IMPLEMENTING RIGHT TO INFORMATION: A PRACTICAL APPROACH

SAPNA CHADAH

Right to Information is one such device experimented and promoted especially by mature democracies. Public support has become an essential condition of responsive and viable 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, quasi- official institutions, systems and sub-systems of governance must provide open access to information on their functioning. To provide information in relation to the working of the system of governance is the requirement of democratisation of governance.

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, it is expected from the society governed by the rule of law values to evolve control mechanism to discipline the power to promote justice, equity and fairplay. The need of disciplining the power of executive calls for evolving better accountability mechanism.

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 secret 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 which operate for profit must also be made to disclose all the facts which are of public interest. Importance of the right to information has now been well 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 a democracy. 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. This article briefly touches upon the major impediments and stumbling blocks in the way of its operationalisation.

[1]J. S. Verma, "Rule of Law-the bedrock of Democracy", in *I. C. Centre for Governance*, April 2005 and *Secretary, Ministry of I & B Vs Cricket Association*, AIR 1995 SC1236.

RIGHT TO INFORMATION: INTERNATIONAL SCENARIO

In the last decade, governments around the world have become increasingly more open and transparent. They have recognised the importance of access to information in building faith and confidence of people in the democratic values as well as in government and its instrumentalities. This will no doubt go a long way in building confidence in government institutions and strengthen their credibility, effectiveness and efficiency. As on March 2004 over 50 countries all over the world have enacted comprehensive laws to facilitate access to information and numbers of others are in process of enacting such legislations. However, there are still many states, including democracies where people are denied access to information, which is in public domain. With the support of UNDP 30 countries have enacted laws requiring the disclosure of government records. These countries are Albania, Armenia, Belize, Bosnia and Herzegovina, Bulgaria, Colombia, Czech Republic, Estonia, Georgia, Hungary, India, Jamaica, Latvia, Lithuania, Mexico, Moldova, Pakistan, Panama, Peru, Philippines, Poland, Romania, Slovakia, Slovenia, South Africa, Thailand, Trinidad and Tobago, Ukraine, Uzbekistan and Zimbabwe.[2]

Although right to information laws have existed since 1776, when Sweden passed its Freedom of the Press Act, it is the last decade, which has seen an unprecedented number of states adopting access to information legislation. There are a number of reasons for this which include emergence of new democracies following the collapse of authoritarian regimes especially in the 1980s, increasing attention from multilateral organisations and bilateral donors like the World Bank, the International Monetary Fund, and increasing attention from civil society organisations and the media.[3]

Right to information has long been regarded as a fundamental human right. In 1946, the UN General Assembly in its very first session adopted Resolution 59(1) stating, "Freedom of information is a fundamental human right and ...the touchstone of all the freedoms to which the United Nations is consecrated." Article 19 of the Universal Declaration of Human Rights, 1948 reads "Everyone has the right to freedom of opinion and expression; the right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through media and regardless of frontiers".[4] Thus the declaration recognises freedom of expression including Freedom of Information and Free Press as fundamental human

[2]*Practical Guidance Note on Right to Information*, UNDP, July 2004, pp 6,10.
[3]*Ibid*, p.10.
[4]United Nations General Assembly Resolution 217 (III) A of 1948.

right. Article 19(2) of the International Covenant on Civil and Political Rights[5] states: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

Article I of the UNESCO Declaration of 1978 on 'Fundamental Principles Concerning the Contribution of Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement of War' states: "The strengthening of peace and international understanding, the promotion of human rights and the countering of racialism, apartheid and incitement to war demand a free flow and a wider and better balanced dissemination of information". Article II of the Declaration states: "...the exercise of freedom of opinion, expression and information, recognised as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding..."

Article 13 of 'UN Convention against Corruption'[6] identifies '(*i*) effective access to information for public; (*ii*) undertaking public information activities contributing to non-tolerance of corruption (including conducting public education programmes) and (*iii*) respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption...' as important measures to be taken by governments for ensuring the participation of society in governance.

Besides these international instruments the regional human right treaties like the European Convention of Human Rights, 1950; the African Charter on Human and Peoples Rights 1981; the Inter-American Declaration of Principles of Freedom of Expression 2000 and Declaration of the Principle of Freedom of Expression in Africa, 2002, have all reiterated Article 19 of the Universal Declaration of Human Rights, 1948 adopting Freedom of Expression and Information as a fundamental human right.

An insight into the international scenario reveals that there has been a trend from administrative practice of secrecy to freedom of information all over. As already quoted a number of countries all over the world have enacted legislations for access to information and many are in the process of doing so. The objectives behind these enactments are to ensure transparency, openness and fairness in the functioning of government. Most of the legislations are based on the paradigm that except for exceptional matters like security, defence of the nation, etc. There is no room for secrecy

[5]United Nations General Assembly Resolution 2200 A (XXI) of 1966.

[6]Adopted by United Nations General Assembly on October 31,2003.

in affairs of the government. USA, Australia and Sweden are the countries where openness has been a rule rather than an exception since long. One may like to add that the requirement to bring transparency is like bringing light, to prevent the darkness of crime, corruption and misuse of power and authority for personal gain and greed.

The right to information can be guaranteed in a number of ways. Many countries provide in their constitutions usually by means of a broad statement guaranteeing the right of access to information. In other cases right to information is read in and inferred from the constitutional right to freedom of expression. However, constitutional provisions can be effective only in a mature legal system capable of giving effect to constitutional rights in law; otherwise such constitutional provision remains mere empty formality and may be even countermanded by other laws. The most effective way to guarantee the right to information is through legislation providing protection to the right to information and giving access to the official documents. As a rule maximum possible information should be disclosed to the public. The exceptional and limited circumstances under which the information can be withheld should also be clearly brought out in the statute. The effective and efficient procedure and mechanism of appeals in case of denial of information is a condition precedent to make the right to information meaningful in letter and spirit.

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. In France, the accountability of public servant is a constitutional right. The implementing legislation of 1978 provides for an independent administrative authority, the Commission on Access to Administrative Documents. Norway and Denmark have also statutorised public access to official information. Norway has the Freedom of Information Act of 1970 besides the constitutional right to access

the public documents. Denmark has the Access to Public Administration Files Act, 1985.

In USA the foundation of openness and right to information lay in constitutional fundamental of free speech. The statutory framework for it is provided in the Freedom of Information Act, 1966 and its statutory cousins the Privacy Act, 1974 and 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 individuals have a right to seek injunctive relief. However, all the states as well as the District of Colombia and some territories have enacted similar legislations requiring disclosure of information by the agencies of the state and local governments.

In Britain the trend from the very beginning has been to maintain secrecy, which was achieved through Official Secrets Act. Earlier there was Officials Secrets Act, 1911. According to its catch all Section 2 all official information, whether it related to national defence and security or not was the property of the Crown, thus privileged and those who received it officially could 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 at 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, those 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 Access to Information Act, 1985 and complementary Privacy Act, 1983. The Access to Information Act provides 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. The Act gives every person who is a Canadian citizen, or a permanent resident a right to request for any record under the control of a government institution. A request for access to a record under this Act shall be made in writing and in sufficient detail to the government institution that has control of the record. Australia and New Zealand are having law on Freedom of Information since 1982.

The latest development in constitutionalism is the adoption of the Constitution of the Republic of South Africa, 1996. The new South African Constitution provides access to information to any person in the form of a fundamental right. Chapter 2 titled Bill of Rights, Section 32 is dealing 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. The Promotion of Access to Information Act approved in February 2000 eventually expanded on this constitutional right. The Act applies to a record of public body as well as a record of a private body, regardless of when the record came into existence. The right to access information privately held is an interesting feature of this law as most of the laws on right to information world over cover only the information in the public domain.

In European Union in the early days (from the Treaty of Rome in 1976) there was a pervasive "diplomatic" approach where almost every document was a state secret. The Maastricht Treaty (1993) and the Amsterdam Treaty (June 1997) have inevitably undermined this approach in favour of more transparent proceedings. The expansion of the EU remit to cover justice and home affairs issues (1993) and incremental increases in the powers of the European Parliament (1993 and 1997) make more "transparent" decision-making processes and ("openness") access to documents inevitable. The struggle for openness and freedom of information in the European Union

over the past decade started with the Code of Access to EU Documents introduced in December 1993 and the first challenges in the courts and to the European Ombudsman. Despite their public commitment to openness, EU institutions especially the Council of the European Union (the 15 EU governments) and the European Commission wanted to control, which documents were released and which were not. When the Amsterdam Treaty was agreed in June 1997 the right of access to documents was written in Article 255. The new Regulation, Regulation 1049/2001 was formally adopted on May 30, 2001 and came into effect on December 3, 2001. A deadline was set for June 3, 2002 when the European Commission and the European Parliament had to provide a public register of documents on the internet. The "Purpose" set out in Article 1 is to "ensure the widest access possible to documents" as provided for in Article 255 of the Amsterdam Treaty. As per Article 2, Regulation is to apply to: "all documents held by an institution, that is to say, drawn up or received by it and in its possession, in all areas of activity of the European Union". However, Article 2.5 says that "Sensitive documents" are to be subject to "special treatment".

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 a part of Article 19(1)(a).

In the case of *State of U.P. vs. Raj Narain*[7] 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 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*, is a factor which should make one way, when secrecy is claimed for transactions which can, at any rate, *have no*

[7](1975) 4 SCC 428, 453 para 74.

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,*[8] decided by seven-judge 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*[9] the Supreme Court while making a reference to *State of U.P. vs. Raj Narain*[10] and *S.P. Gupta vs. Union of India*[11] held that in modern constitutional democracies, its 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, which can legitimately

[8]1981 Supp SCC 87 para 73 & 74 at pp.284-286.
[9](1997) 4 SCC 306.
[10]*supra n* 2 at p 5
[11]*supra n* 3 at p 5

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 which 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 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. A 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. 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 the 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 declared its decision to make Right to Information a fundamental right. He expressed his intention on 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, which 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, which 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 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.

Even before the Parliament enacted Right to Information Act, 2005, many states took lead and enacted legislations providing for access to official documents. Tamil Nadu was the first state to introduce legislation on Right to Information in April 1996. Other states followed, Goa introduced such a legislation in 1997, Karnataka and Maharashtra in 2000, Delhi and Assam in 2001, Madhya Pradesh in 2002 and J&K in 2004. Ultimately in 2005, the Parliament of India passed legislation on right to information, which is a landmark legislation in Indian context. It is in consonance with provisions of International Covenants on the issue and has brought India in line with some of the evolved democracies of the world. However, the success of the Act can only be achieved if the public authorities take the Act in right spirit and there is effective implementation of the Act by them and people use it as an instrument for pressing transparency and accountability on part of the public bodies.

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 around 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, 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. 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. RTI 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.[12] The Act extends to whole of India except the state of J&K.[13] The Act gives every citizen of India a Right to Information.[14]

a) Purpose of the Act

As per the Preamble of the Act, the aim of the Act 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.

b) 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".[15]

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[12]"Empowering People with Right to Information" *The Pioneer*, May 13, 2005.
[13]RTI Act Section 1(1).
[14]*ibid,* Section 4.
[15]*ibid,* Section 2(f).

c) Definition of Right to Information

Right to Information under the Act means as the right to information 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.[16]

d) Public Authority

For the purpose of this Act the Public Authority has been given a very wide and broad meaning. Public authority means any authority or body or institution of self-government established or constituted: (*a*) by or under the Constitution; (*b*) by any other law made by the Parliament; (*c*) by any other law made by the State legislature; (*d*) by notification issued or order by appropriate Government, and includes any: (*i*) body owned, controlled or substantially financed; (*ii*) non-government organisation substantially financed, directly or indirectly by funds provided by the appropriate government.[17] Thus it includes within its ambit the Government at all levels: Centre, State and local. It covers both Houses of Parliament, state legislature and all municipal and panchayati raj bodies. All public undertakings, NGOs and institutions, which are funded and controlled by the government, are covered in the definition of the Public Authorities.

e) Obligations of the Public Authorities

Every public authority shall

1. maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information.
2. ensure that all records that are appropriate to be computerised are, within a reasonable time computerised and connected through a network all over the country on different systems so that access to such records is facilitated.
3. publish within one hundred and twenty days from the enactment of this Act, the particulars of its organisation, functions and duties including the powers and duties of its officers and employees. In all seventeen items have been prescribed under

[16]*ibid,* Section 2(j)
[17]*ibid,* Section 2(h)

this heading.;

4. publish all relevant facts while formulating important policies or announcing the decisions which affect public.
5. provide reasons for its administrative or quasi-judicial decisions to affected persons.[18]

Every public authority shall constantly endeavour to provide as much information *suo moto* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information. Every information shall be disseminated widely and in such form and manner which is easily accessible to the public. However, all materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.[19]

f) Authorities under the Act

To provide information it has been made incumbent on every public authority to designate within a period of one hundred 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.[20]

g) 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 means. Request can be made 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

[18]*ibid,* Section 4(1)
[19]*ibid,* Section 4(2),(3), (4)
[20]*ibid,* Section 5(1) &(2)

Officer as the case may be. The particulars of the information required must be specified in the application. No reasons or personal details except for that required for contacting are required to be given for seeking information. Where the request for an information is made to the public authority which is held by another public authority or the subject matter is more closely connected with the functions of another public authority, the public authority to which such application is made shall transfer the application or part of it to the other public authority and inform the applicant immediately about such transfer. The transfer shall be made as expeditiously as possible. In no case it shall take time more than five days from the date of receipt of the application. [21]

The application must either be decided within a period of 30 days or the request be rejected for the reasons as specified under the Act. Where the information sought concerns the life and liberty of a person the same shall be provided within 48 hours of the receipt of the request. Where the public authority fails to comply with time limits specified, the person making the request for information shall be provided information free of charge. Where the request for the information is rejected the person making the request shall be communicated the reasons for such rejection, period within which appeal against such rejection may be preferred and the particulars of the appellate authority.[22]

h) Restrictions on Right to Information

The information under the Act can be denied if disclosure would prejudicially effect 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 and or publication of the information is expressly forbidden by court of law or tribunal and disclosure may constitute contempt of court.

The disclosure of information would cause breach of privilege of the Parliament or the State Legislature and 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 have also been kept out of the ambit of the Act..

If information is available to the person in his fiduciary relationship unless the competent authority is satisfied that larger public interest requires disclosure of such information and if information is received in confidence from the foreign government it is also exempted from disclosure.

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[21] *ibid*, Section 6

[22] *ibid*, Section 7

Disclosure of information would endanger the life or physical safety of any person or identify the source or assistance given in confidence for enforcement of law or security purposes and the information which would impede the process of investigation or apprehension or prosecution of offenders can also be denied.

Any information which is personal and has no corelation to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual unless larger public interest justifies the disclosure of such information will also not be available including request for the access to information involves an infringement of copyright subsisting in a person other than state.[23]

Section 8(2) of the Act provides that notwithstanding anything in the Official Secrets Act, 1923, nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

Where the request for access to information is rejected on the ground that it relates to the information, which is exempt from disclosure, then access may be provided to the record, which does not contain any information, which is exempt from disclosure under the Act and can reasonably be severed from the part, which contains the exempt information.[24]

i) Non-applicability to Certain Organisations

As per Section 24(1) the Act shall not apply to following intelligence and security organisations established by the Central Government:

- Intelligence Bureau
- Research and Analysis Wing of the Cabinet Secretariat
- Directorate of Revenue Intelligence
- Central Economic Intelligence Bureau
- Directorate of Enforcement
- Narcotics Control Bureau
- Aviation Research Centre
- Special Frontier Force
- Border Security Force
- Central Reserve Police Force
- Indo-Tibetan Border Police
- Central Industrial Security Force
- National Security Guards
- Assam Rifles

[23]*ibid,* Section 8& 9

[24]*ibid,* Section 10(1)

- Special Service Bureau
- Special Branch (CID), Andaman and Nicobar
- The Crime Branch-C.I.D.,-CB, Dadra and Nagar Haveli
- Special Branch, Lakshadweep Police [25]

However, the information pertaining to the allegations of corruption and human rights violations shall not be excluded. But in such cases the information shall only be provided after the approval of the Central Information Commission and within 45 days from the date of the receipt of the request.[26] Further, the Act shall not apply to the intelligence and security organisations established by the State Government, as that Government may, from time to time, by notification in the official gazette, specify. However, the information pertaining to allegations of corruption and human rights violations shall not be excluded. Such information shall be provided only after the approval of the State Information Commission and shall be provided within 45 days from the receipt of the request for information.[27]

j) 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 consisting of the Chief Information Commissioner and the Central Information Commissioners not exceeding 10 in number. They should be appointed by the President on recommendation of committee consisting of the Prime Minister as Chairperson, Leader of Opposition in the Lok Sabha and Union Cabinet Minister nominated by the Prime Minister. The Chief Information Commissioner (CIC) and Information Commissioners (ICs) shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, 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 whichever 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 whichever 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.[28] CIC and IC can be removed from office by the order of the President on ground of

[25] *ibid*, Second Schedule
[26] *ibid*, Provisos to Section 24(1)
[27] *ibid*, Section 24(4)
[28] *ibid*, Sections 12 and 13

proved misbehaviour or incapacity. This can be done after an inquiry made by the Supreme Court on a reference made by the President. The President by order can remove CIC or IC if CIC or IC, as the case may be, is adjudged insolvent or has been convicted of an offence involving moral turpitude or engages during his term of office in any paid employment outside the duties of his office or is unfit to continue in office by reason of infirmity of mind or body or has acquired such financial or other interest as is likely to affect prejudicially his function as the CIC or IC.[29]

Similarly every state government shall constitute the State Information Commission, which shall consist of the State Chief Information Commissioner and the State Information Commissioners not exceeding 10 in number. The appointment of the State Chief Information Commissioner and State Information Commissioners 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 Commissioners (SICs) shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, 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 whichever 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 whichever 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.[30] 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 Governor can by order remove SCIC or SIC if SCIC or SIC, as the case may be, is adjudged insolvent or has been convicted of an offence involving moral turpitude or engages during his term of office in any paid employment outside the duties of his office or is unfit to continue in office by reason of infirmity of mind or body or has acquired such financial or other interest as is likely to affect prejudicially his function as the SCIC or SIC.[31]

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[29]*ibid*, Section 14

[30]*ibid*, Sections 15 and 16

[31]*ibid*, Section 17

k) Powers and Functions of the Information Commissions

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

(1) to receive and inquire into a complaint from any person:

- 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 Assistant Public Information Officer to accept the application or appeal to forward the same to Central/ State Public Information Officer or specified senior officer or Central/ State Information Commission;

(*i*) who has been denied access to the information requested;

(*ii*) who has not been given response to request for information within time limit specified;

(*iii*) who was required to pay unreasonable amount of fee;

(*iv*) who believes that the information provided is incomplete, misleading or false;

(*v*) any other matter relating to request for access to information.

(2) initiating inquiry in any matter if the Commission is satisfied that there are reasonable grounds to inquire into the matter (*suo motu* power).[32]

l) 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 to the officer senior in rank to the Information Officer. If the person does not receive a decision within the time specified or is aggrieved by the decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, then within 30 days from the expiry of such period or from the date of receipt of the decision prefer an appeal to such officer who is senior in rank to the concerned Public Information Officer. However, such officer may admit the appeal even after expiry of the period of 30 days if he/ she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.[33] When first appeal is made by the concerned third party against the order of the concerned Public Information Officer to disclose third party information it shall be done within 30 days from the

[32]*ibid,* Section18

[33]*ibid,* Section19(1)

date of order.[34] In both these cases of first appeal, appeal shall be disposed of within 30 days of the receipt of appeal or within such extended period not exceeding a total of 45 days from date of filing thereof and reasons for the decision must be given in writing.[35]

A second appeal against the decision of the appellate authority in the first appeal lies 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. Provided that the Central/ State Information Commission may admit the appeal even after the expiry of the period of 90 days if it is satisfied that the appellant was prevented by sufficient cause in filing the appeal in time.[36]

m) 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.[37] 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.[38]

During the last three years of its operation the RTI Act has proved to be the most path-breaking and historic piece of legislation. It has generated tremendous impact in matters of citizens' democratic rights, monitoring public good, curtailing corruption and improving governance. With increasing levels of education and awareness among the rural and urban public, RTI

[34]*ibid,* Section19(2)
[35]*ibid,* Section19(6).
[36]*ibid,* Section19(3).
[37]Section 20(1).
[38]Section 20(2).

Act has proved to be a potent weapon for solving a number of problems. Citizens are now using their statutory right to be informed to get any sort of information which lies in public domain. Be it may be regarding utilisation of public funds, progress in ongoing projects, state of civic services, distribution under public distribution system, access to answer sheets , disclosure of cut off, disclosure of question-wise marks, patient's right to his treatment records, for obtaining driving licence and passport and the list goes on.

Major Concerns

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

(i) Disclosure of file notings

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."[39] 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 record is. 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.[40] 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 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

[39]"PM Orders Changes in Right to Information Act", *Yojana*, January 2006, p.8.

[40]Indra J. Mistry, "Breaking the bureaucratic Mould" *Yojana*, January 2006, p.9 at10.

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 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.[41]

(ii) 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, 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.

(iii) Misuse of Information

There has also been the apprehension that the information sought 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 discretion of authority, which creates 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.[42] Transparent exercise of public power by public bureaucracy is, therefore, a guarantee against the misfeasance, non-feasance and late-feasance of public power.

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[41]Aloke Tikku, "File notings covered by right to info, says watchdog", *Hindustan Times*, February 4, 2006, p.1.

[42]Shekhar Singh & Misha Singh, "Changing Governance Forever", *Yojana*, January 2006, p.33.

(iv) Choice of Information Commissioners

This is yet another major concern 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".[43] In view of this the appointment of retired bureaucrats in majority may not be justified rather goes against the express provision of the Act. In addition, this may also give an impression that all those who are responsible for administrative culture of secrecy are now trying to ensure transparency. According to a study 58 per cent Information Commissioners are from administration and governance sector. Out of 60 Information Commissioners 27 were retired IAS officers.[44]

(v) Judiciary and Government killing RTI

The government and judiciary pose a serious threat to Right to Information Act. The widely prevalent and dangerous trend of resistance to transparency in their functioning by those in power will gradually kill Right to Information Act. Government across the country, irrespective of which party they belong to, follow a pattern of mis-governance and are opposed to transparency. The judiciary on the other side has been granting stays on the orders of the Information Commissions; this will eventually kill the Act. Government departments are rushing to courts to get stay orders against the decisions of Information Commissions to provide information to common man. Delays in finally deciding the matters destroy the spirit of the Act. Further, the government is flouting all norms in the appointment of Information Commissioners. There is no transparency in the appointment of Information Commissioners. No norms are being followed and Information Commissions are being turned into parking lots for favourites of the government of the day. As a result the four year old law to provide information to the common man is under threat of being weakened by the government mindset of amending it for its convenience.[45] Now the Cabinet has cleared the Law

[43]RTI Act, Section 12(5).

[44]Subhash C. Kashyap, "Right to Information" *South Asia Politics*, June 2009, p. 29.

[45]Nagendar Sharma, "Judiciary, Government killing RTI Act: Panel Member", *Hindustan Times*, July 24, 2009 p. 8.

Ministry's controversial draft Bill, which while making it mandatory for judges, their wives and children to declare their assets annually, also lays down that all such details will be kept confidential. It was this confidentiality that the judiciary has been lobbying for to remain outside the ambit of the RTI Act. This Bill will soon be introduced in the Parliament. Justice J. Verma, Former CJI who had made the asset declaration for the judges mandatory in 1997, called the new Bill 'a joke'. Former Supreme Court Judge Justice V. R. Krishna Iyer said the government lacked the political will to reform the judiciary. He said that it is shameful that judges want secrecy and the government is abetting it.[46]

OPERATIONAL ISSUES

The passing of a law is no doubt one of an extremely important part of securing the right to information but it is not the ultimate step. It is the effective implementation of the law, which makes the statute a success and the right to information meaningful. There are a number of aspects, which are required to be taken into consideration for effective implementation and operationalisation of the right to information legislation. Building public awareness, promoting an informed civil service, encouraging cultural change within the civil service, developing an efficient and well-organised information management system are some of important facets, which require immediate focus to realise the right to information. As regards creating public awareness is concerned, it is incumbent on the government to educate and make aware the public of their right of access to information, especially how they can apply, as part of promoting a culture of openness and responsiveness within government. The government supported public information campaigns are extremely important tools to achieve the goals of right to information. Campaigns need to employ a variety of communication mechanisms including print and electronic media and all other available modes of communication to reach the widest possible segments of the public, including those in rural areas and those who are illiterate. Governments should also produce and distribute literature in a variety of forms including governmental websites on how citizens can use their rights under the legislation. Effective national information and communication strategies to make information available are an essential part of open and transparent government. The media also has an important role to play in raising awareness on the right to information. However, the most effective implementation will come only

[46]Nagendar Sharma, "Cabinet Okays Bill to Keep Judges' Assets Confidential", *Hindustan Times*, July 25, 2009 p.1.

when people themselves demand for information, demand driven by a pressing social need of some kind like public health or environmental issue.

To have an informed civil service, provision of training on right to information for employees is an important requirement. Such training should deal with why access to information is important, the scope of any law, the procedures by which people request information and how requests should be responded to, how to maintain and access records. Such training programmes will develop a positive mind set among the officials and the law will be seen as a positive benefit to officials, rather than burden. There is a need to develop cultural change among the civil servants and public officials. Governments with a long history of secrecy will tend to resist releasing information.

Public officials weaned on secrecy tend to regard information as power and are reluctant to give it up. They therefore, delay the processing of information. In the administrative set-up public officials tend to regard the files they hold as their own personal property. Within traditionally secretive bureaucracies, information itself is a form of power and officials are reluctant to share it with other officials and most rarely with the public. They lack transparency in regard to the information they hold. This is a formidable challenge to change the mindset of the bureaucracy. The training programmes to certain extent can be important in tackling the ingrained mindset that may go back for several generations. For right to information law to be effective, institutional supports both at national and local levels are required. Processing of requests for information must be facilitated through effective decentralised structures and mechanisms. The chaotic nature of the information and public records system, the lack of proper archives and the lack of any consistent system for managing information across the government are major institutional problems. Strengthening information and records management systems is thus need of the hour to make the right to information more meaningful.

CONCLUDING REMARKS

The enactment of RTI Act is indeed a bold step and will go a long way in creating enabling environment in favour of maturisation of our constitutional democracy and empowerment of citizenary. 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 colourable 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 *probono publico* to be vigilant so that the objectives of the Act should not be frustrated by the bureaucratic manipulations. The heart and soul of any beneficial legislative enactment always lie in its implementation. The success of the right to information in India is an open challenge in our administrative culture, public service ability of adjustment and public services' commitment to the public cause. Let us hope positive response from our public bureaucracy in the successful operationalisation of the right to information.