RIGHT TO INFORMATION ACT 2005: ITS ENFORCEMENT AND EFFICACY WITH SPECIAL REFERENCE TO THE STATE OF PUNJAB

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The present study has been a modest attempt to study the journey of Right to Information Act, 2005 right from its inception to the present day in the country in general, and in the State of Punjab in particular.

1. **Genesis of Right to Information in India**

The right to information, as such, has come to be talked about only in recent times. It is, however, not a new concept. It has been there all the time, though in other forms. Traditionally, man is inquisitive. There is ample evidence in this context in the great Vedic erudition, where it is written: “Life is a perennial search for the truth. The restless swan (soul) is on the journey infinite to find the truth”. Looking at the concept from historical perspective, it can be inferred that the concept of search for truth is not alien to the Indian political thinkers and philosophers. They have expressed concern to secure knowledge since the very early time of Vedic age.¹

The colonial government in India kept itself at a distance from the people. It thrived on the culture of secrecy, and distrust of the people. Such culture also produced distrust of the government among the people. The culture of secrecy continued even after independence, and even after India became a republic. It has continued for the last fifty seven years. It is unfortunately true that the government of independent India functioned in the same milieu as that of the colonial government until recently. Secrecy had been the rule and transparency an exception. However, after independence when India became a welfare state, powers of the administration were bound to increase. A welfare state is always a much–governed state. In a welfare State, it is the executive cum-administrative branch of

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the government, having the duty and responsibility to plan and implement welfare schemes, which expands and acquires vast powers, most of which are discretionary in nature, the traditional methods of control of the government are bound to prove inadequate to cope with such increased powers. Although actions of the authorities are subject to judicial review and although the courts have extended the scope of judicial review, but judicial review has its own limitations. Judicial review is sporadic and formal. Abuse of power can be very subtle and may escape judicial scrutiny. Corruption and abuse of power are the inevitable fall-outs of such an unaccountable system of governance.\(^2\)

2. The Campaign for the Right to Information

The battle for appropriate legislation for the right to information has been fought on two main planks. The first is a demand for amendment of the draconian colonial Official Secrets Act, 1923 and the second, campaign for an effective law of the right to information. The Official Secrets Act, 1923 (OSA), is a replica of the erstwhile British Official Secrets Act and deals with espionage.\(^3\)

During the last decade, the focus of citizens’ groups had shifted from demanding merely an amendment to the Official Secrets Act to the demand for its outright repeal, and its replacement by a comprehensive legislation, which would make disclosure the duty, and secrecy the offence. Powerful organizations, like MKSS, continued to experience enormous difficulties in securing access to and copies of Government documents, despite clear administrative instructions that certified copies of such document should be available to the citizens on demand. This highlighted to citizens’ groups how important it is that the people’s right to information should be enforceable by law.\(^4\)

Interestingly, in India, the movement for the right to information has been as vibrant in the hearts of marginalized people as it is in the pages of academic journals and in the media. This is not surprising since food security, shelter,

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\(^2\) Ibid.


\(^4\) Ibid.
environment, employment and other survival needs are inextricably linked to the right to information.

In the early 1990s, in the course of struggle of the rural poor in Rajasthan, the Mazdoor Kisaan Shakti Sangathan (MKSS) hit upon a novel way to demonstrate the importance of information in an individual’s life through public hearings or Jan Sunwais. The MKSS’s campaign demanded transparency of official records, a social audit of government spending and redressal machinery for people who had not been given their due. The campaign caught the imagination of large cross-section of people, including activists, civil servants and lawyers.\(^5\)

3. **The Right to Information Act, 2005: An Analysis**

In a world where non-state actors, such as public or private corporations, non-governmental organizations (NGOs), quasi non-governmental organizations and international institutions influence the destinies of millions, the ambit of the Right to Information needs to encompass more than just governments. Some Commonwealth countries have extended the coverage of their laws to some private bodies,\(^6\) recognizing that the issue needs to be “resolved by reference to its role in protecting the fundamental interests of citizens, and not by reference to the provenance or structural characteristics of the institution holding the contested information”.\(^7\) As more and more public functions, like provision of health care, supply of water, power and transport, and even prison management, are privatized, people need to be able to get information from the bodies performing these services. Often, agreements between government and service providers do not require them to make information about their activities available. This removes information from the public domain that would otherwise have been covered under access laws. Even where private bodies are not providing public services, their activities need to open to public scrutiny if they affect people’s rights. For

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example, the public should be able to access information on a factory’s environmental management policies to ensure the factory is managing toxic waste appropriately, and therefore, not diminishing their right to health. Without information and communication of exact knowledge, one feels impotent to step into action. With the growth of idea of social welfare State or a socialistic pattern of society, the Government being an activist entity, has gathered a vast arsenal of powers and has come to acquire enormous powers. The powers are used to affect economic interests, social and cultural life and personal liberty of individuals. In the name of peoples’ welfare, Government does all acts and performs all activities. Such a development, certainly, has an inbuilt danger that these vast powers of the government are not used for private gains or personal profit of grinding own axe, or with corrupt motives or arbitrarily and capriciously, instead of being exercised in public welfare. Hence, it is extremely important that these powers must be exercised for public good and for the purpose for which these powers are conferred. This makes it extremely essential for the people to know what Government had been doing for ensuring accountability of the Government to the people. The first requisite, therefore, is that the people should know or be informed from time to time how, and in what manner, the government had been functioning. No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government.

The Right to Information Act consists of six Chapters arranged as under:

Chapter I Preliminary
Chapter II Right to information and Obligations of Public Authorities
Chapter III The Central Information Commission
Chapter IV The State Information Commission
Chapter V Powers and Functions of the Information Commissions, Appeal and Penalties
Chapter VI  Miscellaneous

4. Objective of the Study

True democracy cannot exist unless all citizens have right to participate in the affairs of the polity of the country. The right to participate in the affairs of the country is meaningless unless citizens are well informed of all sides of the issues in respect of which they are called upon to express their views. One sided information, disinformation, misinformation and non-information, all equally create uninformed citizenry, which makes democracy a farce when medium of information is monopolized, either by State or any other organization. This is particularly so in a country like ours where about 65 percent of the population is illiterate and hardly 1.5 percent of population has an access to the print media, which is not subject to pre-censorship. The Government has shown political will by enacting the Right to Information Act, 2005. However, struggle for achieving ‘openness’ in the governmental affairs is not over. The government should use Right to Information Act, 2005 to improve the delivery system of the administration.

The Right to Information Act, 2005 is the most important and progressive piece of legislation since independence, and it has tremendous potential to improve the functioning of public authorities in the country. Citizens at large are very enthusiastic about using this new instrument to improve the services they get from public authorities. The bureaucratic and political establishment in the country does not seem to have right spirit. The Central and the State governments have an important role in ensuring that Act gets implemented in the right spirit. The Central Information Commission and State Information Commissions have to tread carefully but firmly to ensure that the Act does not loose its value to citizens and to the society at large. Therefore, the main aim of this study is to suggest the means for its effective implementation.
5. **Significance of Study**

The present study is specifically aimed at studying the Right to Information Act, 2005, and its implementation, specifically in the State of Punjab. An analytical study shall be carried out to find out whether the Right to Information Act, 2005, is able to achieve the idea of transparent government? In this regard, a specific study shall be undertaken to observe the commitment on the part of the governments and the functioning of the Commission under the Right to Information Act, 2005. This study will help in analyzing the law relating to the right to information, and the government’s commitment to further provide the right to information to the people of India according to the Constitutional and Legislative Commitments, specifically in the State of Punjab.

6. **Research Hypothesis**

Transparency and openness in the functioning of a democratic and welfare government is essential. The citizen’s right to know is essential for such purpose. The right to information is the basic right and the execution and enjoyment of all other rights depend upon the enforcement of this right. The trend in India and other commonwealth countries favour the non-disclosure and secrecy in the government functioning. The bureaucracy in India has developed a practice of keeping the secrecy in the office files. The confidentiality and secrecy is supported to some extent by the Constitution of India itself, and other legislations, like Official Secrets Act, 1923, Indian Evidence Act, 1872, etc. The judiciary in India has tried to build up the citizen’s right to know from the government functionaries through its judgments. The recent legislation has further strengthened the citizen’s right to get information from the public authorities. This is one of the best pieces of legislation enacted by the Parliament. But it will be most difficult to implement this law in the background of confidentiality and secrecy in functioning of government, and the mindset of the public officials of our country. There has to be a change in the mindset by creating the infrastructure to make this legislation fruitful. Therefore, it is hypothesized that the right to information is essential for the exercise of all other rights, but the lack of infrastructure in the government
machinery and mindset of public officials may cause problems in the implementation of the recent legislation, which favours openness and transparency in the functioning of the government. The research shall be conducted and suggestions shall be made for the effective implementation of this law.

7. **Research Methodology**

The present research work requires both analytical and empirical study of the topic. The analytical work will deal with the literature relating to the right to information of the citizens from their government. The study shall be conducted to understand the historical background of the citizens’ right to know and its applications in the present era in the light of Right to Information Act, 2005. An analytical study of the Reports of the Central Information Commission and State Information Commissions shall also be conducted. A comprehensive study shall be conducted through the statutes, websites, journals, newspapers and books. In the empirical study, data shall be collected on the basis of structured and unstructured interviews and questionnaires.

9. **Chapter Plan of the Study**

First Chapter gives introduction to the topic, its problem profile, object of study, significance of study, research hypothesis and analysis of literature, genesis of Right to Information in India, i.e., the role played by MKSS (public hearings and public agitations etc.), provisions already existed under different laws before the implementation of Right to Information Act, 2005, role of different State Governments to implement Right to Information Act 2005 in India, Role of Commonwealth regarding Right to Information in India, Efforts made by National Campaign for People’s Right to Information in 1996.

The central theme of Second Chapter is that Right to Information promotes an open government system, like rule of law, participatory government, transparent and corruption free system, responsiveness of the government, effectiveness and efficiency of the government, and accountability of the government.
Third Chapter deals with the role of the government to implement the Right to Information Act, 2005. Certain goals are specified under Section 4 of Right to Information Act, 2005. All the public authorities are required to achieve these goals; in other words, discharge these obligations defined under this Section. Further, the obligation of the government to prepare programmes as defined by Section 26 of the Right to Information Act, 2005, is also defined in this chapter.

Fourth Chapter explains the relationship of Right to Information Act, 2005 with the Constitution and other legislations, i.e., The Official Secrets Act, 1923, The Indian Evidence Act, 1872, Destruction of Official Record Act, 1917, Public Record Act, 1993, Public Interest Disclosure and Protection of Persons Act, 2010, Freedom of Information Act, 2002. The main theme of this chapter is to highlight the harmonious relationship of these enactments with the Right to Information Act, 2005. All these enactments contain certain provisions in favour and disfavour of the disclosure of information.

Fifth Chapter highlights the significant role of Judiciary to develop Right to Information Act, 2005, in our country by giving landmark decisions in favour of people’s right to know. The present chapter has divided the role of Judiciary in two parts, i.e., Role of Judiciary before the enforcement of Right to Information Act, 2005 and Role of the Judiciary after the enforcement of Right to Information Act, 2005. Decisions of the Supreme Court and High Courts have been discussed in this chapter.

Sixth Chapter defines the power and functioning of the Central Information Commission since 2005. This chapter explains the constitution of the Central Information Commission (CIC). With the help of various decisions of the Central Information Commission, an analysis has been made regarding the actual functioning of this Commission, what kind of action has been taken on the complaints received, and the procedure adopted by the Commission.

In the Seventh Chapter, a case study is presented on the Punjab State Information Commission since 2006 to analyze the nature of complaints and procedure adopted by the State Information Commission.
Eighth Chapter deals with the empirical work of this topic. In this chapter researcher has made an analysis of the data collected from Information Commissioners (State Information Commission Punjab), Public Information Officers (PIOs) & Assistant Public Information Officers (AIPOs) of the different Punjab Government Departments and from the stake holders.

Finally, based on the research, the conclusion has been drawn and few suggestions have been given with a view to enforce the Right to Information Act, 2005 with efficacy. These final observations and suggestions are presented hereunder:

1. The concept of open Government directly emanates from the right to know, which seems to be implicit in the freedom of speech and expression. An open society is the new democratic culture towards which every liberal democracy is moving and India should be no exception. No democratic Government can survive without accountability and the basic postulate of accountability is that people should have information about functioning of the Government. It should be well recognized by the law that every member of the public has a basic requirement to receive information and the government has a corresponding obligation to disclose information. Up to the extent it is possible all laws should be drafted with a clear presumption in favour of people’s right to access all information. It should be the primary obligation of the public bodies to disclose maximum amount of information held by them. Moreover, right to access to official/government held information should be a wide right. The exception to the rule of giving information should be limited and specific. Preference should be given to the disclosure of information. The real efficacy of the right to information depends upon the affordability of information and earlier responses by the government officials. There should be a clear, simple and uncomplicated procedure prescribed for the information law. It should always be
remembered by the government officials that in an open Government system, public business is the people’s business. Therefore, the approach of the government should be in favour of disclosure by setting aside the culture of secrecy. In an open Government system, disclosure is the norm and secrecy is an exception. There should be a political will to make an open Government system. Politicians can themselves be part of the change in the culture of secrecy and improve their own credibility through involvement with initiatives to promote and implement the right to access information. The need of the hour for the government is to realize the undeniable importance of the freedom to information. It must enact proper legislation that enshrines this right. The problem is not what the law says, but the extent to which it is being implemented. In this regard, civil society organizations campaigning to promote the right to information create a culture of right to information. This culture should develop willingness of public officials to release information and the readiness of the public to file requests. Intensive legal education and freedom of information campaigns need to be undertaken to raise awareness amongst the population. To promote openness and transparency in the government, it is also essential that all the laws, which are inconsistent with transparency, like old official secret and certain civil service rules, should be repealed and subjected to the Right to Information Act, 2005, so that openness can be developed. It is pertinent to note that continued existence of restrictive legislations, i.e., law of secrecy creates confusion and makes it hard for the public authorities to know exactly how much to disclose under the new access law.

2. Like open Government, the rule of law is also an essence for Good Governance, and is a dynamic concept. The rule of law is the rule of reason unaffected by desire, when passion distorts the minds of rulers. It is a safeguard against arbitrary and injudicious government actions.
The basic emphasis of Rule of law is on exclusion of arbitrariness, lawlessness and unreasonableness on the part of the government, it can be only be possible by making Public Authorities more accountable. The flow of information is thus, integral to the rule of law. In this way, entrenching an effective flow of information can enable people to be part of decision making processes. There should be no discrimination, i.e., reducing any public perception of exclusion of opportunity or unfair advantage to one group over the other can be against the spirit of an open government and rule of law.

3. In making the Government transparent and open, which is one of the essential requirements, the law should provide protection to public officials (whistle blowers) who give certain exempted information where it is necessary to do so in overwhelming public interest. Further, the public interest disclosure terms should be designed to encourage reporting of wrong doing and provide protection from subsequent victimization.

4. One of the essential pre requisite for an open Government system is that all its organs, i.e., Legislature, Executive and Judiciary should be equally accountable before the general public. When judges function in open courts and their judgments are public documents, there should be no reason for the Judiciary to seek exemption from the disclosure of information for their administrative matters. Besides, there should be accountability of private bodies, like corporations and companies, etc. Keeping in view the larger public interest and the cases of violations of environment laws, community and human right violations, these bodies should be made transparent and accountable to the citizens of the country.

5. In order to build an open, transparent and RTI culture, the educational curriculum should be designed to teach children about how to use RTI and its importance, and thus, growing a culture of transparency. State
universities and educational institutions can play a very important role for disseminating information to improve Government efficiency and information management.

6. The basic premise behind the right to information is that since Government is for the people, it should be open and accountable and should have nothing to conceal from the people, which it purports to represent. The right to information is an antidote to corruption; it limits abuse of discretion, and protects civil liberties. It provides people participation and brings awareness of new laws and policies. Media is a powerful tool to unearth cases of corruption, mismanagement of public funds, highlighting the government’s misusage of public resources, etc. Keeping in view the importance of media as a mediator between the government and citizenry, it should be an obligation for the government to provide sufficient help to these bodies.

7. Keeping in view the responsibility of the Government to implement the Right to Information Act, first of all the mindset of public servants should be changed along with awareness among the people. It is about time for government to recognize the significance of voluntary disclosure of information, as a lot of time that goes into processing RTI applications will be saved.

8. It has been noticed that even though the RTI Act is a dream come true for people, yet it is not being implemented properly. For proper implementation of the Act, adequate training sessions should be provided to appointed officers to educate them on the provisions of the RTI Act, 2005 and the latest decisions on appeals. The Government may consider allocating a specific fund for this purpose in the financial budget. Detailed guidelines should be issued by the appropriate Government for proper implementation of the RTI Act, 2005. These guidelines should contain provisions for appointment of
PIO and APIO, procedures to be followed in disseminating information and various other rules governing the finer aspects of the RTI Act, 2005.

9. Government should provide proper infrastructure to the Public Authorities. As more and more people are being encouraged to make use of the RTI Act, it is found that the necessary apparatus for providing sought information is still not in place. In some areas, PIOs are yet to be appointed and in others, applicants are complaining lack of co-operation from the PIOs. Officials senior to the PIOs are misplacing the appeal documents of applicants. Besides, there are problems of too few support staff, no means to operate the modest funds, and in some case, no letterhead.

10. Public Authority is required to make proactive disclosure of all the relevant information as per the provisions of Section 4 of the RTI Act, unless the same is exempt under the provisions of Section 8(1). But the Act does not provide any penalty for violation of Section 4, which would ensure effective compliance on the issue and would also deter the applicants from approaching Public Information Officer, as the information would be made available to them. It is also recommended, as a preventive measure, that besides penalty for violation of Section 4, non-display of information under Section 4 should be treated as deficiency in service under the Consumer Protection Act, 1986 and the Consumer Forums constituted under the Consumer Protection Act, 1986, should be empowered to take cognizance of such failure in case of loss suffered by the applicant due to non-display of information under Section 4 of the RTI Act.

11. Section 27 of the RTI Act provides that the appropriate government may make rules to carry out the provisions of the Act. Accordingly, the Central government and the State governments have made rules. However, the rules framed by the Central government and the State
governments have no uniformity and a citizen may have to face difficulties in obtaining information, if he has to obtain information from different States. Therefore, the rules framed under the Act should be uniform all over the country.

12. The following additional suggestions are forwarded to make functioning of RTI Act more effective:

- Expand the definition of Public Authorities to include private corporations and non-government organizations where their activities affect people's rights;

- It should be mandatory to provide the information under Section 26(3) on the official website of the appropriate governments. Further, Section 26(4) should be amended to compulsorily provide for updating the information on the official website every month.

- The details of all the Public Authorities, the Public Information Officers and Appellate Authorities of a department should be prominently shown on the departmental websites of the concerned department and it should necessarily be updated within 15 days from the date of any change.

- An exhaustive campaign through the electronic and the print media should be initiated to make people aware about their right to information.

- Override inconsistent and restrictive provisions in existing laws;

- Include clear and uncomplicated procedures that ensure quick responses at affordable fees;
• The right of access to official/government-held information should be a wide right. The exceptions to the rule of giving information must be limited and specific. The law must not contain a long list of exceptions couched in terms general enough to ensure that all kinds of information can be refused taking the help of the law.

• The law, if it provides for a levy of a fee for getting information must ensure that the fee is reasonable and does not act as a deterrent for asking information and does not end up debarring information from the disadvantaged groups who cannot afford the fees. The law must provide for waiver of fees in certain circumstances.

• The law should contain provisions for setting up specific systems for storing and disseminating information and upgrading the existing systems for enabling easy access. There must be specific provisions for priority-wise computerization of government offices.

• The law should contain a specific allocation of funds for the purpose of operationalizing the Right to Information Act, 2005. Without this, the law will be a dead letter and shall have no effect.

• The law should contain a specific directive for simplification of official language. Information given should be in a form that can be easily understood by people. There must be a focus on traditional means of giving information. As of now, most information is contained in official gazettes and publications that are usually unavailable and are of no use to the lay citizens, given the low literacy levels. The law should ensure
proper use of the electronic and print media as well as use of conventional methods of communication as per the target group.

- The law should cast a positive duty on public bodies to inform the public in case of certain projects and activities that relate to the public. This envisages giving information without being asked for it. It must be made mandatory to give out certain kinds of information on a mandatory basis. This kind of information would include rules, information on proposed projects and schemes, and other relevant information which needs to be given out and updated routinely.

- The person who applied for seeking information but could not obtain the required information within time prescribed by the statute they should adequately be compensated by the defaulting government officials who are responsible for such delay or not supplying the information to the person seeking it.

- In order to avoid harassment to citizens at the application-making stage, there should be a window at each of the geographically distinct offices of any Public Authority for accepting RTI applications, accepting the application fee and for accepting RTI appeals, for the Public Authority as a whole. This should be a single window facility, and this should be located outside the security pass system, preferably at the reception counter.

- Steps should be taken to enable people file their applications by post. To make this easy, awareness should be generated through printed and electronic media regarding the name of the bank account into which the demand draft or bankers’ cheque should be accepted. The particulars of these bank accounts should be furnished to the Central Information Commission.
• Some Ministries/Departments have appointed several Public Information Officers having different jurisdiction. In such cases, a clarification may be issued to the effect that application can be received by any PIO whose duty it would be to direct it to the PIO concerned under intimation to the applicant.

• Citizens' Charters should be made effective by stipulating the service levels and the remedy, if these service levels are not met.

• Regular citizens' feedback, survey, and citizens' report cards should be evolved by all government organisations for gauging citizens' responses to their services. These should be used as inputs for improving organizational efficiency.

• Social audit should be made mandatory for all developmental programmes and be institutionalized for improving local service delivery.

• Reward schemes should be introduced to incentivize citizen's initiatives.

• Citizens may be involved in the assessment and maintenance of ethics in important government institutions and offices.

• Enactment and enforcement of whistleblower protection law to further the cause of openness and improve discipline and accountability.

• Putting in practice the principle of 'Open Meetings', including passing of the Open Meetings law.

• Consult through nominal groups, focus groups etc, and get feedback and to stimulate public debate.
• Engage through public issue forums, citizen panels, workshops and incorporating citizen views in discussion process, and

13. The Official Secrets Act, 1923 still empowers the government officials not to disclose any information in the interest, safety and security of the nation. The RTI Act and Official Secrets Act seems to be contradicting each other, as one gives power in the government officials to not disclose any information under Section 5 of Official Secrets Act, 1923, whereas Right to Information Act makes promise of providing information and transparency. Thus, for sustenance of democratic deals, the ideal step would have been to repeal the OSA and merge it with RTI because without an outright repeal of OSA, the system retains its right to tell only what it wants to tell. Above all, the appointment of all twelve Chief Information Commissioners under RTI from the bureaucratic background makes the working of Right to Information Act more doubtful, as the bureaucracy is felt to have a mindset of denying information to the people and exercising of power. Similarly, Constitution of India, Evidence Act and the Destruction of Record Act also favour non-disclosure, which needs to be brought in consonance with the disclosure regime.

14. Despite progress on a number of fronts, the RTI Act still retains a number of restrictive provisions, which could be abused to deny information, which rightly belongs in the public domain. These include:

(i) An overly broad exemption has been included for “Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries and other officers.” A proviso is added that decisions of the Council of Minister, their reasons and the materials on the basis of which the decisions were made will be published after a decision is taken and the matter is complete.
However, it is unjustifiably broad and could be used to exempt a large amount of non-sensitive information.

(ii) A range of Central intelligence & security agencies are specifically and entirely exempted from the Act, except where the information request pertains to allegations of corruption or human rights violations. (In the latter case, the Information Commissions will make the decision regarding whether or not to release the information). State Governments are also permitted to prescribe their own list of intelligence & security agencies which will be exempt from the Act.

(iii) Third parties are permitted to make representations where a PIO intends to disclose information supplied by the third party and “treated as confidential by the third party”. There is some concern that this provision could be abused in practice to improperly delay responses to requests, particularly because the Act defined third parties to include other Public Authorities.

(iv) The Act allows for a fine for “denying information [in bad faith], knowingly giving incomplete, incorrect, misleading information; destroying information that has been requested and obstructing furnishing of information in any manner”, the fine is to be calculated on a daily basis. It is not clear how this provision will apply in practice. How many days of fine will be imposed for destruction of a document?

(v) In response to strong lobbying from civil society, the original Bill was amended to extend coverage to all State and local bodies, as well as Central Government Public Authorities. It is undoubtedly positive that the Act is designed to apply across the country at all levels, because only eight States and one
Union Territory have passed their own access laws. However, in practice, it remains an open question as to whether and how a law, which was passed by the Central Parliament, will be implemented by State government.

15. It is most unfortunate that the Supreme court, which in its past judgments has laid down the basis for a citizen’s right to know (State of U.P. v. Raj Narain\(^8\)), and upheld the right to information as a fundamental right (S.P. Gupta v. Union of India\(^9\)); is now being seen as backtracking from its own leading role, and in many cases, taking an adversarial position. Some of the steps taken by Indian Judiciary for dilution of the Right to Information Act, 2005 in the recent past include:

(i) Many High Courts, for instance, have fixed exorbitant application fees under the Right to Information Act, 2005.\(^{10}\)

(ii) The Delhi High Court has refused to divulge information on appointments of Class 3 and Class 4 officers in its offices, taking recourse to rules that prohibit disclosure of information on administrative and financial matters.\(^{11}\)

(iii) Recently, the Punjab and Haryana High Court rejected an application seeking information on pendency of cases (including writs) in the High Court and the number of cases remanded by the Supreme Court for rehearing and/or expeditious disposal. The Public Information Officer of the Punjab and Haryana High Court rejected the application on the ground that “the information specified under Section 8 of the

\(^8\) AIR 1975 SC 865.

\(^9\) AIR 1982 SC149.


Right to Information Act shall not be disclosed and made available, which is not in the public domain or does not relate to judicial functions and duties of the court and matters incidental or ancillary thereto”\(^\text{12}\). The rules of the Punjab and Haryana High Court are in violation of the Right to Information Act as the quoted exemption is absent from the relevant exemption under Sections of the Right to Information Act.

(iv) Many progressive orders of the Information Commissions have been stayed by various High Courts. The courts have also raised objections about the *locus standi* of the Information Commissions and their power as independent appellate authorities to direct the Courts in dispensing information as per the provisions of the Act. No doubt, there should be minimum interference by the Information Commissions; however, in the public interest, Commissions can direct the Courts.\(^\text{13}\)

16. The problem of judicial accountability has been compounded by the Supreme Court's judgment in the *Veerawami* case,\(^\text{14}\) in which it declared that no judge of the High Court or the Supreme Court could be subjected to even investigation in any criminal offence of corruption or otherwise, unless one obtains the prior written consent of the Chief Justice of India. This has resulted in a situation whereby no sitting judge has been subjected to even investigation in the last 15 years since that judgment, despite public knowledge and complaints of widespread corruption in the judiciary. The police do not dare to approach the Chief Justice for permission to investigate, unless they already have clinching evidence, which they cannot get unless they investigate. It is pertinent to note that the purpose of the RTI Act is to make Public Authorities transparent & accountable. Being transparent


\(^{13}\) *Ibid.*

\(^{14}\) 1991 (3) SCC 655.
and accountable does not mean interference with their independence. In fact, the purpose of independence of Judiciary as well as transparency and accountability by access to information through RTI Act is one and the same. It is best to subserve the citizens of this country with accountability, transparency and without any unwanted obstruction. Now, when the purpose of both is the same & one, it is unimaginable that the RTI Act might interfere with the independence of the Judiciary. Independency does not mean absence of accountability, responsibility and transparency. Further, while any enquiry is to be conducted against a sitting judge, it must be done by an Enquiry Committee or a Council, which does not consist of any sitting judge. It may consist of some retired judges, but it must have persons from outside the judicial family. There should be no additional immunity with which judges have cloaked themselves, to the effect even an FIR cannot be registered against a judge. This practice should be abolished. The disciplinary control via the process of impeachment should be amended and it should not be extremely difficult to pursue in practice.

17. Further, the Judiciary is even insulated from public criticism by the threat of Contempt of Court, which can be used in a very draconian manner by the judges towards whom the criticism is directed, as we saw in the Arundhati Roy case\textsuperscript{15}. The sword of Contempt has kept the Judiciary away from searching public scrutiny, particularly within the mainstream media. Even though draconian law relating to the contempt of Court has been amended, but still Judiciary enjoys higher position.\textsuperscript{16}
18. The Supreme Court has recommended to the government that so far as the Supreme Court is concerned, the decision of the Registrar General of the Court should be final and not subject to any independent appeal to the Central Information Commission. They have further commented that the Chief Justice should have unfettered right to interdict the disclosure of any information, which in his opinion, might compromise the independence of Judiciary. The Chief Justice has already gone on record to say that even the disclosure of assets by judges or the formation of any independent disciplinary authority over judges, would compromise the independence of the Judiciary. Going by this, it is obvious that no information about complaints against judges or about their incomes and assets would be available under the Right to Information Act. Thus, while the Supreme Court decrees that even candidates aspiring to become public servants (MLAs or MPs), would be required to disclose their assets, when it comes to sitting judges, such closure would violate the independence of the Judiciary. There cannot be a more glaring example of double standards. It should be specified in the Right to Information Act, 2005 that Judiciary, being a Public authority, is liable to disclosure of information. There should be no ambiguity regarding the responsibility of Judiciary under the Right to Information Act. Chief Justice of India does not hold such declaration in a fiduciary capacity. The information pertaining to declaration given to the Chief Justice of India and the contents of such declaration are subject to the provisions of RTI Act because if Chief Justice of India is a Public Authority, then any material kept under his authority would be properly subject to this Act. Proactive disclosure should be made by the judicial authorities, especially about their assets. Accountability and independence of the judicial bodies should be defined by keeping in view public interest. Any legislation of Indian legislature has binding force on each organs including Judiciary, until the same is declared *ultra vires*. As a guardian of
Constitution, Judiciary has empowered only to check the Constitutionality of particular legislation on well founded grounds and to interpret the provisions. So long as any Act stands valid, it should be observed by the judiciary. Same is true in respect of RTI Act, 2005.

19. The Central Information Commission finds itself in a piquant situation. In fulfilling its role as adjudicator and as regulator, the Commission face considerable handicap in the two crucial areas of information flow. Firstly, the suppliers of information, the Public Authorities and the PIOs concerned, are not properly equipped or trained to handle the responsibility of supplying information. Secondly, the seeker of information, the common citizen, is as yet not fully aware of his empowerment and the procedure for securing access of information. As a consequence, during the process of adjudication, considerable avoidable time is spent in guiding PIOs in responding properly while supplying information, and in clarifying deficiencies on the part of information seekers. Both these functions should have been carried out in the routine. Indeed, many matters need not to have been brought up for adjudication at all, if well informed PIOs and information seekers had resolved the issue at the outset. Therefore, the requirement is for the proper training programmes of the Public Information Officers and to provide awareness to the general public about RTI.

20. Better coordination between the Central Commission and the State Commissions could help the promotion of Open Government Partnerships. The Commissions are autonomously functioning towards the fulfillment of a common goal, namely ensuring free flow of ideas, knowledge and information. However, there exists no inbuilt system in place for various Information Commissions to share and disseminate information, experiences, case laws and best practices in
promotion of Open Government. There should be a mechanism for regular and continuous interaction between the Information Commissions in the country. It will facilitate better networking and coordination among CIC/SICs. This will also enable the CIC & SICs to overcome some of the constraints and bring about:

- Better uniformity/clarity in interpretation of the RTI Act as a result of exchange of information on case laws and interpretations.
- More informed and proactive Commissions as a result of sharing of knowledge on best practices in India and abroad.
- Effective coordination in taking up issues of importance with State Governments/Central Governments and/or civil society enabled through better networking.

21. There should be a National Coordination Committee (NCC) set up under the chairpersonship of the Chief Information Commissioner with the nodal Union Ministry, the SICs and representatives of States as members. A provision to this effect may be made under Section 30 of the Act by way of removing difficulties. The National Coordination Committee would:

(i) Serve as a national platform for effective implementation of the Act,

(ii) Document and disseminate best practices in India and elsewhere,

(iii) Monitor the creation and functioning of the national portal for Right to Information,

(iv) Review the Rules and Executive orders issued by the appropriate governments under the Act,
(v) Carry out impact evaluation of the implementation of the Act, and
(vi) Perform such other relevant functions as may be deemed necessary.

22. Improving the disposal rate of complaints/appeals by Information Commission through the following recommendations:

- Hearings through video conferencing. Since the Central Information Commission is situated in the national capital, it is inconvenient for applicants to be present during the scheduled hearing. Where the appellant has to travel to New Delhi, it is proposed that, the Information Commission should use video conferencing (VC) as a mode of communication for such hearings.

- Usage of software application for managing the processes at the Information Commission. This application should assist in improving productivity/efficiency in disposal of cases, drafting of orders, day-to-day office administration etc.

23. As per Section 12(5) of RTI Act, the composition of selection committee of CIC should be such that it should have people with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. To implement these Sections in spirit, it is recommended that the people who have worked in Government should be restricted to 50% (if not less) as recommended in the ARC report. Section 12 of the Act may be amended to constitute the selection committee of CIC with the Prime Minister, leader of the opposition and Chief Justice of India. Section 15 may be similarly amended to constitute the selection committee at the State level with the Chief Minister, leader of the opposition and the Chief Justice of the High Court. At least half of the
members of the Information Commission should be drawn from non civil services background. Such a provision may be made in the Rules under the Act, by the Union Government, applicable to both CIC and SICs. Further, to facilitate the induction of the new Commissioner, where he/she does not have a background of law/quasi judicial role, he/she should go through an induction period before assuming full charge.

24. Usage of RTI compliant standard templates should ensure quick and reasoned orders to the appellant. It may be noted that the templates have a strong linkage to the Act and leave little room for errors. To ensure better service delivery by authorities and officials, third party audits should be institutionalized to support the Information Commission in carrying out responsibilities under Section 19(8)(a), 25(1), 25(2), 25(3f), 25(3g) and 25(5). Institutionalizing regular audits would facilitate the Public Authorities’ compliance with the RTI Act (through the audit findings made available by Information Commission). In this context it is recommended to have a third party audit (at least annually) to support the Information Commissions and RTI Implementation Cell to monitor the performance of Public Authorities and to take appropriate action in case of any deviation.

25. The success of normal functioning of a Public Authority largely depends on its ability to store and retrieve information. To provide easy access to information, the Act specifies that every Public Authority shall maintain all its records duly catalogued, indexed, computerized and connected through a network all over the country. Section 4(1) of the Act stipulates that every Public Authority shall maintain all its records duly catalogued and indexed in a manner and form, which facilitates the Right to Information Act. At present, the Public Authorities have easily avoided the process on the pretext of
non-availability of resources. Therefore, Section 4(1) (a) should be amended accordingly. There should be a system of indexing and cataloguing of records of the Commission, which facilitates easy access of the required information. This could be best achieved by digitizing all the records and providing access to citizens with facilities for retrieving records based on intelligible searches.

26. The Central Information Commissions is meant to serve as Appellate Authority, independent of the government. The RTI law aims to undo the misdeeds of the bureaucrats, who unfortunately, have taken complete control of it. The retired bureaucrats are being appointed at the highest levels of the RTI hierarchy, i.e., the Information Commission at the Central and State levels. However, these bureaucrats, who have been inducted into the RTI implementation apparatus, are expectedly sympathetic towards their fellow 'babus', over whose wrongs the information seekers are trying to spill the beans. Therefore, the need is to change this system by effective measures.

27. There should be a specified time limit for disposing the second appeal. At present, no time frame has been attached to the provision of second appeal. In the RTI Act, dissatisfied applicants have not been given any option of moving court against the PIOs. The buck stops at the Information Commission, which may take its own sweet time to address appeals. Another glaring anomaly is that there is no provision to pay the Rs. 10/- application fee along with an application filed online. There should be a well recognized mechanism for the payment of fees.

28. The various provisions contained under Section 18 and 19 are overlapping. A person, who has not been given a response to a request
for information or access to information within the time specified under the Act or who has been required to pay an amount of fee which he or she considers unreasonable, may prefer a complaint under Section 18 of the Act. However, in such circumstances, he/she also have a right to prefer a second appeal to the Appellate Authority. Therefore, to decrease the workload of the Information Commissions, Sections 18 and 19 may be redrafted and complaint under Section 18 should be allowed only in those cases, where the appeal is not admissible under Section 19 and an inquiry is needed. In this way, number of cases will be disposed of at the level of the Appellate Authority.

29. The Information Commissions have the power of a civil court while inquiring into the matter,\(^{17}\) whereas no such powers are available to the Information Commissions while hearing of appeals under Section 19 of the Act. Therefore, Section 18 (3) should be deleted and a new Section may be inserted with the provision for providing of powers of civil court to the Information Commissions, while disposing of all kinds of matters.

30. The Information Commissions have been vested with the powers to impose penalties on the Public Information Officers, if they have acted in contravention to the various provisions of the Act.\(^{18}\) However, the Appellate Authorities have not been provided with similar power while dealing with the first appeals. Therefore, the Appellate Authorities should also be empowered to impose penalties, while deciding the first appeals, as per the provisions of the Act. Further, there is no provision to impose penalties on the Appellate Authorities

\(^{17}\) Section 18 (3) of the Right to Information Act, 2005 (22 of 2005).

\(^{18}\) Section 20 of the Right to Information Act, 2005 (22 of 2005).
even if they act in contravention of the provisions of the Act. Therefore, Section 20 may be amended by inserting a provision for the imposition of penalties on the Appellate Authorities on the analogy of the Public Information Officer.

31. One of the most important concerns raised in respect of RTI Act from the very beginning is regarding disclosure of file notings. The government and bureaucracy are concerned over the exposure of file notings to the public that “it will act adversely against the requirement of free and frank opinion by the public officials in decision making process. In this context it would be appropriate to mention that file notings are _ad hoc_ written notes added to the file by officials and thus can give a critical insight into the government decision-making process. The exclusion of file notings would undermine the spirit of bureaucratic openness and accountability, which the law embodies. The entire purpose of the Act is to open government’s decision-making process to public scrutiny. In this context it would be appropriate to consider Section 2 (i) (a) of the Act, which has define record. This definition includes any document, manuscript and file. The manual of Office Procedure defines “file” to cover “notes” and “appendices to notes”. Further under Public Records Rules, 1997 “file” means “a collection of papers relating to public records on a specific subject matter consisting of correspondence, notes and appendices thereto”. Thus from a legal and technical point of view the term file as understood in Section 2 (i) (a) of the RTI Act includes file notings and it can legally be disclosed as per the requirement of the law. In addition the disclosure of notings will certainly ensure application of mind of the decision-maker to the issue involved and thereby enhance the quality of decisional process. It may also be mentioned that compulsion of disclosure of file notings will reduce to
a great extent the administrative culture of putting something as part
of record on dictation or in a mechanical manner. Disclosure of file
notings may also be considered from the point of view of the
promoting the overall culture of good administrative practice. It
would be appropriate to mention the decision of the Central
Information Commission that the “file notings” were an integral part
of file. It was further held by the two–member bench of the
Commission that a citizen has the right to seek the information in file
notings unless covered by the usual exceptions under Section 8 of the
RTI Act.\(^\text{19}\) It is worth mentioning that the Department of Personnel &
training (DoPT) guidelines on the file notings are contrary to the
provision of RTI Act. Such guidelines create confusion in the minds
of Public Authorities who will be more inclined to follow them, rather
than RTI law or the decision of the CIC. The CIC should give
appropriate directions to the DoPT under Section 19(a) (3) and publish
correct interpretation of the RTI Act.

32. Right to privacy is a part of Article 21 of the Indian Constitution,
which provides that no person shall be deprived of his life and
personal liberty except according to the procedure established by law.
The safeguards are, therefore, provided that though the right to
privacy is a part of fundamental right guaranteed under the
Constitution, but specific laws can over ride this where larger Public
interest is involved. The Authorities should deal with the written
request for information under the Act with an applicant friendly
attitude and when there would be a conflict between the privacy of an
individual and the right to information of citizens, the latter should be
get proper importance as it serves larger Public Interest and,
therefore, disclosure be made accordingly.

\(^{19}\) Aloke Tikku, “File notings covered by the Right to Information, says watchdog”,
Many Public authorities are in habit to deny disclosure of information if these are related to third party information without proper application of mind. If the Public authority is satisfied that the information sought for should be disclose, he may obtain the submission of the third party and should take a decision keeping such submission in view. All information held by Public authorities should be subject to disclosure and Public authorities have obligation to disclose information and every member of public has a corresponding right to receive information. A refusal to disclose information should not be justified unless the Public authority can show that the information meets a strict three test, i.e. the information relates to a legitimate aim listed under law; disclosure must threaten to cause substantial harm to that aim; and harm is greater than public interest.

Lack of proper infrastructure in the Punjab State Information Commission not only hinders the work of the Commission, but also causes inconvenience to the public. Moreover, there should be permanent appointments of the working staff. At present, most of the subordinate staff of the Punjab State Commission works on non-permanent (adhoc) basis. No doubt, the nature of their job causes insecurity to them; as a result, there is a lack of dedication about their work. Most of the Information Commissioners are the retired bureaucrats. Therefore, the need is to appoint permanent staff and Information Commissioners from the civil society. Further, there should be certain improvements in the process of meetings conducted by the Punjab State Information Commission according to the following suggestions:
• **Publication of Agenda:** The primary requirement is that the agenda of the meetings conducted by the Commission should be published in the local newspaper.

• **Participation of civil society:** In the meeting of Commission, there should be participation from the members of civil society or any public spirited person who has right to give opinion.

• **Publication of Decisions taken in the Meetings:** There should be publication of the final decisions taken in these meetings in local newspapers. It will provide an opportunity to the general public to express their opinions and improve the functioning of the commission.

35. There is a need to effectively implement the video-conferencing for the convenience of general public. To make the filing of request for obtaining information through electronic means feasible, the applicants should be allowed to deposit the application fee and other charges through the credit/debit cards in addition to the prevalent mode of making payment. At present, the application fee for obtaining information is not uniform all over the country. For example, the application fee in Himachal Pradesh is Rs. 10/-, whereas in Haryana, it is Rs. 50/- and in Arunachal Pradesh, between Rs. 500/- and Rs. 50/- depending upon the type of information to be obtained. Therefore, the application fee should be minimal and uniform all over the country. Similarly, the charges for obtaining information should also be minimal, uniform and reasonable so that the same are not beyond the reach of the common people. For this, Sections 6 and 7 of the RTI Act should be amended to provide that no State government

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20 Section 6(1) of the Right to Information Act, 2005 (22 of 2005).
21 See the websites of the concerned state Governments and State Information Commissions.
charge more fee than prescribed by the Central government. However, the State government may be at liberty to charge lesser fee than prescribed by the Central government. Moreover, if possible, voluminous information should be provided in a soft copy like CDs, etc., and then the applicant has to pay lesser amount which he otherwise have to pay for each page.

Finally, it is pertinent to note that a beginning has been made, but changing the mindset of the bureaucracy and citizens will take time. This will happen once there is a greater awareness among the public about their rights under the RTI Act. As observed by the former Punjab State Chief information Commissioner, Rajan Kashyap, “Right to information Act, 2005, is a reflection of a liberal and resurgent India that shifts the power of knowledge in the hands of common man, the real stakeholders of the Government.” However, expressing his concern, Mr. Kashyap further said that a lot still needed to be done. That is, to make the Act more effective, the seekers and the deliverers should both be educated.