

CHAPTER-1

HISTORICAL BACKGROUND OF CONSTITUTIONAL AND STATUTORY FOUNDATION OF RIGHT TO INFORMATION LAWS IN INDIA

1.1. An Overview

Democracy rests on good governance found on transparency, openness and accountability. Secrecy and democracy being sworn enemies cannot coexist. An informed citizenry can contribute to the formulation and execution of important policy measures for the promotion of socio-economic objectives of the country.

The trend towards informed citizenry did not come easy to us. Post independence, India had to deal with the aftermath of partition, exchange of population with Pakistan, religious communalism, growing social and economic insecurity besides other problems. In order to fulfill the obligations of a welfare state, the state acted as *parens patriae* and focused on various sectors including land redistribution; development in the areas of agriculture, setting up of industries and facilitating education. The government took all major decisions and the citizens had no role to play in the governance of the country.

Though India inherited an administrative system which had been designed to subserve colonial interest, independent India's addition to it has been no less substantial.¹ India has focused more on the mechanics of administration rather than necessary reforms due to lack of political will and motivation. Since independence the most crucial segment of public administration that underwent least amount of change is the civil service. The Administrative Reform Commission's Report on Personnel Administration, published in 1969 focused attention on the need for reform in the civil service.² The increasing complexity of public administration gave birth to a large number of training institutions to improve their administrative capabilities.

¹ S.R. Maheshwari "Administrative Reforms in India, 292 (Macmillan Publishers India Limited, Chennai, 2011)

² *Ibid*

Post independence, the successive governments that came into power brought in major reforms in the state which included land reform measures, abolition of license Raj, freedom to import technology, the emergence of New Industrial Policy, contraction of public sector, free entry of foreign investment, monetary reforms etc. but all of these, under the comfort of secrecy. In addition to this, various development projects such as poverty alleviation programmes and various welfare schemes were also implemented from time to time for the progress of the nation of which very little were made public. Wrongful disbursement of public funds, allotment of discretionary quotas for seats in medical, engineering and other vocational institutions, were common.

Due to the secrecy regime existing in India as a part of British legacy, information relating to these programmes was not available to the citizens. Lack of accountability and transparency in such policies left doubts in the minds of the public and denial of such information resulted in widespread criticism of the government and encouraged corruption. It is rightly stated by U.C. Agarwal that *“the greatest blow to the Indian democracy has been the diminishing credibility of government due to ever rising corruption wasteful expenditure, acts of nepotism and favouritism and other malpractices.”*³

Post independence, various committees and commissions have been appointed to go into various aspects of public administration in India. Two major landmarks have been the report of Administrative Reforms Commission 1970 and the Fifth Central Pay Commission 1997.⁴ The Administrative Reforms Commission 1966 chaired by Morarji Desai, submitted its report in 1969 and made recommendations besides others, the need for ensuring the highest standards of efficiency and integrity in public services for the furtherance of carrying out sound economic and social policies of the government.⁵ These recommendations were not implemented and so far there is no significant changes in the public administration. The Fifth Central Pay Commission⁶ increased the

³ U.C. Agarwal, “The Official Secret Act to the Right to Information Act Dawn of “Glasnost” 341 *IJP* (2012)

⁴ Surendra Munshi & Biju Paul Abraham,(eds.) “Good Governance, Democratic Societies and Globalisation, 234 (Sage Publication ,New Delhi,2004)

⁵ Resolution of the First Administration Reforms Commission,1966

⁶ Established in 1994, the Fifth Central Pay Commission submitted its report on January 30,1997 recommending revision of pay scales of Central government employees. *available at:*https://irtsa.net/pdfdocs/Acceptance_orders_govt_on_Fifth_CPC.pdf (last visited March 9,2019)

nation's burden by introducing a hike in the pay and pensions of the government employees. Moreover the safeguards available by the Constitution of India made the position of the civil servants more secure.⁷ Lack of accountability by these officials led to rampant corruption resulting in discontent and anguish among the people. To add to the woes, the politicians soon started personal aggrandizement at the cost of the public welfare.⁸

Soon a movement began demanding accountability from the government with the active participation of the civil society organisations and the media. Thereafter, a series of landmark judgments by the Apex Court upholding the right to information and activism began. Subsequent to this, the common people the civil society groups, media led to the enactment of the historic Right to Information Act, 2005.

The Right to Information Act, 2005 brought in a ray of hope for the citizens for the first time by enabling them to seek answer to questions concerning their day to day lives unveiling the garb of secrecy. This journey from secrecy to transparency is discussed in detail in this chapter.

1.2. The Secrecy Regime in India

A successful democracy reflects in an aware citizenry. In a democracy like India where the major activities of the state rests on the shoulders of the executive, every citizen has the fundamental right to know how the government is fulfilling its obligations. The secrecy regime that exists in India was an integral part of British administration. The myth of Official Secrecy has been in practice in India far too long and has done considerable disservice to the citizens and the state.⁹ The Indian Official Secrets Act, 1889 was an extension of the British Official Secrets Act, 1889 applicable to all colonial states. The Act underwent some amendments in 1904 and 1911 and was later replaced by the Official Secrets Act, 1923.

⁷ Art. 311 of the Constitution of India, 1950 provides for constitutional safeguards to the public servants against arbitrary removal, dismissal and reduction in rank.

⁸ S.P.Sathe, *Right to Information*, 21 (Lexis Nexis Butterworths ,New Delhi, 2006)

⁹ U.C. Agarwal, "The Official Secret Act to the Right to Information Act Dawn of 'Glasnost'", 341 *IJPA*, Vol.LV, No.3 July-Sep(2009)

Post independence, the Act was not repealed and had been continued as it allows safeguarding information from unauthorized disclosure. Moreover, it was difficult to change the attitude of the public officials who refused to disclose any information which was now ingrained in them as a matter of right. The secrecy regime therefore flourished and took people to the realm of darkness.

Nevertheless, it is also true that not all information can be disseminated to public. Every state has to follow secrecy rules where the information is classified into several categories. Indian government also makes classification of documents into two categories – ‘classified’ and ‘non-classified’.¹⁰ For the classified documents, the Ministry of Home Affairs has issued departmental security instructions further classified into – ‘top secret’, ‘secret’, ‘confidential’ and ‘personal not for publication’.¹¹ The top secret information is that information that affects national security such as military secrets, matters of high international policy, intelligence reports etc. Secret information is that may endanger national security or cause injury to the interests or prestige of the nation and also hamper the relation with foreign states. The confidential information includes information whose disclosure would be prejudicial to the interest of the nation or give advantage to a foreign nation or cause administrative embarrassment.

Personal – not for publication are information that is fit for communication to the individual members of the public, but it is desired that the information given to an individual is not meant for publication. The non-classified documents unless authorized by general or special orders cannot be communicated by any official handling such documents.¹² For the purpose of communication by the press, the information is communicated through Press Information Bureau or the representatives of the press through the ministers, secretaries or officers authorized officers.

¹⁰ Central Secretariat Manual of Office Procedure, May 2015 *available at*: www.darpg.nic.in (last visited on Sep. 6, 2018)

¹¹ *Ibid*

¹² *Ibid*

1.2.1. The Official Secrets Act, 1923 and its Inadequacies

The Official Secrets Act, 1923, makes all unauthorized disclosure of information from official sources punishable. It primarily disallows all official documents and information to be communicated to any ‘unauthorised’ person.¹³

The reason for not repealing the Act remains unknown. The statute has provisions that are too broad and vague, often leaving room for arbitrariness. For instance under the Act defining a “prohibited place”, any railway road, way or channel or other means of communication by land or water can be notified by the Central government as a “prohibited place”.¹⁴ The Act prescribes penalty for spying to be imposed on anyone who is even found in the ‘vicinity’ of a prohibited place for three years which may extend to fourteen years.¹⁵

Under the Act, 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.¹⁶ 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.¹⁷

The main problem with the Act is that it is not possible for anyone to know with certitude that some information is ‘secret’ or likely to be useful for an enemy. It seems there is a manual by the Ministry of Home Affairs which deals with classification of documents. However, that manual itself is treated as ‘secret’.¹⁸ There is gross misuse of the Act very often.

In the recent past, Retired Major General V.K. Singh, who wrote a book detailing instances of corruption, nepotism and negligence within the Research and

¹³ Official Secrets Act, 1923, s.5

¹⁴ *Id.*, s. 2(8)(d)

¹⁵ *Id.* s. 3

¹⁶ *Ibid*

¹⁷ *Id.*s.13

¹⁸ ‘Will India ever Have ‘The Post’ Moment, with the Official Secrets Act in Place’ Manu Sebastian, *available at:* www.livelaw.in (last visited on May 5, 2018)

Analysis Wing, was booked under the Act. The court had to intervene, granting the retired General anticipatory bail based on the finding that nothing in the book put any national secret in jeopardy.¹⁹

In another case, a journalist faced prosecution under the Official Secrets Act, 1923 and the Indian Penal Code for doing a sting operation on the Sahayak System in the Army that allegedly led to suicide of a ‘Sahayak’ whom she interviewed.²⁰ In another incident, a former Navy Captain, was put in the lock-up for months on charges of violating the Act. The Bombay High Court found his prosecution to be fraudulent. Secrecy in government operations is necessary, but it has to be limited by absolute necessity, keeping the confidentiality strictly time-bound.²¹

There have been objections to the Official Secrets Act, 1923, since independence. At different points of time, various committees were constituted to limit the area where government information could be hidden and opening up of all other spheres of information. In 1977, a Bill to amend the Official Secrets Act was introduced but in many respects it was no improvement over the previous one. In 1982, the Mathew Commission recommended amendment to Sec-5 of the Act emphasising on the need to know. The Administrative Reforms Commission has also recommended in 2006 that the Official Secrets Act should be repealed as it was incongruous with the transparency regime but no further action was taken in that regard.²²

With the passage of time, the focus of citizens’ groups shifted from demanding merely an amendment to the Official Secrets Act, to its replacement by a comprehensive legislation towards the Right to Information. The Right to Information Act, 2005 as it stands today, does not invalidate the provisions of Official Secrets Act but says that its provisions need to be consistent with Official Secrets Act but whenever there is a conflict between the two laws; the provisions of the RTI Act override those of the Official Secrets Act.²³

¹⁹ “The Secrecy Regime” The Hindu, April 20, 2015

²⁰ “SC notice to Centre on alleged misuse of Official Secrets Act, Sahayak System”, The Tribune, April 24, 2017

²¹ *Supra* note 4

²² *Supra* note 3

²³ The Right to Information Act, 2005, s.22

1.2.2. Contemporary Legislations Protecting Secrecy in India

Other than the Official Secrets Act, 1923, there are several legislations that encourage confidentiality in India. **The Indian Evidence Act, 1872** regulates the power of the government to withhold information.²⁴ **The Civil Service Conduct Rules, 1964**, also prohibits any unauthorized communication by a public servant to the citizens and considers it a punishable offence.²⁵ **The All India Services (Conduct) Rules, 1968** punishes the employees for any leak of official information into media or outside world.²⁶ **The Atomic Energy Act, 1962** empowers the Central government to protect the national nuclear policy of India and declare any information as ‘restricted information’ which is not so far published or otherwise made public relating to the theory, design, construction and operation of nuclear reactors etc.²⁷ **The Commission of Inquiry Act, 1952**, that provides for appointment of Commission of Inquiry for making an inquiry into matters of public importance, was amended in 1986 to give power to the government to withhold the report of the Commission from the House.²⁸ **The Competition Act, 2002** puts restrictions on disclosure of information relating to an enterprise which has been obtained by or on behalf of the Commission for the purposes of this Act, without the previous permission in writing of the enterprise.²⁹ **The Information Technology Act, 2000** also penalises breach of confidentiality and privacy.³⁰ Maintaining secrecy regarding the admission of the woman in the hospital for the purpose of termination of pregnancy is also an integral part of Regulations of the **Medical Termination of Pregnancy Regulations, 2003**³¹

All these legislations hinder free flow of information and creates ambiguity for the public officials and the citizens to understand how much to disclose under the new access law and how much information to be requested for respectively. While Parliament may pass a strong access law, bureaucrats can effectively undermine its

²⁴ The Indian Evidence Act, 1872 s.123,124 & 162

²⁵ The Central Civil Services (Conduct) Rules, (Manual of Office Procedure for the Central Government) 1964 Rule 11.

²⁶ All India Services (Conduct) Rules, 1968 Rule 9

²⁷ Atomic Energy Act, 1962 s. 3(c)

²⁸ Commission Inquiry Act, 1952 s. 3

²⁹ The Competition Act, 2002 s.57

³⁰ The Information Technology Act, 1986, s.72

³¹ Medical Termination of Pregnancy Regulations, 2003

impact by promulgating regulations or implementing internal rules which restrict its ambit.³²

1.3.Origin and Growth of Access to Information Laws

Sweden was the first country to pass its Freedom of the Press Act in 1766 and remained so for over a century. Inspired by the Swedish model, Finland, Norway and Denmark passed their information laws and made information accessible to the public by 1970. The concept of the right to information began to spread subsequent to the formation of the United Nations. Between 1996 and 2006 a large number of countries adopted their access to information laws including the United States of America, France, Netherlands, Australia, New Zealand, Canada, the United Kingdom and India.

In the international sphere, the right to information was viewed predominantly as an administrative governance reform in the 1990s, but is now increasingly viewed as a fundamental human right. Major countries today have their comprehensive laws to facilitate access to information on how the government and other public authorities function.

The United Kingdom had its Freedom of Information Act in 2000 after a two-decade long public campaign which came into force in January 2005 owing to September 2001 attack. In the United States, the statutory framework for access to information is provided under the Freedom of Information Act, 1966, the Privacy Act, 1974 and the Sunshine Act, 1976. In Europe, nearly all nations have adopted Freedom of Information Laws. The organisation which played an instrumental role in propagating Freedom of Information laws in Europe is George Soros' Open Society Institute (OSI), which took the lead in promoting transparency.³³

Today, more than 100 countries around the world have adopted freedom of information laws. As a party to the Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights 1966, India is under an obligation to effectively guarantee the right to information to its citizens. Further, under Article 51(c)

³² CHRI 2008, *Implementing Access to Information: A Practical Guide for Operationalising Access to Information Laws*, Commonwealth Human Rights Initiative, Print World, New Delhi, 2008, pg-13-16

³³ *Available at:* <http://www.opensocietyfoundations.org> (last visited on May 9, 2018)

of the Indian Constitution enshrines to foster respect for international law and treaty obligations.

1.4. Progression of Right to Information Laws in India

In India, the journey of the passage of the information law has been historic. The pre independence era legislations gave ample opportunity to the officials to refrain from disclosure. The enactment of the Right to Information Act, 2005 was to a large extent inspired from the liberal and meaningful interpretation of the provisions of the Constitution by the Judiciary and the pressure from the civil society groups, activists and NGOs.

1.4.1. Right to Information under the Constitution of India

The Constitution of India is the Fundamental Law of the land. Inspired by the International Conventions and other Constitutions of the world, Part III of the Constitution envisages Fundamental Rights for individuals guaranteeing right to equality³⁴, right to freedom³⁵, right to education,³⁶ right against exploitation³⁷, right to religion,³⁸ cultural and educational rights,³⁹ right to property⁴⁰ (repealed by the 44th Amendment Act, 1978) and the most importantly the right to constitutional remedies.⁴¹

Although many countries have enshrined right to inform and to be informed in their constitutions, the Indian Constitution does not explicitly mentions right to information as a Fundamental Right. The right has been recognised as a fundamental human right by the Indian judiciary over the last few decades culminating into a statutory right post 2005.

However, the right to know and receive information is not absolute and subject to reasonable restrictions enumerated in Article 19(2) that includes sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public

³⁴ The Constitution of India, Art.14-18

³⁵ *Id.*, Art. 19-22

³⁶ *Id.*, Art.21A

³⁷ *Id.*, Art.23-24

³⁸ *Id.*, Art.25-28

³⁹ *Id.*, Art.29-30

⁴⁰ *Id.*, Art.31

⁴¹ *Id.*, Art.32

order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

Freedom of press as an important source of information, although not explicitly mentioned in the Constitution, has given a wider interpretation by the Apex Court to include freedom of the press as an integral part of Article 19 1(a).

Besides ensuring the civil and political rights, the cherished goal of the framers of the Constitution was to transform India socially and economically and fulfill the promises laid down under Part IV of the Constitution. These directives are fundamental in the governance of the country and encourages participation of the citizens in the administration of the state. 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.⁴² Participation of workers in the management of industry inserted by the Constitution (42nd Amendment) Act, 1976 gives opportunity to the workers in decision –making and policy making and ensuring their right to know about the enterprise or undertakings.⁴³

1.4.2. Judicial Approach towards Right to Freedom of Speech and Expression

Freedom of speech and expression is considered the citizen's most cherished right and is an essential component of a democratic society. The public discussion with peoples' participation is a basic feature and a rational process of democracy, which distinguishes it from all other forms of government.⁴⁴

It was in 1982 that the right to know matured to the status of a constitutional right in the celebrated case of *S.P.Gupta v. Union of India*⁴⁵ (popularly known as *Judges transfer case*). In this case the Apex court was pleased to order the disclosure of all correspondence between the Law Minister and the Chief Justice of India and the Chief Justices of High Court of Delhi and Patna in connection with the non-appointment and

⁴² Sapna Chadah "Implementing Right to Information: A Practical Approach" 460 *IIPA* Vol LV, No.3 July-Sep (2009)

⁴³ The Constitution of India, 1950 Art.43A

⁴⁴ *S. Rangarajan v. P.Jagivan Ram* (1989) 2 SCC 574

⁴⁵ AIR 1982 SC 149

transfer of certain judges. Thus the right to information came to be judicially recognized in India by the early 1980s. Justice Bhagwati observed that the concept of an open government was the direct emanation from the right to know which was implicit in the right of free speech and expression guaranteed under Article 19(1) (a).

Thereafter, in 1986, the Bombay High Court followed the *S.P.Gupta* judgment in the well known case of *Bombay Environmental Group v. Pune Cantonment Board*⁴⁶, the writ petition of an voluntary organisation, that was interested in protecting the environmental and ecological balance of the city was entitled to the right to access information that was withheld by the Pune Cantonment Board in connection with the construction work carried out within the cantonment limits. This was considered such a landmark judgment concerning access to information that the Ministry of Environment and Forestry in New Delhi published it, for the benefit of other voluntary agencies and the public at large.⁴⁷

In *Dinesh Trivedi MP v. Union of India*⁴⁸ the court held that freedom of speech and expression includes right of citizens to know about the affairs of the government.

In *Union of India v. Association for Democratic Reforms*⁴⁹ reaffirmed the right to know of citizens. The right to get information in democracy is recognized all throughout and it is a natural right flowing from the concept of democracy “The Supreme Court also issued directives to the Election Commission of India regarding voter’s right to know the antecedents of the election candidates.

The judicial interpretation prior to the enactment reflects that to know the information any one can approach to the High Court or Supreme Court directly, but this effort was not enough to avail the information properly and systematically but uncertainty prevailed regarding its applicability which was creating ambiguous situation and the citizens were facing difficulties to avail the information from the various agencies of government and non-government organizations. Therefore in order to provide a systematic and concrete mechanism Parliament of India enacted “Right to

⁴⁶ W.P.2733 of 1086 decided on 7.10.1986-unreported)

⁴⁷ P.Lakshminarayanan, “The Right to Information-Present Study and Issues: A Banker’s Perspective” 513 IIPA Vol LV, No.3 July –Sep(2009)

⁴⁸ (1997) 4 SCC 306

⁴⁹ AIR 2002 SC 2112

Information Act 2005” which facilitates the citizen to avail all kind of information without establishing his or her *locus standi* or giving reasons for seeking such information.

1.4.3. Movement for the Right to Information in India

A legislation making the government accountable was an impossible task made possible only through an active movement by the people of India. The first of its kind movement for the right to information was initiated by an organization of marginal farmers and landless labourers of Dendungiri village in Rajasthan named “Mazdoor Kisan Shakti Sangathan” (MKSS) or Workers and Peasants Empowerment Organization that was registered on 1st May, 1990.⁵⁰ The aim of the organisation was to make available free access to information on payment of minimum wages in state development projects and drought relief programmes as well as equitable distribution of rationed items under the Public Distribution System (PDS) meant for the rural poor.

The demand made by the MKSS, for transparency in the disbursement of all development funds, in their respective regions, was made possible by introducing a method of public hearings, or *Jan Sunwai* for voicing the rights. The MKSS organized its first Jan Sunwai on 4 December 1994 and thereafter in many districts of Rajasthan and managed to get documents which pointed to irregularities in certain state development projects.⁵¹ The muster rolls of a number of construction projects had names of people who did not work on the construction site making ghost entries on which the attendance of the labourers were marked and the wages paid were written. The photocopies of the muster rolls and vouchers for the purchase and sale of materials which were attached in the records were demanded in *Jan Sunwais*. This exposure shook the very foundations of corruption that had made a strong hold due to non-access of the public to the information, files and secret records.⁵²

These public hearing in the form of open debate became common in the region with the active participation of common people, local intelligentsia, elected

⁵⁰ CHRI: Commonwealth Human Rights Initiative Available at: www.humanrightsinitiative.org/programs/ai/rti/india/states/rajasthan.htm (last visited on April 4, 2018)

⁵¹ *Ibid*

⁵² *Ibid*

representatives of the people, government officials, NGOs community based organizations and foreign observers after identifying the issues for discussion. This direct involvement of the people differentiated the *Jan Sunwai* from other methods in the fight against corruption. Thereafter, a *dharna* (demonstration) in the town of Beawar in Ajmer to stress the demand for the right to free access to information was organized and it continued for 40 days. In response to the agitation, the state government set up a Commission, which, within three months, had to look into the benefits and risks relating to free access to documents of the local administration. Although the Committee submitted its report on time, it was not made public due to which further *Jan Sunwais* and *dharnas* followed and attracted attention of the government.

The right to information became a topic for the Rajasthan Assembly elections in the second half of 1998. Ashok Gehlot, the candidate of the Congress Party for the post of Chief Minister, supported the demands of the MKSS and included it in his election manifesto. The Congress won the election, Gehlot formed a Commission to draft a possible legislation. The State Assembly passed the Rajasthan Right to Information Act 2000 in January 1999, which came into force in June 2000 and came into force on 26 January 2001.

On 5th April, 1995, the Chief Minister of Rajasthan announced in the State Assembly that Rajasthan would be the first state in India where every citizen would be entitled on the payment of some fee to have photocopies of all the official documents relating to local development expenditure.

After one year of this announcement, the MKSS launched *dharna* from the Bewar town to press issue of administrative instructions for the ordinary citizen's right to know the local development expenditure. Slowly the movement spread to the whole state of Rajasthan. After the end of 52 days of *dharna*, the Dy. Chief Minister announced that the State Government had issued administrative instructions six months earlier regarding right to receive photocopies of documents from Panchayat or local government institutions. It was quite astonishing as to why these administrative instructions issued six months earlier were kept in dark. Despite such instructions, the bureaucrats and elected Sarpanch of the villages denied information to MKSS members

and sometimes even manhandled them and also lodged false FIRs against them. Only in a few cases, incomplete or unreliable information were furnished.

The Collector's order for a special audit and seizure of documents could not be implemented. For the national movement for right to information, the National Campaign for People's Right to Information was founded in 1996. Its objective was to press for information law at national level. A model bill on Right to Information was drafted by the Press Council of India which was updated by the National Institute of Rural Development. For the draft of Freedom of Information Act, 2002, it served as one of the reference papers.⁵³

. In 1996, Justice P.B. Sawant, the Chairman of the Press Council of India, drafted the Right to Information Bill. This draft derived significantly from a draft prepared earlier by a meeting of social activists, civil servants and lawyers at the Lal Bahadur Shastri National Academy of Administration, Mussoorie in October 1995. It stated that the legislation merely seeks to make explicit provisions for securing to the citizen this right to information.

The Draft Bill was submitted to the Government of India on 1996. In the bill, in addition to state, both the corporate sector and the NGOs were sought to be brought under the purview of this proposed legislation. The draft legislation laid down penalties for default in providing information.⁵⁴

Finally the Department of Personnel, Government of India, constituted a Working Group on January 2, 1997 under the chairmanship of bureaucrat and consumer activist H.D. Shourie to draft legislation for consideration of government.

On the positive side, the 1997 draft Bill on Freedom of Information brought the judiciary and legislatures under the purview of the proposed legislation. However, on the negative side, it widened the scope of exclusions to enable public authorities to withhold 'information' the disclosure of which would not subserve any public interest. This single clause broke the back of the entire legislation. It also made no provisions for penalties in

⁵³ Sudhir Naib, "*The Right to Information in India*" 48 (Oxford University Press, New Delhi, 1st edn. 2013)

⁵⁴ *Supra* note 49

the event of default and appeals were allowed to consumer courts. The Act did not cover the private sector and all NGOs which are not ‘substantially funded or controlled’ by government.

Meanwhile, the Department-related Parliamentary Standing Committee on Home Affairs (2000) in its 55th Report on the Demands for Grants (1999-2000) of the Ministry of Personnel, Public Grievances and Pensions had observed that ‘the Committee in its 44th Report had recommended for the explicit provision of Right to Information. The Committee again reiterates its stand taken earlier on the matter and suggests that access to information must be accorded the status of Fundamental Right’.

Finally, the Cabinet of the BJP led National Democratic Alliance approved the Bill on 13 May 2000. Accordingly, the Bill was introduced in the Lok Sabha on July 25, 2000. It was referred to the Parliamentary Standing Committee on Home Affairs, chaired by Pranab Mukherjee, on 14 September 2000. The Committee considered the Bill in five sittings from October 2000 to July 2001. The Committee heard the Secretary, Ministry of Personnel and eminent experts connected with the issue. These included renowned Indian scholars, policymakers and analysts. However, after the President’s signature this Act could not be notified in the Government Gazette. This Bill included new provisions like fixing the time limit of 48 hours of life and liberty related information. Still various provisions of the Act were similar to that of the RTI Act.

The Freedom of Information Bill which was introduced in Parliament by the National Alliance Government, on 25th July, 2000 was approved by both Houses of Parliament in December, 2002 with the assent of the President, it became Freedom of Information Act, 2002. It was notified on 6th January, 2003 as Act No.5 of 2003 but it was never brought into force due to certain shortcomings mentioned in the subsequent paragraph. Therefore, to ensure greater and effective access to information and to make it more progressive, participatory and meaningful significant changes were proposed in the existing Act. The Government decided to repeal the Freedom of Information Act, 2002 and in the proposed legislation to provide an effective frame-work for effectuating the right to information.

1.4.4. Emergence of Right to Information Act, 2005

The Freedom of Information Act, 2002 was largely criticized owing to its shortcomings and was never enforced because its rules were not framed, nor was its enforcement date notified as it suffered from some inherent, substantive and procedural problems and was repealed by the new UPA government which came into office in 2004.

Thereafter, a Common Minimum Programme (CMP) was agreed upon by the UPA government outlining objectives of the coalition government in India that included to provide a government that is corruption-free, transparent and accountable at all times. To fulfill this objective, The National Advisory Council (NAC) was assigned the task of suggesting changes in the Freedom of Information Act, 2002.

Taking into consideration the important amendments proposed by the NAC, the Right to Information Bill 2004 was introduced in Lok Sabha. The Bill was then referred to the Parliamentary Standing Committee on Personnel, Public grievances, and Law and Justice that took note of the suggestions given by social activists and eminent personalities and asked the government to consider their suggestions. The important changes were given effect to and the final report of the Standing Committee was tabled in the Lok Sabha and the Rajya Sabha on 21st March, 2004 that was finally passed and received the assent of the President on the 15th June, 2005 and came into force on 12th October, 2005. Unlike other countries, it is the people's suffering and grievances that has led to the initiation of the passing of the right to information in India.

A new weapon in the hands of the citizens to fight corruption was handed over that aimed to strengthen the institutional architecture for curbing corruption, enhancing transparency and accountability in public administration and improving delivery of services to the people. It ensured greater transparency and promised to reduce corruption.

The Right to Information Act, 2005 is considered one of the landmark legislations in the history of India that strengthens the processes of participatory democracy. It has empowered the citizens with an effective weapon to fight corruption.

Being a social welfare legislation, it is also a special law under Section 41 of the Indian Penal Code as far as the penalties provided under section 20 of the Act are concerned.⁵⁵

1.5. Right to Information Legislations in the States prior to the enactment of the Central Act

Owing to the federal structure of the Indian Constitution, the implementation of the Act equally rests on the shoulders of the Union and the State governments. Department of Administrative Reforms & Public Grievances is the nodal agency of the government of India for administrative reforms as well as redressal of public grievances relating to the states in general and those pertaining to Central Government agencies in particular.⁵⁶ As stated earlier, a Conference of Chief Ministers on “Effective and Responsible Government” was held on 24th May, 1997 in New Delhi which expressed the need on the law of right to information.

Thereafter, inspired by the endeavour taken up by the Press Council of India, Working Group and the Central Government, and the government of various states began preparing draft legislation on Right to Information. A number of states had already introduced the Bill on Right to Information, before the Freedom of Information Bill, 2002 was introduced in the Lok Sabha.

The states laws on the Right to Information include Tamil Nadu Right to Information Act, 1999; Goa Right to Information Act, 1999; Karnataka Right to Information Act, 2000; Rajasthan Right to Information Act, 2000; Delhi Right to Information Act, 2001; Madhya Pradesh Right to Information Act, 2003; Maharashtra Right to Information Act, 2003; Jammu and Kashmir Right to Information Act, 2004. Tamil Nadu was the first state to enact Right to Information Act in 1997.

The Right to Information Bills had been introduced in the Legislative Assemblies of Uttar Pradesh, Andhra Pradesh, Kerala and Odisha, where they were not passed into law, but executive orders for providing the right to information had been issued to the departments. These legislations in the states could not bring the expected

⁵⁵ Dr. J.N.Barowalia, ‘*Commentary on the Right to Information Act*’ 104 (Universal Law Publishing, 2013)

⁵⁶ Available at: <http://darp.gov.in/administrative-reforms> (last visited on March 3, 2018)

reforms as the acts were over protective of the bureaucracy, imposed high fees for application and photocopying and provided no penalty for officials refusing to divulge information or delaying beyond stipulated time without any justification. Therefore, a need was felt for a central legislation to ensure uniform application of the law throughout the country.

1.6. Development of Right to Information Act in India: Present Position

The Right to Information Act, 2005 has brought in a transition from a secretive and inaccessible administration to a responsive and responsible government in India. It has brought in reforms in the administrative machinery in the country.

The 73rd and 74th Amendments of the Constitution in 1992 made a significant transit from a powerful centralized democracy to a power sharing closer to people governance—a shift from Loksabha to Gramsabha.⁵⁷ Institutional mechanisms and capacities have been developed at national, state and local levels which continue to aid and assist the implementing agencies improving the systems and governance at large.

In addition to this, the Second Administrative Reforms Commission in its first report has made several recommendations that included inclusion of organisations and agencies carrying out government functions under the ambit of the RTI Act. It had also opined that to remove difficulties in interpretation such provision to be included in Sec 30 of the Act.⁵⁸

In comparison to other countries, India has done fairly well in making this Act a potent weapon in the hands of the public. The NGOs like Satark Nagrik Sangathan (SNS), Mazdoor Kisan Shakti Sangathan (MKSS), Commonwealth Human Rights Initiative (CHRI) have been instrumental in keeping a check on the misuse of power by the government and has promoted transparency in governance. The National Campaign for People's Right to Information (NCPRI), a coalition of these organisations, played a significant role in the enactment of the RTI Act and has been actively involved in preventing government from diluting the Act through amendments.

⁵⁷ Ankita Ghosh '*Right to Information: An instrument for effective Participatory Development of the Indian economy*' Expanding Horizons of Human Rights 162 (2009)

⁵⁸ Second Administrative Reforms Commission 2005 *available at* <https://darp.gov.in> (last visited April 24,2019)

The Central and the State Information Commissions have been given wide powers to attend to appeals and complaints filed by the citizens under the Act. They have done a remarkable job in restoring the rights of the people and taken significant steps in exposing corruption, unearthing misgovernance, human rights violation, land encroachment and has ensured transparency in governance. The Supreme and the High Courts have also played a major role in interpreting the Act giving enhanced access to information to citizens through this Act.

1.7. A Sum Up

The journey of the enactment of the RTI Act from secrecy to transparency was long and arduous especially due to resistance from a large number of vested interests. The civil society groups and the media played an instrumental role in the battle against the secrecy regime and the pressure from all corners led to the enactment of the legislation making the government functionaries answerable to public.

However, like all other legislations, implementation of the RTI Act remains one of the major challenges. The media and civil societies act as watchdogs and ensure its effective implementation yet the battle between secrecy and transparency continues. Nevertheless, questions relating to accountability from them have surfaced over the years as well. The performance of the states with regard to the implementation has been inconsistent. However, the Information Commissions and the judiciary have been playing key roles in creasing out the ambiguities and have giving purposive interpretations to the provisions to fulfill the objectives of the Act.