

RIGHT TO INFORMATION REGIME IN INDIA: A CRITICAL APPRAISAL

SAPNA CHADAH

The right to information has been recognised as an important democratic privilege and one of the essential requirements of good governance. The information regime has dawned on Indian scene after a considerable period of popular aspiration. The Right to Information Act of 2005 empowers the citizens to seek information and correspondingly makes it mandatory for the public authorities to disseminate information for better governance and accountability. Besides transparency and openness the new legislation shall be an instrument to prevent misuse of public power and funds. Here is a discussion on various distinctive and significant features of the Act along with an elucidation on its institutional framework. The author puts forth major concern regarding candour in its implementation and effectiveness in execution.

IN A welfare state the functions and powers of the executive wing of the government have grown manifolds in due course affecting every walk of life of the people. It also deeply influences the socio-economic condition of the society. As a result there is hegemony of the executive powers over the individuals. The vast powers in the hands of the executive are not always used for the public purpose, public good and in public interest. There are instances where the power has been used for private gains and with corrupt motives. In such a scenario there is always a conflict between power and justice. In such an event, the societies need to evolve control mechanism to discipline the power to promote justice, reasonableness and non-arbitrariness. The need of disciplining the power of executive calls for evolving better accountability mechanism. Right to Information is one such device experimented and promoted by mature democracies. Public support has become an essential condition of responsive and accountable governance, which depends on

a two-way communication between government and citizen. Citizen's right to access information is not limited to receipt of official information but it also requires that those who exercise authority must be made answerable for the way in which they discharge their public responsibilities. All centres of powers, institutions whether publically funded or privately owned, and quasi-official institutions must provide open access to information on their functioning.

Democracy means meaningful participation by the people in the public affairs. A democratic government must be sensitive to the public opinion, for which information must be made available to the people. Information and knowledge are instruments of transformation. Transparency, openness and accountability are the basic postulates of a responsive, responsible and accountable government. Effective accountability rests on the peoples' acquaintance with the information and circumstances for the decisions taken. The government which pursues hidden aims or operates in secrecy tends to lose the faith of the people and thereby its own legitimacy and credibility. Openness and full access to information are two pillars of any democratic state. Not only the government but also the corporate houses and industries must also be made to disclose all the facts which are of public interest. Importance of the right to information has well now been recognised as one of the essential requirements of the good governance as evident in the prescriptions provided by the international organisations such as World Bank, IMF, UNDP, OECD countries and ADB.

Governance in a republican democracy is by the people themselves through their elected representatives, aimed at public welfare. It implies that people should participate in the process of governance. Thus to enable the people to discharge their participatory role in governance, they must have the necessary information to make informed choices between available options. Transparency, therefore, is the essence of the representative form of government. In addition, it ensures accountability of institutions of governance because they hold the authority and power on behalf of the people—the great master, Author and Founder of Society. As emphasised by Edmund Burke, “All persons possessing a position of power ought to be strongly and awfully impressed with the idea that they act in trust and are to account for their conduct in that trust to the one great master, Author and Founder of society”. Thus the state is not only under obligation to respect the right of the people regarding transparency, but also to ensure availability of the means by which the right to acquire legitimate information can be

meaningfully, efficiently and effectively enjoyed.¹ Keeping in view the importance of the access to information, it would be worth considering that how the emphasis on right to information evolved and how it influenced the thinking on the subject in India? In addition, major emphasis is given on the analysis of the provisions of the Right to Information Act and major concerns expressed so far regarding implications of its working.

RIGHT TO INFORMATION: ITS EVOLUTION

Article 19 of the Universal Declaration of Human Rights, 1948 reads “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” An insight into the international scenario reveals that there has been a trend from administrative norm of secrecy to freedom of information all over. USA, Australia and Sweden are countries where openness is a rule rather than an exception. Sweden has a long history of an administrative openness and public access to information. The credit of being the first country, which guaranteed the right to information to its citizens, also goes to Sweden. Its Constitution itself declares that the citizens shall have the free access to official documents subject only to such restrictions as are demanded out of consideration for the security of the realm and its relations with the foreign powers or in connection with official activities for inspection, control or other supervision or for prevention and prosecution of crime or to protect the legitimate interests of the state, communities and individuals or out of consideration for the maintenance of privacy, security of the person, decency and morality. The principle of public access was adopted in 1766, as a part of provisions of Freedom of the Press Act. Here the public access to government documents is a right and non-access only an exception. Finland also has a law on the right to information since 1951 on publicity of documents. France has also accepted the principle of citizen’s access to information. There is Commission on Access to Administrative Documents. Norway and Denmark have also statutorised public access to official information. In USA the foundation of openness and right to information lay in constitutional fundamental of free speech. The statutory framework

¹See J.S. Verma, " Rule of Law—The Bedrock of Democracy", Lectures on Transparency and Accountability in Public Governance, IC Centre for Governance, April 2005 and Secretary, Ministry of I&BVS Cricket Association, AIR 1995 SC 1236.

for it is provided in the Freedom of Information Act, 1966 and its statutory cousins the Privacy Act, 1974 and the Government in the Sunshine Act, 1976. Freedom of Information Act makes disclosure a rule and non-disclosure an exception. Individuals have been given a right to access information and in case the information is withheld, the government has to justify the reason for withholding document. In case of denial of access to documents the individual has a right to seek injunctive relief.

In Britain the trend from the very beginning has been to maintain secrecy, which was achieved through Official Secrets Act. Earlier there was Official Secrets Act, 1911. According to its catch all Section 2 all official information, whether it related to national defence and security or not is the property of the Crown, thus privileged and those who received it officially can not divulge it without the authority of the Crown. In an attempt to reform the catch all Section 2, of the Official Secrets Act, 1911, Official Secrets Act, 1989 was adopted. The aim was to reduce the amount of information protected by the criminal sanctions, to limit it to areas where disclosure would be against public interest. However, the Act has an effect of tightening secrecy and making conviction more likely. The Act applies not only to civil servants who are at risk on disclosing unauthorised material but also to editors and journalists who are under threat on publishing any damaging information, which is disclosed without official approval. Besides, there are Local Government Act, 1939; Public Records Act, 1958 and Public Bodies (Admission and Meetings) Act, 1960, which have bearing on the openness and accountability of the government functioning. In UK the Freedom of Information Act (FoIA) was passed on November 30, 2000. It gives a general right of public access to all types of 'recorded' information held by public authorities, sets out exemptions from that general right, and places a number of obligations on public authorities. The Act applies only to 'public authorities' and not to private entities. Public authorities are, however, broadly defined in the Act, and they include not only Government Departments, local authorities and many other public bodies, (such as the Post Office, National Gallery and the Parole Board), but also schools, colleges and universities. Private entities - such as spin-off companies—that are wholly or largely owned by a 'public authority' will also be subject to the Act. The Act is enforced by the Information Commissioner—who oversees both Freedom of Information and Data Protection legislation. The Act applies only to England, Wales and Northern Ireland. There is a separate Freedom of Information Act, 2002 for Scotland.

The concept of secrecy has almost lost its relevance in the Commonwealth countries like Canada, Australia and New Zealand. Canada has the Freedom of Information Act, 1986 providing complete procedure of disclosure of information to person applying and requires the government departments to maintain a register, providing the kind of information, which is available to the public and have the register available for the public consultation. Australia and New Zealand are having laws on freedom of information since 1982. The latest development in constitutionalism is the adoption of the Constitution of the Republic of South Africa, 1996. Chapter two titled Bill of Rights, Section 32 deals with Access to information and contains (1) Everyone has the right of access to- (a) any information held by the state and (b) any information that is held by another person and that is required for the exercise or protection of any rights. (2) National legislation must be enacted to give effect to this right and may provide for reasonable measures to alleviate the administrative and financial burden on the state. This may be highlighted that South African constitution provides access to information to any person and in the form of a fundamental right, which is worth appreciation.

RIGHT TO INFORMATION: INDIAN SCENARIO

Indian Constitution does not expressly provide any right to freedom of information as such. Part III dealing with Fundamental Rights and Part IV dealing with Directive Principles of State Policy are totally silent on this subject. However, Article 19(1)(a) of the Constitution, which confers the right to freedom of speech and expression, includes the right to information when read with Article 19 of Universal Declaration of Human Rights, which has been ratified by India also. It may however be mentioned that the Indian apex Court through its progressive interpretation read this valuable right as apart of Article 19(1)(a).

In the case of *State of UP vs. Raj Narain*² Mathew, J. expressed this proposition in the following words:

In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public

²(1979) 4 SCC 428, 453 para 74.

functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, it a factor which should make one way, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security. To cover with veil of secrecy, the common routine business is not in the interest of the Public. Such secrecy can seldom be legitimately desired. It is generally desired for the purpose of parties and politics or personal self-interest or bureaucratic routine. The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.

The Supreme Court in *S.P. Gupta vs. Union of India*³, decided by seven-judge Constitution bench, added a fresh, liberal dimension to the need for disclosure in matters relating to public affairs. In the instant case it was held that in regard to the functioning of Government, disclosure of information must be ordinary rule while secrecy must be an exception, justifiable only when it is demanded by the requirement of public interest. It was further held that the disclosure of documents relating to the affairs of the State involves two competing dimensions of public interest, namely, the right of the citizen to obtain disclosure of information, which competes with the right of the State of protecting the information relating to its crucial affairs. In addition it was also held that in deciding whether or not to disclose the contents of a particular document, a Judge must balance the competing interests and make his final decision depending upon the particular facts involved in each individual case. It is important to note that it was conceded that there are certain classes of documents which are necessarily required to be protected such as Cabinet Minutes, documents concerning the national safety, documents which affect diplomatic relations or relate to State secrets of the highest importance and the like in respect of which court would ordinarily uphold government's claim of privilege. However, even these documents have to be tested against the basic guiding principle, which is that wherever it is clearly contrary to the public interest for a document to be disclosed, then it is in law immune from disclosure.

In *Dinesh Trivedi vs. Union of India*⁴ the Supreme Court while making a reference to *State of UP vs. Raj Narain*⁵ and *S.P. Gupta vs.*

³1981 Supp SCC 87 para 73 & 74 at pp.284-286

⁴(1997) 4 SCC 306

⁵supra fn 2

*Union of India*⁶ held 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. However, like all other rights, even this right has recognised limitations; it is by no means, absolute. Transactions, which have serious repercussions on public security, secrecy can legitimately be claimed because it would then be in public interest that such matters are not publicly disclosed or disseminated.

Further, Article 21 of the Constitution guarantees to every citizen the right to life and personal liberty. The citizens cannot exercise this right to protect their lives unless they are informed about threats to their lives, the measures being taken by the concerned authorities and the measures available to them. Without this information right becomes totally meaningless. Bhopal gas tragedy is a living example wherein many lives could have been saved provided people living near the plant site were provided complete information about the hazards of the plant and how they can protect themselves from the MIC gas.

Article 51A (g) imposes a duty on every citizen to protect and improve environment.

It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

Again, this duty becomes meaningless if the citizens are denied information on important aspects of natural environment, various projects being taken up by the government which are going to effect the environment and the policies of the government on environmental issues.

In India there are a number of laws to curb free flow and access to information. One such legislation is Official Secrets Act, 1923 that is a replica of the Official Secrets Act of Britain and is still being used by the government to suppress the freedom of the press and voices of the poor and marginalised sections of the society. Two important aspects have been dealt in the Act—Espionage and disclosure of secret official information. Section 5 is the omnibus and catch all provision of the Act, preventing disclosure of all official information. Under this Section any official document can be marked as ‘confidential’ to prevent its disclosure to the public. The disclosure *per se* has been made punishable irrespective of the purpose of disclosure or the prejudicial effect it is

⁶Supra fn 3

going to have on the national interest. Both, person who is communicating and the person who is receiving the official information are guilty under the Act. Person guilty under the Act shall be punishable with imprisonment, which may extend to three years or fine or both. The decision to decide whether the information is secret or not lies solely with the government. Government by classifying any document as secret can prohibit public access to it. In today's world where the sole emphasis is on openness, and accountability in government functioning the Act remains merely as a relic of the British regime. In addition to Official Secrets Act, 1923 there are provisions in Sections 123, 124 and 162 of Indian Evidence Act, 1872, which regulate the power of the government to withhold information. It is therefore submitted that to give meaning to Right to Information Act and to make it effective it is essential to introduce consequential changes in the provisions of the different laws having negative implications on the free flow of information.

Demand for Right to Information in India

In addition to recognition to right to information by Supreme Court, Mathew Commission in 1982 in its report while recommending amendment to Section 5 of Official Secrets Act 1923 emphasised the need of right to know. In 1989 V. P. Singh's National government came to power and declared its decision to make Right to Information a fundamental right. He expressed his intention in April 1991 in 20th Conference of Ministers of Information and Cinematography, "An open system of governance is an essential prerequisite for the fullest flowering of democracy. Free flow of information from the government to the people will not only create an enlightened and informed public opinion but also render those in authority accountable". By this time the demand for Right to Information got intensified and took the shape of mass movement. In 1995 the Press Council of India drew up the first blue print for the Information Bill. It asserted that information, which could not be denied to Parliament or State Legislature, should not be denied to a citizen. In 1997 the Government of India decided to introduce the Freedom of Information Bill. It suggested that each state do likewise, to provide access to information in areas within its jurisdiction. As a result several states enacted Right to Information Act. In 1997 itself, a working group under the Chairmanship of Shri H. D. Shourie, a consumer activist was constituted which presented another draft. In July 2000 Freedom of Information Bill was finally introduced in Parliament keeping in view the growing recognition and demands for Right to Information. Freedom of Information Act, 2002 was enacted but was never notified.

Right to Information Act, 2005

Right to Information Act, 2005 was passed by both Houses in the summer session of the Parliament and received assent of President on June 15, 2005. The Bill was passed after about 150 amendments were introduced in the original draft. The Act replaces relatively weak and ineffective legislation Freedom of Information Act, 2002 passed during NDA regime. The legislation confers on all citizens a right to seek information and correspondingly makes it the duty of the public authorities to disseminate information for better governance and accountability. The law has widest possible reach covering Central and State Governments, Panchayati Raj Institutions (PRI), local bodies and recipients of government grants but would not apply to the intelligence and security organisations except if the information relates to the allegations of corruption. Moving the Bill Prime Minister said that the Bill would usher in a new era of performance and transparency to benefit the common man in the complex modern world and empower the people to judge if the government was functioning in public interest. Right to Information will give public-spirited people an instrument to prevent misuse of public power and funds. He said that the intention of the Bill is to enlarge the interface between people and government and not to paralyse the administration.⁷

Purpose of the Act

As per the Preamble of the Act the aim is:

- to provide the citizens right to information which will enable them to have access to information under control of the public authorities which will promote transparency and accountability in the working of every public authority and
- to provide for the constitution of a Central Information Commission and State Information Commissions.

The Act will extend to whole of India except the state of J and K.⁸ The Act gives every citizen of India a Right to Information⁹.

Meaning of Information

Information has been defined as “any material in any form, including records, documents, memos, e-mail, opinion, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force”¹⁰.

⁷“Empowering people with right to information”, *The Pioneer*, May 13, 2005

⁸RTI Act Section 1(1)

⁹*Ibid* Section 4

¹⁰*Ibid* Section 2(f)

Definition of Right to Information

Right to Information under the Act means as the right accessible under this Act, which is held by or under the control of any public authority and includes the right to:

- (i) inspection of the work, documents, records;
- (ii) taking notes, extracts, or certified copies of documents or records;
- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or any other device.¹¹

Authorities under the Act

For providing information it has been made incumbent on every public authority to designate within a period of 100 days of enactment of this Act Central Public Information Officers or State Public Information Officers as the case may be in all its administrative wings for the purpose of providing information to person so requesting and Central Assistant Public Information Officer or a State Assistant Information Officer at each sub-divisional level or other sub-district level to receive the applications or appeals and to forward them to the Central Public Information Office or State Public Information Officer or Central Information Commission or State Information Commission as the case may be.¹²

Procedure for Supply of Information

A person who desires to obtain information has to make a request for the same in writing or through electronic form¹³. It can be in English, Hindi or in the official language of the area in which the application is being made. Such application shall be accompanied with prescribed fee. The application is to be made to the Central Public Information Officer or State Public Information Officer of the concerned public authority or Central Assistant Public Information Officer or State Assistant Public Information Officer as the case may be. The particulars of the information required must be specified in the application. No reasons or personal details are required to be given for seeking information. The application must either be decided within a period of 30 days or the request be rejected for the reasons as specified under the Act¹⁴.

¹¹*Ibid* Section 2(j)

¹²*Ibid* Section 5(1) &(2)

¹³*Ibid* Section 6 (1)

¹⁴*Ibid* Section 7

Restrictions on right to information

The information under the Act can be denied if:

- Disclosure prejudicially effects sovereignty and integrity of India, security, strategic, scientific or economic interests of the state, relation with the foreign state or lead to incitement of an offence;
- Publication of the information is expressly forbidden by court of law or tribunal and disclosure constitute contempt of court;
- Information disclosure of which, causes breach of privilege of the Parliament or the State Legislature;
- Information includes commercial confidence, trade secrets or intellectual property and disclosure would harm competitive position of the third party unless the competent authority is satisfied that the public interest warrants disclosure of such information;
- Information available to the person in his fiduciary relationship unless the competent authority is satisfied that larger public interest requires disclosure of such information;
- Information received in confidence from the foreign government;
- Information whose disclosure endangers the life or physical safety of any person or identifies the source or assistance given in confidence for enforcement of law or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. However the decisions of the Council of Ministers and the reasons and material on which the decisions were taken shall be made public after the decision has been taken provided it is not covered under any of the exemption clauses mentioned.
- Personal information which has no correlation to any public activity or interest or which causes unwarranted invasion of the privacy of the individual unless larger public interest justifies the disclosure of such information;
- Providing information involves an infringement of copyright subsisting in a person other than state.¹⁵

Central and State Information Commission

The Act provides for creation of the Central Information Commission and State Information Commission at Central and State levels. The Central Government shall constitute Central Information Commission

¹⁵*Ibid* Section 8& 9

consisting of Chief Information Commissioner and Central Information Commissioners not exceeding 10 in number. They should be appointed by President on recommendation of committee consisting of Prime Minister as Chairperson, Leader of Opposition and Union Cabinet Minister nominated by the Prime Minister. The Chief Information Commissioner (CIC) and Information Commissioners (ICs) shall be person of eminence in public life with wide knowledge and experience in law, science and technology, social science, management, journalism, mass media or administration and governance. CIC shall hold office for a term of five years or till he attains the age of 65 years which ever is earlier and shall not be eligible for reappointment. IC shall also have a term of five years or till he attains the age of 65 years which ever is earlier. IC shall also not be eligible for reappointment as IC but he may be considered as CIC provided his term of office on appointment, as CIC shall not be more than five years in aggregate as IC and the CIC. Salaries and allowances and terms and conditions of the CIC shall be the same as that of a Chief Election Commissioner and the IC as that of an Election Commissioner. CIC and IC can be removed from office by the order of the President on ground of proved misbehaviour or incapacity. This can be done after an inquiry made by the Supreme Court on a reference made by the President.

Similarly every state government shall constitute State Information Commission, which shall consist of State Chief Information Commissioner and State Information Commissioners not exceeding 10 in number. The appointment shall be made by the Governor of the state on the recommendation of the committee consisting of the Chief Minister who shall be the chairperson of the committee, Leader of the Opposition in the legislative assembly and a Cabinet Minister to be nominated by the Chief Minister. The State Chief Information Commissioner (SCIC) and State Information Commissioner (SIC) shall be person of eminence in public life with wide knowledge and experience in law, science and technology, social science, management, journalism, mass media or administration and governance. SCIC shall hold office for a term of five years or till he attains the age of 65 years which ever is earlier and not eligible for reappointment. SIC shall also have a term of five years or till he attains the age of 65 years which ever is earlier. SIC shall also not be eligible for reappointment as SIC but he may be considered as SCIC provided his term of office on appointment, as SCIC shall not be more than five years in aggregate as SIC and the SCIC. Salaries and allowances and terms and conditions of the SCIC shall be the same as that of an Election Commissioner and the SIC as that of the Chief

Secretary of the state government. SCIC and SIC can be removed from office by the order of the Governor on ground of proved misbehaviour or incapacity. This can be done after an inquiry made by the Supreme Court on the reference made by the Governor.

The duty of the Central Information Commission and State Information Commission involve:

1. to receive and inquire into a complaint from any person:
 - (i) who has been unable to submit a request to Central Public Information Officer or State Public Information Officer because of
 - non appointment of such officer or
 - refusal of Central Assistant Public Information Officer or State Public Information Officer to accept the application or appeal to be forwarded further;
 - (ii) who has been denied access to the information requested;
 - (iii) who has not been given response to request within time limit specified;
 - (iv) who was required to pay unreasonable amount of fee;
 - (v) who believes information provided is incomplete, misleading or false;
 - (vi) any other matter relating to request or access of information.
2. initiating inquiry in any matter if Commission is satisfied that there are reasonable grounds to inquire into the matter (*suo moto* power)¹⁶

Appeal

The Act provides for two stages of appeals. At first stage the appeal lies against the decision of the Central Public Information Officer or the State Public Information Officer. If the person does not receive a decision within the time specified or aggrieved by the decision of the Central Public Information Officer or the State Public Information Officer then within 30 days from the expiry of such period or from the date of receipt of the decision prefer an appeal to officer who is senior in rank to the concerned Public Information Officer(PIO).¹⁷

When first appeal is made by the concerned third party against the order of the concerned PIO in respect of the disclosure of the third party information it shall be done within 30 days from the date of order.¹⁸

¹⁶*Ibid* Section18

¹⁷*Ibid* Section19(1)

¹⁸*Ibid* Section19(2)

A second appeal lies against the decision of the appellate authority in the first appeal to the Central Information Commission or the State Information Commission. The appeal shall be preferred within 90 days from the date on which the decision should have been made or was actually received.¹⁹

Penalty

If Central Information Commission or the State Information Commission at the time of deciding a complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer has

- without any reasonable cause refused to receive application for information or has not furnished information within time specified under Section 7(1) or
- malafidely denied request for information or
- knowingly gives incorrect information, incomplete or misleading information or
- destroyed information which was subject of request or
- obstructed in any manner in furnishing information.

It shall impose a penalty of Rs. 250 each day till application is received or information is furnished, however the total amount of penalty shall not exceed Rs. 25,000.²⁰ Further it shall recommend for disciplinary action against the Central or State Information Officer as the case may be under the service rules applicable to him/ her.²¹

MAJOR CONCERNS

Some of the major concerns in relation to implementation of Right to Information (RTI) Act as expressed from various quarters may be considered as below:

Disclosure of file notings

One of the most important concerns raised in respect of RTI Act is disclosure of file notings in the context of the comment made by the President, Dr. A. P. J. Abdul Kalam and subsequent remarks made by officials in the Prime Minister's office also seem to confirm government and bureaucratic concerns over the exposure of file notings to the public that "It will act adversely against the requirement of free and frank

¹⁹*Ibid* Section 19(3)

²⁰ Section 20(1)

²¹ Section 20(2)

opinion by the public officials in decision making process.”²² In this context it would be appropriate to mention that file notings are *ad hoc* written notes added to 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 what is record. Section 2(i)(a) of the Act defines ‘record’ to include 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.²³ In addition the disclosure of notings will certainly ensure application of mind of the decision maker to the issues involved and thereby enhance the quality of decision making 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 recent decision of the Central Information Commission that the “file notings” were an integral part of a 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.²⁴

Cost of Implementation

Another major concern has been the cost of implementing RTI Act. Such concerns keeping in view the actual facts *viz*; the savings to the government through reduction in the level of corruption and maladministration by implementation of the Act would be more than the cost on its implementation. Additionally, it may also be mentioned that the total cost on administration of nation certainly comes from the taxes,

²²“PM Orders Changes in Right to Information Act”, *Yojana*, January 2006, p.8

²³Indra J. Mistry “Breaking the bureaucratic Mould”, *Yojana*, January 2006, p.9 at 10

²⁴Aloke Tikku “File notings covered by right to info, says watchdog”, *Hindustan Times*, February 4, 2006, p.1

which the citizens pay to the government and the cost on implementation of RTI would be negligible as compared to the total cost on administration. This may also be said other way round that the taxpayers have all the right to know that how their government is making expenditure of their money. Thus, the concern relating to cost on implementation of RTI Act has been blown out of proportion and ill founded.

Misuse of information

There has also been the apprehension that the information requisitioned under the RTI Act would be misused or used to blackmail officials or organisations. In this context it should be remembered that this law can be used to access the truth therefore it may be said that how one can misuse the truth. The situation of blackmailing the officials or organisations will only emerge when the official is placed in a privileged position to maintain secrecy of sensitive information. It is the situation of secrecy coupled with unguided and uncannalised discretion of authority, which create a situation of blackmailing in favour of official position and not the other way round. It may further be said that the scope of misuse or blackmail will be reduced or minimised to a great extent in a situation of transparency and free access to information. In this way transparency regime is a sure guarantee against chances of misuse or abuse of public office.²⁵ Transparent exercise of public power by public bureaucracy is, therefore, a guarantee against the misfeasance, non-feasance and late-feasance of public power.

Choice of Information Commissioners

This is yet another major concerns that the majority of Information Commissioners appointed at both the centre and the state levels have been retired high-ranking members of the bureaucracy. One of the major concerns is that it is they who were part of the secrecy regime in the functioning of public administration system for a long period of their career, therefore, their mindset may not be in favour of promoting transparency. Yet another strong reason, which may go against such appointments, is the requirement of the Act itself. The Act requires that the Commissioners may be appointed from the category of persons having “eminence in public life with wide knowledge and experience in law, science and technology, social science, management, journalism, mass media or administration and governance”.²⁶ In view of this the appointment of retired bureaucrats in majority may not be justified rather goes against the express provision of the Act.

²⁵Shekhar Singh and Misha Singh, “Changing Governance Forever”, *Yojana*, January 2006, p.33

²⁶RTI Act Section 12(5)

CONCLUSION

The enactment of RTI Act is indeed a bold step and will go a long way in creating enabling environment in favour of maturation of our constitutional democracy. Penal provisions as stipulated under the Act for malicious and unreasonable refusal of information may not be treated sufficient in view of the long tradition of secrecy in our administrative culture influenced by the colonial hangover and feudal mindset. To break these negative influences more stringent penal provision is needed to ensure personal liability of the official concerned in the case of malafide or debatable refusal of information. What is most important at present juncture is to give honest chance to the Act to operate without negative stumbling blocks and bottlenecks. There is a special duty cast upon the organisations of the civil society and *pro bono publico* to be vigilant so that the objectives of the Act are not frustrated by the bureaucratic manipulations.