could expect that people will demand information. The government should make more serious efforts towards improving the literacy level.

The act lacks necessary teeth for defaulters. In cases where information has been denied without sufficient cause, the penalty is not so harsh enough so as to have a deterrent effect on those who do not want to share information. The official mindset is a very big obstacle in the progress of this act. No official in normal condition wants to share information. They generally prefer not to share information, and therefore people find it very difficult to secure information from them. The act itself provides for several grounds on which the public information officer turn down the application. Although one is allowed to appeal to next higher authority but this is just making the matter worse. The act being based on computerized records of data, it may take a long time in computerization of such vast data and therefore the doubt hangs over whether the act would be implemented in a time bound manner.

Critical Appraisal of RTI Act

The jurisprudence of the Courts points that the right to know is implicit in the language of Article 19 (1)(a) and Article 21 of the Constitution which guarantees the freedom of speech and expression as well as right to life and personal liberty respectively.

It is well known that corruption thrives on secrecy. Transparency may lead to its eradication and right to information, in its undiluted form, would be an essential tool to prevent corruption. The long title of the RTI Act emphasizes the need for transparency and accountability in the working of every public authority to keep the citizenry informed and to make the Government and their instrumentalities accountable to the governed. While transparent governance is essential to restore accountability and increase
efficiency, accountability of the governors to the governed is an essential feature of good governance. It, however, needs to be borne in mind that while all confidential information pertaining to efficient and smooth functioning of the Government and matters of national security cannot be divulged to the masses, the RTI Act seeks to identify and classify such information that may be made readily available to the public and to which the average Indian citizen has a right to ready access in order to preserve the true worth of the country’s democratic ideals.

The Right to information is definitely a very powerful tool for exercising the fundamental right to freedom of speech and expression. Information is indispensable for the functioning Information always empowers people and ensures transparency of administration. But people’s access to information is very limited because of the fact that mechanism is not so effective and man’s brain deliberatively holds back information. The Right to Information Act, 2005 seems to be an effective legislation but what about its effective implementation. And it requires aware and educated people who can use it for their welfare. So government first needs to ensure that a majority of population becomes educated so that this act may survive for a longer period and serve the deprived and poor people of this country. Also a high order Judicial Activism is also necessary regarding the implementation. If it succeeds in its purpose it will necessarily increase public participation. Thus, it is an opening way to true democracy. A fully informed citizen will be able to perform his duties in a better manner and if we stand together we can build a better tomorrow for our country.

Implicit in this assertion is the proposition that in transactions which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in the public interest that such matters are not publicly disclosed or disseminated. In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the Government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare. However, like all other rights, even this right has recognised limitations; it is, by no means, absolute.
In actual practice, revelation of information is likely to conflict with other public interests, including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information. It is necessary to harmonise these conflicting interests while preserving the paramount status of the democratic ideal.

In a democratic society, where the Government is selected by the will of the people, there is a need for maintaining a relationship which ensures trust in all sense. A free flow of information can be an important tool for building a trust between the Government and the citizens. It also improves communication within the government to make the public administration more efficient and effective in delivering services to its constituency. Without the support of the citizens, no government can survive in a democratic system of governance. Therefore, it is necessary that whatever ideas the government or its other members hold must be freely put before the public at large. The free flow of information is essential for a democratic society in particular because it helps the society to grow and flourish. It is now recognized that the right to information is vital to democracy for ensuring transparency and accountability in governance. It therefore ensures that governance is more participatory being a vital component of successful democracy.

An antidote to corruption:

India has the dubious tag of being the twentieth most corrupt nation in a recently compiled list of 91 countries around the world. This is consistent with most people’s everyday experiences; corruption in India is rampant, from the common clerk to the highest offices of the country. Big scams for example regarding defense deals, fodder procurement and sugar prices – have frequently made the headlines. People even have to pay bribes to access basic information. Such as their own electricity bills. The right to information is thus a potent tool for countering corruption and for exposing corrupt officials.

Protection of civil liberties:

The right to information is also necessary for protecting civil liberties, for example by making it easier for civil society groups to monitor wrongdoing such as encounter killings or the abuse of preventive detention legislation.
The fact that the authorities regularly refuse to release information to civil society on such issues is indicative of the need for right to information legislation.

**Matter of Life and Death:**

Food, shelter, livelihood and education, the most important aspects of a person’s life, are provided in most rural areas through numerous schemes run by the Central or State Government.

In most cases, people do not know about the existence of these schemes, or at least salient details, such as their entitlements under the scheme, paving the way for them to be tricked into accepting less than their allocation through forgery. Furthermore, records are often tampered with, a relatively simple practice because no one outside the tight-knit Governmental circle has access to them.

**Limiting Abuse of Discretion:**

Officials can abuse their discretion to suit various political or other vested interests, as well as to misappropriate fund. For instance, the power given to Collectors to allocate tribal land to non indigenous people or to convert agricultural land to non agricultural land has been seriously misused all over the country. Since these are administrative matters, they tend to be hidden from disclosure, fostering abuse of power. While in theory it is possible to obtain a State High Court order to compel disclosure of this information, in practice this is not possible for poor indigenous people or villagers, given the cost, distance and delays involved. The right to information is therefore important to check abuse of administrative discretion and to ensure fair process.

**Participation**

Participation in political and economic processes and the ability to make informed choices is restricted to small elite in India. Consultation on important policy matter, even, when they directly concern the people, is rare. Even where consolation is mandatory, for example under the Environment Protection Act, information sharing is limited, undermining the whole
consultative process. Furthermore, reports pertain to those consolation are difficult to access.

The need for more openness as an aspect of democratic and effective governance has been accepted not only by international organization like the World Bank (which is presently conducting a widespread Consultation on how best to strengthen its Disclosure Policy), but also by private enterprise. A recent industry report on infrastructure development made a strong case for greater transparency.

Knowledge of Laws and Policies:

India has some very progressive legislation, backed up by progressive Court judgments, but these laws are often largely confined to the books and fail to be fully implemented because they have not been effectively disseminated. For example, for years after the forest laws were put into place, few people understood the conditions they placed on cutting down trees, leading to harassment and threats by local forest officials against villagers for cutting on their own land. In Madhya Pradesh, it was reported that any pink coloured paper could be used to exploit indigenous people as they identify it as a penalty slip for violating forest laws.

Elixir for the Media:

The need for the media to be able to access information is of crucial importance in India, as it is elsewhere in the world. The media provides a link between the people and their Government and acts as a vehicle of mobilization. This role is particularly important in India, where the media played a major role in the freedom struggle as well as during the period of internal emergency, when civil and political rights were suspended.

The media’s right to information is not a special privilege but rather an aspect of the public’s right to know in which the media play a key role in ensuring. This view finds support in statements of the Supreme Court of India in cases involving claims of press freedom.

Thus, information is the currency that every citizen requires to participate in the life and governance of society. Right to information may be
broadly classified into two broad heads (i) right to information against government and (ii) rights to information against private persons. In *Dinesh Trivedi Case* (1997), the Supreme Court dealt with the right to freedom of information and observed “in modern Constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been by them, seek to formulate sound policies of governance aimed of their welfare.” Right to know being a broad concept, sometimes takes into account information held by private persons too. But a trade secret is commercially valuable information that is legally protected. But in case a vegetarian consumer does not know the ingredients of cosmetics, drugs or food products which he/she wants to by, it will be difficult for him/her to practice vegetarianism. Therefore Court instructed that the instructions on the container of the goods should enable the consumer to make a right judgment according to his need. It is felt that “A user must know how he is to use it and when he is to use it”.

Therefore, although information in the current debate refers primarily to information held by public authorities, strong arguments can be made to extend the scope of the term to certain kinds of information held by private parties. The right to information would then become a right to seek and receive information from public authorities, as well as a right to access certain kinds of information from private actors. But perhaps, the normal rule in the government of India is secrecy, as here documents themselves classified into ‘Top Secret’, ‘Secret’, ‘Confidential’, ‘Classified’ and ‘De-classified’. But it is generally argued by the government that secrecy must be maintained in matters (i) related to national security and foreign affairs (ii) related to public safety and individual protection and (iii) relating to controlling and regulating the economy. Researcher submits that there is a need to define and the nature of documents and information which require secrecy instead of declaring every document as secret. Secrecy, in fact, contributes to disempowerment of ordinary citizens.

**International arena**

The study reveals that in a number of countries, freedom of information, including the right to access information held by the State, has
been recognized at the constitutional level, either by courts, which have interpreted general guarantees of freedom of expression as including it …..or through specific constitutional provisions. Quite early on in 1946, the UN recognized that the freedom of information is a fundamental human right and …the touch-stone of all the freedoms to which UN is consecrated. This was furthered by the adoption of Universal Declaration of Human Rights in 1948, wherein is was stated that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. The passing of International Covenant on Civil and Political Rights, 1966 and establishment of UN Special Rapporteur on Freedom of Opinion and Expression in 1993 by UN Commission on Human Rights furthered this cause. The United Nations Development Programme adopted a Public Information Disclosure Policy in 1997. In 1998, as a follow-up to the Rio-Declaration and Agenda 21, member States of the United Nations Economic Commission for Europe and the European Union signed the legal binding Convention on Access to Information. Before it American Convention on Human Rights also recognized the freedom of information. Similarly African Charter on Human and People’s Rights, 1981 includes freedom of information and has been rectified or acceded to by 49 States out of the 50 members of Organization of African Unity (OAU). In 1999, the there special mandates on freedom of expression, the UN special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, adopted a Joint Declaration stating that “implicit the freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented”. The World Bank also recognized the importance of the right to access information.

A number of countries have established laws relating to the freedom of information. The study has been taken the legislative trend in this regard countries like Sweden, US, UK, Australia, Canada and India.
Judicial Response:

Study in Chapter IV deals with Judicial Response to Right to Information. It is now clear Constitution of India does not specifically guarantee the right to information. The Constitution, however, guarantees various fundamental rights to the people that come to life only if the right to information is available. Therefore, information is the lifeblood in development in every field. Accordingly the Indian judiciary has elevated the people’s right to know as a guaranteed freedom under Article 19 (1)(a) and Article 21.

In *Bennett Coleman & Co. Case*, the Supreme Court struck down the newsprint control order, which restricted the allotment of newsprint to newspaper and held that such a restrictions had not only infringed newspaper’s right to freedom of speech but also the reader’s right to read. So, also in *Indian Express Newspapers Case* (1986), held that freedom of press and information were vital for realization of human right. In *Cricket Association of West Bengal Case* (1995), the right to impart and receive information from electronic media was included in freedom of speech. In *Association for Democratic Reforms with People’s Union for Civil Liberties Case* (2002), it was held that the voter had right to information about the antecedents of electoral candidate.

Acknowledging the importance of right to information in rapidly changing economic industrial scenario the Supreme Court in *Reliance Petrochemical Ltd. Case* (1989) made an illuminating observation: “We must remember that the people at large have a right to know in order to be able to take part in a participatory development in the Industrial life and democracy. Right to know is a basic right which citizens of a free country aspire in the broaden horizon of the right to live in this age on our land under article 21 of our Constitution. The right has reached new dimension and urgency.” Kavaljit Singh rightly observed that in the case of Bhopal gas tragedy, many lives could have been saved if citizens living near the plant site had been informed of how they can protect themselves by just putting a wet cloth over the nose any face against MIC gas. Furthermore, non-information related to the treatment of patients affected by the MIC led many more preventable deaths.
The march towards securing freedom of information began with case of *Raj Narain*, the Court here laid down "the doctrine of 'Public Interest' under which the State would not have veil of immunity from disclosing an official document in public", the Supreme Court has taken cognizance to lifting the veil of corruption and established the importance of right to information. In *Dinesh Trivedi Case* (1997), while considering the questions of the disclosure of the Vohra Committee Report the Supreme Court once again acknowledged the importance of open government in a participative democracy. The court observed that, “In modern constitutional democracies, it is axiomatic that citizens have a right to know about the affairs of the government which, having been elected by them, seeks to formulate sound policies of governance aimed at their welfare”.

The survey of the above cases clearly demonstrates that right to information which is sine qua non of participatory democracy is implicit as guaranteed under Article 19 (1)(a) of the Indian Constitution. To deprive a person of his right to know amount to deprive a person of his right to live a full life as guaranteed under Article 21 of the Constitution. Researcher submits that the right to information as a fundamental right can become genuinely enforceable only when every citizen becomes educate enough to know what information to seek from whom and to what use to put it.

**Right to Information and Government Privileges**

Chapter V deals with Right to Information and Government Privileges. In this context I have opportunity to quote Justice V.R. Krishna Iyre, who observed that: “Right to express one’s thought is meaningless if it is not accompanied by relaxed right to secure all information on matters of public concern from relevant public authorities. However, to ensure that there is no harm in inserting the freedom of information on a specific corollary to Art 19 of the Constitution.” But in India, secrecy is the rule rather than exception. The Official Secrets Act, 1923 and the privileges of government under the Indian Evidence Act, 1972 are the main laws which curb the free flow and access to information.
However, the access to information is presently being governed by the Official Secrets Act, 1923 which lays down that all disclosures and use of official information is a criminal offence unless expressly authorized. The said Act is modeled on the United Kingdom’s Official Secrets Act, 1911 which was drafted at a time when growing hysteria about spies and threat of impending war was looming large.

The Official Secrets Act, 1923 broadly consists of two parts. One deals with espionage or spying activities and the other deals with unauthorized disclosure of official information. The first is dealt with under Section 3 and second under Section 5 of the Act. Section 5 lays down that if any person having in his possession any document or information which has been entrusted to him in confidence by any government official, communicates it to any person other than to person to whom he is authorized to communicate it, he shall be guilty of an offence. And also a person who receives such document or information knowing or having reasonable ground to believe that this is being communicated in breach of the Act. It also penalizes disclosure of documents or information likely to effect friendly relations with foreign States.

**Right to information versus Right to Privacy**

Chapter VI of the research work deals with ‘Right to information: It’s Relationship with Right to Privacy’. The study shows that right to privacy is closely connected with right to information. The right to privacy entitles one to exclude others from (a) watching (b) utilizing (c) invading introducing upon or in other ways, his private realm. The right to privacy is an essential component of the right to life. Article 12 of Declaration of Human Right declares that “No one shall be subject to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.” In America right to privacy was recognized by the Fourth Amendment of American Constitution, it says that “The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and
particularly describing the place to be searched, and the persons or things to be seized”. Frankfurter J. observed in *Wolf v. Colorado*, that the security of one’s privacy against arbitrary intrusion by the police..... is basic to free society. It was also held that private consensual acts of sodomy between married couples cannot be criminalized by State Statutes. The American Supreme Court also reaffirmed a woman’s right to abortion etc.. In 1995, the American Law Institute Model Penal Code stated that every individual is entitled to protection against State interference in his personal affairs when he is not harming others. In 1957, the Wolfenden Committee (UK) stated that it is not the function of criminal law to intervene in the lives of Citizens.

Indian Supreme Court traced the history of right to privacy in England, the US and India; and held that right to privacy is implicit in the right to life and personal liberty guaranteed under Article 21 of the Indian Constitution. In *Kharak Singh v. State of U.P. Case* (1963), speaking for the minority Subba Rao, J. held that ‘right to privacy’ is an essential ingredient of personal liberty. In *Neera Mathur v. Life Insurance Corporation of India Case* (1992), the apex Court held that “It is a right to be let alone. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.” Even a woman of easy virtue is entitled to privacy and that no one can invade her privacy as and when he likes. In *R. Raja Gopal v. State of T.N. Case* (1995), B.P. Jeevan Reddy, J. of Supreme Court declared that ‘even a prisoner condemned to death by the Court, also has a right to privacy, which is part of his right under Article 21.’ Telephone tapping would also infract Article 21 unless it is permitted under the procedure established by law.

Right to privacy as enshrined in the Constitution also comes into play as and when any party to the proceedings is called upon to undergo any scientific test, such as DNA test, for the purpose of collecting evidence. It is a fairly settled position that no party to a legal proceeding can be subjected to any scientific test against his or her will as it has been the effect of infringing his or her right to privacy. But the most serious advocacy of privacy must confess that there are serious problems of defining the essence and scope of the right. Privacy interest in autonomy must also be placed in the context of
other right and values. Therefore, right to privacy is not absolute and disclosure by doctor that the patient who was to get married has tested HIV positive would not be violative of patient’s right to privacy. Hence, in matrimonial cases where divorce is sought, say on the ground of impotency, schizophrenia etc. normally without medical examination, it will be difficult to arrive at a conclusion as whether such allegations, allegation is correct or not. A matrimonial court has the power to order a person to undergo medical test. Passing of such an order by the court would not be in violation of the right to privacy.

Today the governments are collecting an unprecedented range and volume of information relating to citizens. This information may relate to health, personal life, business secrets or financial status of an individual. The disclosure of this information may harm their reputation and act to their prejudice. Privacy Act, 1974 of the US regulated the use of records of personal information collected or maintained by the federal government. This landmark legislation, gave citizens the right to inspect and copy most records about them stored by federal agencies and right to challenge and get correct any inaccurate information, also prohibits non-routine dissemination and disclosure of personally identifiable information, unless required by or consented to by the concerned subject. But in India there is no such law. The National Commission to review the working of the Constitution made recommendation to insert a new Article 21-B which runs as below:

(1) Every person has a right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others.

The need to protect privacy per se has become more salient now. For one thing technology has made it possible to violate privacy without trespass, and, for another powerful communications media find it more and more
profitable to violate privacy. With the advent of digital revolution, the personal information is increasingly collected, maintained and transmitted electronically. At this time, European countries, Australia, Canada and USA have passed data protection laws, which protect the right of privacy especially in the field of marriage, procreation, conception, abortion and family, relationship, child rearing and education.

As it is clear from above observation that two right i.e. right to information and right of privacy are recognized as fundamental right. Therefore, it is needed that the limits of there both rights should be determined by a suitable legislation. Some the question arose that in the event of conflict between these two rights which shall prevail? The researcher makes conclusion from study of this Chapter that in India, there is no right to privacy specifically conferred by Article 21 of the Constitution. However, the judiciary with the extensive interpretation of the phrase ‘personal liberty’ has read this right into Article 21. But the right to privacy as interpreted by judiciary in terms of this Article is not absolute. It may be restricted or violated in some circumstances and right to information may dominate. It is submitted by researcher that if there is a conflict between fundamental rights of the two parties; one seeking information and other claiming right to privacy, that right which advances public morality should prevail.

**File Noting:** File Noting was included within the purview of the Act. In *Vimal Kishore v. NAIBARD*, the appellant had sought certain information pertaining to the disciplinary proceedings utilized against him by the respondent. The authorities furnished the information but the appellant was unhappy as he feels that the documents sought by him have not been furnished to him. It was held that CPIO should allow him to inspect the relevant papers/files including ‘file noting’ as per the provisions of the RTI Act and furnish the information sought after due applications of Sections 8 (1), 10 (1) and 11 (1) of the Act.

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**Cut off Marks:** In *Rajnish Chaudhary v. UPSC*,\(^5\) the appellant, Rajnish Choudhary approached UPSC under the RTI Act conversion existence, Since the information was not disclosed to the appellant in totality, the appellant approached the additional secretary UPSC; and he asked for cut-off mark for each optional subject and detailed notes for preliminary examination and CPIO rejected if Central Information Commission held to disclose cut off marks & enclose subject will marks assigned to short listed candidates.

The commission again in *Ravinder Kana v. UNC*,\(^6\) where the appellant filed an approach to PIO, UGC to get information about the procedure for selecting UGC/NET candidate and to provide the cut off marks of NET exam. The CIC held to disclose the same the appellant. Again in *Rakesh Kumar v. CBSE* case\(^7\) the respondent asked to disclose question wise marks, however she was not allowed to examine the answer sheet since the same matter is pending before the courts. In *Neeraj Kumar Singh’s* case,\(^8\) the Commission refused to furnish the information sought by the applicant on the ground that, answer sheets are highly confidential documents and it should not be disclosed.

**Complaint filed under Section 2 (f):** In *Jai Kumar Jain v. D.D.A.*,\(^9\) the applicant applied to Delhi Development Authority asking for certain information as he has applied to the PIO, which was refused by DDA. The Central Information Commission directed DDA to provide the requested information within twenty-five days of the issue of its decision.

**Information relating to investigations:** In *Sekhar Singh and Others v. Prime Minister’s Office*,\(^10\) the applicant asked for certain information relating to file and personal liberty, which was denied by the authorities. In this case, the Central Information Commission ruled that, since the matter was related to the question of life and liberty the reason for the refusal must be given in writing in

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\(^5\) Decided on 13\textsuperscript{th} November 2006.
\(^6\) Decided on 15\textsuperscript{th} December 2006.
\(^7\) *Rakesh kumar v. CBSE* decided on 18\textsuperscript{th} December 2006.
\(^10\) CIC/WB/C/2006/00066 OF 19\textsuperscript{th} April 2006.
disposing of the application. In *Magto Ram v. Commission of Police*,\(^{11}\) the applicant had applied for certain information during investigations. The Commissioner ordered to furnish information.

**Public Interest Litigation:** The complainant made an application seeking information relating to research and testing on allergy tests conducted by certain groups. The concerned authorities refused the information. The Information Commission held that, Department of Biotechnology being a regulatory body is under a duty to furnish the information sought by the appellant.

**Judges to disclose assets:** There has been sustained coverage in the media, both print and electronic, on the need for Judges to disclose their assets under Right to Information Act. The present dispute started with an application under the Act in November 2007 as to whether the judges were following the resolution of May 1997 which requires Judges to declare their assets to their respective Chief Justices. The Supreme Court refused to divulge this information. In January 2009, the Central Information Commission ruled against the Supreme Court.\(^{12}\) This was challenged by the Supreme Court in the Delhi High Court. The Delhi High Court stayed the order. This led to the media frenzy with nation-wide criticism inform of pungent editorials, chat shows, followed by declarations and resolutions by lawyers, indignant articles by Judges\(^{13}\) (retired and sitting), voluntary disclosure of assets by some judges and finally a resolution by the Judges of the Supreme Court on 27.8.2009 to disclose their assets.\(^{14}\) All this stemmed from a public perception that judges were in fact trying to hide something as honest judges would have no hesitation in making their assets and liabilities public.\(^{15}\) The issue may be taken as settled for the time being with the Delhi High Court holding that the Chief Justice of India is a ‘public authority’ under the Act and is covered by its

\(^{11}\) Decided on 26\(^{th}\) December 2006


\(^{15}\) *Supreme Court of India v. Subhash Chandra Aggrawal*, WP (c) No 288 of 2009.
provisions and directing the Supreme Court to comply with the order of the Central Information Commission.\textsuperscript{16}

In \textit{Treesa Irish v. Central Public Information Officer},\textsuperscript{17} Justice S. Siri Jagan rightly observed that, the Right to Information Act 2005 only establishes the machinery for supply of information when a citizen exercises his fundamental right to receive information in tune with the Constitutional principles, as is clear from the preamble to the Act. Therefore, besides where a citizen has many remedies under the Act, he has also a right to approach the High Court under Article 226 or where it refers to a fundamental right he may even approach the Supreme Court under Article 32.

\textbf{Critical Analysis:} There are certain criteria on which the strength of a people-oriented transparency law can be gauged; first, the accessible information, second, the exemptions, third, the fees, fourth, the appellate mechanism and fifth the penalty.\textsuperscript{18} The study shows that the RTI Act has gone considerably further than the freedom of information Act, 2002 in a number of areas, including independent appeals, penalties for non-compliance, proactive disclosure, and clarity and simplicity of the access process. However, the Act has certain inadequacies too, which may be titled as loopholes in the Act. These may be enumerated as follows:

\begin{itemize}
  \item[i.] Under the Act, the right to information is available only to the citizens and not to non-citizens,\textsuperscript{19} where as in most countries such distinction is not made.\textsuperscript{20} The Act is silent on the millions in India for study, for work visas, residence permits, holding refugee papers and so journig as tourists or on family visit.
  \item[ii.] It does not afford protection to whistleblowers. Whistleblowers are some brave and informed persons who brought to light corruptions in
\end{itemize}

\textsuperscript{16} Justice Ruma Pal, Supra note 12 at 55.
\textsuperscript{17} W.P. (C) No. 6532 of 2006 Decided on 30\textsuperscript{th} August, 2010, 2010 (3) KLT, P. 966 Para 8.
\textsuperscript{18} Vikrant Narayan Vasudeva, “Right to Information: Paradigm Shift from Representative to Participatory Government” AIR 2009 (Journal) pp. 113-119 at 117.
\textsuperscript{19} Preamble, the Right to Information Act, 2005.
\textsuperscript{20} For instance the Freedom of Information Act, 2000, UK, provides this right to any person except ‘alien enemies’.
society. But there is a lack of provision to give protection to ‘whistleblowers’ by maintaining their privacy.\footnote{21}

iii. Even on the third party clause, some degree of reservation can be envisaged as another public authority or department should not be treated as a third party. This will in effect allow two public authorities to collude in refusing information to an applicant.\footnote{22}

iv. Exclusion of file noting from disclosure shows that it will defeat the purpose of the legislation. Corruption in the bureaucracy can only be detected in file noting. File noting form the basis for executive decisions and policy formulations and show who did what, when and why file note is generally the part on which officers of different rank will write there comments and file note is life of the decision, without which, it can never be revealed d as to who took the decisions.\footnote{23}

v. Furthermore, having an Information Commission from non-bureaucratic backgrounds to preside over the enforcement of a law on the right to know is a widely prevalent international practice. The Indian National law too leaves enough space for the appointment of persons of an independent background that are non- partial and non-submissive, though the process of selection is more liable to be political especially as retired IAS officers are being appointed to the appellate bodies.\footnote{24}

vi. Furthermore, there is still lack of transparency in University examination system and students have not been allowed to access to their answer sheets under the protection of exemption cited in RTI Act.\footnote{25}

\footnote{21} It is note able that Law Commission has also given a Report (Report No .179) (2001) on the whistle blowers law which is called Public Interest Disclosure (Protection) Bill.
\footnote{22} \textit{The Hindustan Times}, May 12, 2005.
\footnote{23} \textit{The Times of India}, August 20, 2006 \& \textit{the Hindustan Times}, July 21, 2006.
\footnote{24} \textit{The Times of India}, Nov. 28, 2005.
\footnote{25} \textit{The Indian Express}, March 6, 2006.
vii. It contains an excessively broad regime of exceptions. Exceptions provided under the Act fall under three heads; Section 8 deals with exemption from disclosure, section 9 dreams with grounds for rejection to access certain cases and section 24 deals with a certain organizations are exempted. The broad regime of such exceptions is against the policy of maximum disclosure.

viii. Yet, section 22 of the Act says that this Act shall have overriding effect on the Official Secrets Act, 1923, but, the present Act has failed to expressly repeal the provisions contained in the Indian Evidence Act, 1872. As it is clear from study that Section 123 and 124 of the Evidence Act protects the disclosure of documents and communication made under the official confidence. Thus, it gives power to the government to withhold information and document even from the Court where the documents are in the interest of justice.

ix. The stock exchanges perform important public functions. The stock exchanges have been setup with a view to prevent undesirable transactions in securities by regulating and controlling the business of dealing therein. The stock exchanges assists, regulate or control the business of buying, selling or dealing in securities which is a public function, but stock exchanges are still not come under the purview of RTI Act. The moot question is that why the stock exchanges should not be brought under the purview of RTI Act, 2005, so as to enable investor to seek information from them as an enforceable right.

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26 Under Section 8 of the Act certain categories of information have been exempted from disclosure and those are interalla include information likely to effect the sovereignty and integrity of India, Security of the State; Strategic, Scientific or economic interest of the State delestus and investigations of the offers and trade of commercial secrets and personal Information which has no relationship on its public activity and would cause unwarranted invasions of the privacy of any reasons.

27 Section 9 provides that if a request for information involves as infringement of copyright subsisting in a person other than a State, it may be rejected.

28 As per Section 24 of the Act, It will not apply to certain Govt. Organizations and hence information in relation to certain organizations cannot be obtained.

Suggestions and Recommendations

On the basis of the study made in preceding chapters the following suggestions can be made:

I. **Word 'Citizen' should be replaced by 'Person':** To expand the horizons of the Right to Information Act it is essential that word 'person' should be used in of the RTI Act in place of 'citizen'. As it is clear from the ruling made in *Treesa Irish v. Central Public Information Officer*, it is clear that right to information is not a mere statutory right created by the RTI Act, it is essentially a fundamental right guaranteed by the Constitution of India. In *Bennett Coleman and Co. v. Union of India*, it was held that 'freedom of speech and expression given under Article 19 (1)(a) includes within its compass the right of all citizens to read and the informed. In *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers, Bombay*, it was clearly affirmed that the people at large have right to know and right to know is a basic right under Article 21. Article 21 says that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. In Article 21 word 'person' has been used rather than citizen and hence, the fundamental right contained under Article 21 is applicable equally to non-citizen also. In number cases the Supreme Court has held that foreigners are also entitled to the protection of Article 21. Therefore, in light of these cases it shall be appropriate to replace word 'citizen' by using ‘person’ in RTI Act.

II. **Protection to whistle blowers:** The law Commission has given a Report (Report No.179) (2001) on the whistle-blowers law which shall be called Public Interest Disclosure (Protection) Act. This report has not been translated into law by Parliament. However, in the case

30 Supra note 17, 2010 (3) KLT 965.
31 Bennett Coleman and Co. v. Union of India, AIR 1973 SC 106.
relating to Mr. Dubey who was killed in Bihar for bringing corruption to the notice of the government. Government has, at the instance of the Supreme Court, come forward with a notification under which they have designated the Vigilance Commissioner as the authority to receive complaints about corruption and mismanagement in government. The Vigilance Commission has issued circulars which are available on its website stating the manner in which complaint can be made to the Vigilance Commissioner confidentially and as to how the name of the complainant will be kept secret and how the complaint will be protected from harm or victimization. On account of lack of sufficient publicity in this behalf the number of complaints filed confidentially before the Vigilance Commissioner is almost negligible. The proper thing for any good government will be to enact the Whistle-blower Law on the basis of the draft Bill provided by the law commission\textsuperscript{34} or should amend the RTI Act, 2005 providing protection to whistle-blower. Researcher submitted that such law or amendment as mentioned above coupled with the effective implementation of RTI Act will go a long way in ensuring that the government and public sector operate without malaises of mismanagement, inefficiency or bribery.

III. **List of Exemptions should be reduced:** The list of exemptions from disclosure of information under Section 8 should be reduced. The restrictions on the right to information must be same as the 'reasonable restrictions' laid down under Article 19 (2) of the Constitution i. e., in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. The long list of exemptions contained under Section 8, 9 and 24 may be interpreted in such a vast sense that it may be possible for government to withhold information for quite a large number of reasons.

IV. Inclusion of Public and Private Authorities: According to RTI Act, 'right to information means, the right to information accessible under the Act, which is held by or under the control of any public authority. However, the expression 'public authority' includes non-governmental organizations substantially financed directly or indirectly by funds provided by the appropriate governments. So information related to private body can be accessed, only in limited way. But in an era of liberalization and privatization, giving only limited power to authority to access information regarding the private sector, can be ‘Opening Pandora Box’. Right to Information, flows from Article 19 (1)(a), which is available against whole world. Leaving Private Sector outside the purview of RTI Act will have serious consequences. So there must be an amendment to include the private bodies, under the Section 2 (j).

V. Inclusion of stock exchanges in the word Authority: The stock exchanges should be brought under the purview of the Right to Information Act, 2005. These stock exchanges perform important public function they enjoy a State-conferred or state protected monopoly. For example Bombay stock exchange’s pivotal and pre-eminent role in the development of the Indian capital market is widely recognized. There are around 4,000 companies in the country which are listed and have a significant trading volume and the BSE ‘Sensex’ is the most widely used index in the country. The public money and trust is being used to run such exchanges. Thus it is needed that stock exchanges should be brought under the ambit of definition of ‘authority’ or ‘State’ for the purpose of RTI Act. Further, it is to be noted that in the case of *K.C. Sharma v. Delhi Stock Exchange and Others*, it was held that the stock exchanges are considered as state under Article 12 of

35 Section 2 (j) of RTI Act, 2005.
36 Section 2 (f) of RTI Act, 2005.
39 AIR 2005 SC 2884.
the Constitution. Therefore, a suitable amendment is desired to surmount this issue.

VI. Amendment of Section 123 and 124 of the Evidence Act and Section 5 of Official Secrets Act, 1923: The concept of right to information has gained global importance and the grounds of secrecy contained under Section 123 and 124 of the Evidence Act, 1872 and Section 5 of the Official Secrets Act, 1923 are neither are justified nor recognized by judiciary explicitly stated 'that is not in the interest of the public to cover with a veil of secrecy the common routine business..... the responsibility of officials to explain and justify their acts is the chief safeguard against oppression and corruption.'

It was also observed by our judiciary that, 'open government is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception'. Dr. Y. Padmaja Rant has illustrated an instance of openness. According to him Mrs. John Rimirage of the U.S.A. applied to furnish 2779 photos relating to 9/11 attacks on twin towers of W.T.C. in New York. In view of the provisions of FOI Act, 1966 she was successful in getting the photos from the government'. In light of this example and judicial pronouncements it is suggested that the present provisions of S. 123 and 124 of the Indian Evidence Act, 1872 and Section 5 of the Official Secrets Act, 1923 should be amended. It is notable that Arun Shourie, who was then Chairman of the Committee constituted by the United front Government to draft the freedom of Information bill in 1996, has proposed some amendments to these Sections.

VII. Educational programme needed for awareness: The mere information cannot get transformed into wisdom unless certain

41 S.P. Gupta v. Union of India, AIR 1982 SC 149.
43 ABN Andhra Jyothi News Channel, Dated 11.2.2010.
intermediate processes have been gone through. As Krishna Iyer J. has said, “Information is a necessary condition but one that needs further steps before the citizen can become wiser and can play his dynamic role in a democracy”. For democracy without education would amount to hypocrisy without limitations. The Constitution obligated the State to give compulsory primary education to children but it is common that this goal is far from being realized. The result is that our country has the largest number of illiterate people in the world. The right to Information does not have much relevance in such a situation where large masses of people do not have access even to basic education. The more illiterate, the worse is the situation of the right to information. These illiterate people cannot fully use the fruit of the right to information so that government must ensure effective education system thought the country so as to make use of the freedom of the information effective. Therefore, educational programme aimed to improve awareness has to be contemplated.44

It is also notable that Section 26 of RTI Act also imposes a duty upon appropriate government to develop and organize educational programmes to advance the understanding of public, in particular of disadvantaged communities as to how to exercise the rights to contemplated under this Act. It also imposes a duty upon appropriate government to encourage public authorities to participate in the development and organization of such educational programme and to undertake such programmes themselves.

VIII. Training to Bureaucrats: In order to provide greater access to government information the bureaucracy must act not only legally but also fairly. As the government has endorsed the concept of good governance in its functioning, the bureaucracy must be competent to carry out the policy of the government and to develop skills to function openly and to show its commitment to uphold transparency. It should

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44 The example shown by Karnataka and Maharashtra in implementing RTI as a syllabus in school curriculum is a welcome move; Aravind Menon, “Successful Right to Information Act: Essential Conditions” 2007(4) Kerala Law Times p.7.
be aware of the need to maintain rule of law in the country. It should also not forget that openness is the rule and secrecy is an exception. A well–balanced approach regarding people’s right to know and official secrecy has to be designed. To meet this requirement the bureaucracy is required to be trained in the light to open liberal democracy where people’s right to information get primacy over official secrecy.

It is to be noted that Section 26 of RTI Act also requires that appropriate government should train Central Public Information Officers or State Public Information Officers as the case may be a public authority and produce relevant training materials for use by the public authorities themselves.

IX. **Steps towards protection of right to privacy:** Neither Constitution nor RTI Act protects right to privacy specifically, yet, the privacy has been declared and integral part of life and personal liberty under Article 21 of Indian Constitution. Right to information which also has been held a basic right under Article 21, can invade right to privacy. Researcher has discussed this point in detail under chapter VI and accordingly suggests if there is a conflict between these two fundamental rights of the parties, then that right which advances public morality should prevail. Researcher also suggests that our Parliament should pass a suitable legislation for protection of right to privacy as America has also a separate legislation on this subject. The National Commission to review the working of the Constitution also made recommendation to insert new Article 21-B on this issue, which runs as below-

(1) Every person has a right to respect for his private and family life, his home and his correspondence.

(2) Nothing in clause (1) shall prevent the State from making any law imposing reasonable restrictions on the exercise of the conferred by clause (1), in the interests of security of the State, public safety or for the prevention of disorder or crime, or for the protection of health or morals, or for the protection of the rights and freedoms of others.
Finally, it can be said that the RTI Act is a boon for a country like India which is seeing a cancerous growth of corruption, lack of public accountability and bureaucratic indifference and numerous other ills. In fact it is Indian judiciary, who has elevated the people’s right to knows as a guaranteed freedom under Articles 19 (1)(a) and 21. Dr. Y. Padmaja Rant rightly observed that, “The attitude of yamdhramaja is to be recollected in saying 'except the life of your husband'. As the Indian Constitution has not provided any right to the citizens under 'Right to Information', the Indian Judiciary acted cleverly, as Savithri, and interpreted Article 19 (1)(a) and 21 of the Indian Constitution to effect that right to information is indirectly included in these Articles, on the ground that freedom of thought and expression, and freedom to life and personal liberties indirectly includes the right to information and the bill was compelled to be passed in the year 2005.”

Therefore, the role of Judiciary is commendable for its consistent ruling in favour of the freedom of information or right to information. The RTI Act, 2005 was compelled to be created by Parliament in view of the judicial activism which has been keenly observing the changes in society and emphasized the need of openness in the government.

The Judiciary recognized that the demand for the openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rulers and once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means *inter alia* that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and means of public policies, so that democracy does not remain merely a sporadic exercise in voting but becomes a continuous process of government - an attitude and habit of mind. But this important role people can fulfill in a democracy on if it is an open

government where there is full access to information in regard to the functioning of the government.\textsuperscript{46}

Since the concept of democratic republic State or Welfare State has gained global importance, which can be established only with the transparency and openness. The centaury old laws, which were enacted to cater the needs of the then people and the rulers basing on the than social conditions, need to be interpreted in the changed circumstances of the Welfare State and the social conditions. Dr. Badar Ahmad\textsuperscript{47} observed that it is therefore; clear that the freedom of speech and expression will always remains lame and halt without right to information. This information must flow freely and it must not be officially doctored. No doubt every government develops its propaganda machinery but it must permit others also to convey and canvass their opinions to gain support from their point of view and to see their respective philosophies in open market. The free flow of information and truth should not be checked by any governmental agency or bureaucracy. But Justice A. H. Saikia is of opinion that one should not consider that RTI Act will bring conflict between the public and bureaucracy so as to antagonize the later, but it requires to be considered with a positive approach as a means to ensure that the bureaucracy itself brings about the changes for better functioning of the democratic government.\textsuperscript{48}

The RTI Act is recent one; therefore some eminent writers expressed some doubts in its implementation, as below:

(A) According to Justice A. H. Saikia, though RTI Act has been enacted aiming to bring transparency, accountability and openness in the administration, there are still certain hindrances to be faced in its enforcement. Amongst those required to be borne in mind are: (i) bureaucratic tendency in withholding information, (ii) lack of awareness of the mass people, (iii) ineffective and improper record keeping, (iv)

\textsuperscript{46} In S.P. Gupta Case Supra note 41, (1981) Supp. SCC 87 para 65.
\textsuperscript{47} “New Horizons of the Right to Information and the Supreme Court” Aligarh Law Journal 1997 at 265.
limited trained officials, (v) lack of training officials and (vi) exemption contained in RTI Act.  

(B) According to Justice P.B. Sawant, the access to information itself may also be abused for corrupt considerations. Depending upon the nature of the information received, the Journalists and journals may indulge in all sorts of malpractice ranging from black-mailing to the illegal gains in financial markets.

No doubt, there are some hindrances in its implementation but it can be concluded from above discussion that the right to information is facet of and underlies all fundamental rights whether it be equality, liberty or any of the six freedoms guaranteed to citizens under the Constitution as also social, economic and political justice referred to in then Preamble to the Constitution because it can act as a check against the misuse of power by those who are constitutionally bound to ensure the realization of those rights. It is now for the public to be alert and watchful of their right to such information and compel disclosure because ultimately it is for them to use this weapon against all public functionaries across the board by ferreting out the truth and fixing accountability. However, it must be remembered that even such a trailblazing legislation like RTI Act cannot succeed if people are not vigilant and do not make use of this Act vigorously. Therefore, for its successful implementation of this Act, people’s active involvement is required. Again active involvement of people has a relation with the public literacy and awareness. Thus the effectiveness of this right depends, in direct proportion, on the awareness, initiatives and involvement of the people into the public. It has been rightly pointed out that the right to information as a newly acquired weapon in the hands of the people has yet to sharpen its edges to cut into laches and lags of the administrative procedures and public policy making.

52 Gandham, Suresh Kumar, “The Right to Information in India-A study” *Supreme Court Journal* 2009 (Journal) p. 25.
In a revolutionary recent verdict, the Central Information Commission (CIC) has brought the office of the Chief Justice of India in the ambit of the Right to Information Act. In *Nemi Chand Jain v. Supreme Court of India* [Appeal No. CIC/WB/A/2009/000279 date of decision announced: 10.5.2010], it was observed by Mr. Wajahat Habibullah, the CIC that the office of Chief Justice of India was a Public Authority within the meaning of Section 2 (h) of the RTI Act. The Supreme Court of India challenged this order of the CIC before Delhi High Court. The Delhi High Court declined the argument made on behalf of the Supreme Court and ruled that the office of the Chief Justice of India comes within the ambit of the Right to Information Act saying judicial independence is not a judge's privilege but a responsibility cast upon him. A three-judge bench comprising Chief Justice A.P. Shah and Justices Vikramjeet Sen and S Muralidhar dismissed the plea of the Supreme Court which contended that bringing the CJI's office within the RTI act would 'hamper' judicial independence.

On the basis of above discussions, we can conclude that the right to information has now become an important and vital part of democratic governance. All the organs of the government including executive, judiciary and legislature have been brought under the umbrella of the RTI Act to provide a platform for the people to actively participate in the governance. It will certainly encrypt a new chapter in the history of governance to achieve the basic ethos of people’s right of freedom of speech and expression.

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